Gopalsingh and Another

Vs

State of Madhya Pradesh and Another

Criminal Appeal No. 93 Of 1969

(A. N. Grover, A. N. Ray, D. G. Palekar M. H. Beg, JJ)

22.02.1972

JUDGMENT

PALEKAR, J. -

1. This is an appeal from an Order of conviction and sentence passed by the High Court of Madhya Pradesh reversing the acquittal recorded by the learned Additional Sessions Judge, Rajgarh. The appellants have been convicted for the offence of murder under Section 302, I.P.C. and sentenced to imprisonment for life.

2. The appellants who were about 16 or 17 years old at the time of the offence were students living in a room next door to the Police Station at Shajapur. Appellant No. 1 Gopalsingh is the son of Umraosingh and appellant No. 2 Dulesingh is the son of Bapusingh. Umraosingh and Bapusingh who are brothers were living in village Jaiheda about two or three miles away from Shajapur. The deceased Modsingh was an elderly man about 60 years old and he lived in village Baiheda. Baiheda is about four miles from Shajapur and to the north of Jaiheda.

3. The deceased Modsingh had gone to Shajapur on January 9, 1966, as it was a market day. He was returning by the main road which connected Baiheda and Shajapur and when he was in the jungle portion of the track near Jaiheda he was attacked, according to the prosecution, by four persons with knives and daggers. The time of attack was about 8.00 p.m. and admittedly it was very dark. The first information lodged by the deceased on the next day i.e., January 10, 1966, at Shajapur Police Station says that the assailants stopped him when he was going along the road, dragged him towards a stream close by and there assaulted him with knives on various parts of the body. After the assailants went away the deceased dragged himself to the road and not being able to walk further he sat by the side of the road. Next morning at about 8.00 a.m. Chhotulal, P.W. 7 and Umraodas, P.W. 1 happened to pass by. The deceased asked for water and when the water was being given to him, he mentioned that he had been assaulted by Gopalsingh, Dulesingh, Hatesingh and one other person whose name Modsingh was unable to give. Chhotulal went to the village Baiheda and informed Modsingh's sons Bhagirath, P.W. 2 and Kumersingh, P.W. 5. They brought a cart and took him to the Police Station at about 11.00 a.m. On Modsingh's statement the FIR was recorded as per Ext. P. 28. He was then removed to the Hospital at Shajapur where Dr. Ragunathrao Naik, P.W. 15 noticed that there were 12 incised wounds on various parts of the body of Modsingh. As his condition was serious, arrangements were made to record his dying declaration in the Hospital and the same was recorded by Mr. Shyamlal Shakya, 1st class Magistrate, Shajapur at about 2.00 p.m. It is Ext. P. 4. Later in the afternoon Modsingh died as a result of the injuries and it is not disputed that death was caused by the injuries which he had received.

4. The two appellants and Hatesingh who had been specifically named both in the First Information Report and in the dying declaration were arrested by the Police that same afternoon. Next day, i.e., on January 11, 1966, according to the prosecution, on some disclosures made by the appellants, blood stained clothes were recovered from the room in which the appellants lived. A dagger was recovered from near appellant No. 1's father's house in Jaiheda. Human blood was detected on the same and principally on this evidence the prosecution charged the appellants. Blood was also detected on the shirt of Hatesingh and on that evidence Hatesingh was also made a co-accused.

5. The learned Sessions Judge did not accept the evidence of the dying declaration as sufficiently identifying the assailants nor was he satisfied with recovery evidence. He, therefore, acquitted both the appellants and Hatesingh. In appeal against the acquittal the High Court accepted that evidence against the appellants but rejected it so far as Hatesingh is concerned. That is how the appellants have been convicted while Hatesingh's acquittal was confirmed.

6. The learned Sessions Judge had rejected the dying declaration Ext. P. 4 and the alleged statements made by the deceased to Chhotulal, P.W. 7 and Umraodas, P.W. 1. According to him though the names Gopalsingh and Dulesingh had been specifically mentioned in Ext. P. 4 and for the matter even the first information report Ext. P. 28, in neither of these documents the identity of the appellants had been sufficiently indicated. Neither their father's names nor their place of residence was mentioned therein. The deceased Modsingh appeared to have made himself quite unpopular in his own village and the surrounding villages. He had created enemies for himself and there were other persons named Gopalsingh and Dulesingh in village Baiheda. One such person named Gopalsingh had filed a suit against the deceased for having outraged the modesty of his mother and had also obtained a money decree. On the other hand the deceased had admittedly no quarrel with the appellants nor was there any evidence that these appellants had any personal contacts with the deceased. The High Court, however, held that the First Information Report, Ext. P. 28 gave an unmistakable clue as to the identity because in that report Modsingh had alleged that there was enmity between him and the appellants because some beatings had taken place previously and the fathers of Gopalsingh and Dulesingh had quarrelled with him and there were cases pending in respect of that quarrel. Certain documents, it appears, were produced to show that there was a quarrel between the fathers of the appellants, on the one hand, and the deceased and some others on the other. Ext. P. 2 is a report filed by Modsingh on November 13, 1963, charging the fathers of the appellants, Umraosingh and Bapusingh with an assault on the brother of Modsingh. Ext. P-33 is a cross complaint, dated November 23, 1963, filed by Umraosingh against Modsingh and several others. Ext. P. 34 is the challan filed by the Shajapur Police Station on the information lodged by Modsingh on November 13, 1963, as per Ext. P-2. In the dying declaration Ext. P-4 recorded by the Magistrate and in the first information report Ext. P-28, which was also treated as an earlier dying declaration, it was alleged that cases were pending. But no specific evidence was produced in court to show that these cases filed in 1963 were actually pending on the day of this incident namely on January 9, 1966. Such evidence could have been very easily procured and if that evidence had been led it could have been said that the two recorded dying declarations read together referred to the appellants only. The omission on the part of the prosecution to produce that evidence is not explained. The High Court, however, preferred to rely on the bare word of the Magistrate Mr. Shakya who, when questioned in the cross-examination as to why he had not enquired about the names of the fathers, stated that he did not think it necessary to ask their fathers' names and residence because a case was pending in his court. This explanation is rightly not accepted by the High Court as satisfactory. However, the High Court was prepared to proceed on the learned Magistrate's statement that a case was pending, and that is how the High Court came to the conclusion that Gopalsingh and Dulesingh mentioned in the dying declaration must be the

appellants. We think that the High Court was not justified in relying on any part of the statement made by Mr. Shakya. His further cross-examination shows that he really knows nothing about the case which he said was pending. He stated "I do not remember definitely if there is any case pending in my court filed by Modsingh in which Dulesingh, Hatesingh and Gopalsingh may be parties. I do not remember if Modsingh had given his statement in any of the case before me. I was told prior to recording the statement of Modsingh that the case of the same Modsingh is pending in my court whose statement is to be recorded and the beatings have taken place in the same connection. But I do not remember as to who had told me this fact. Such a rumour was spreading in the court." The statement, therefore, made by Mr. Shakya that a case was pending in his court at that time was not made by him of his own knowledge but on the basis of some rumours. He had not remembered if Modsingh had come before him in any case. In these circumstances, therefore, his bare statement that a case was pending in his court at that time between Modsingh, on the one hand, and some others, on the other, has really no value. And if the evidence of Mr. Shakya on the question as to whether a case was pending is discarded, there is no other evidence to show that a case in which Modsingh and the fathers of the appellants were involved was actually pending at the time. The High Court was inclined not to agree with the learned Sessions Judge because it was satisfied that the allegation with regard to the pending case or cases made in the dying declaration clearly establish the identity of the appellants. But if, as we have shown, there was really no evidence about the pending case or case it would mean that the conclusion of the Session Judge that there was no sufficient identification of Gopalsingh and Dulesingh, as mentioned in the dying declaration, was a reasonable conclusion which, in an appeal against acquittal, was not liable to be set aside.

7. We have already referred to the fact that the learned Sessions Judge was not prepared to accept the evidence of Umraodas, P.W. 1 and Chhotulal, P.W. 7, that deceased Modsingh had named the appellants as assailants when they met him in the morning at 8.00 a.m. on the road side. Detailed reasons have been given by the learned Sessions Judge why he considered their evidence unsatisfactory. The High Court, however, in one sentence expressed its opinion that the evidence of these two witnesses, amongst others, corroborated the dying declaration in respect of the identity of the appellants without giving any reasons why it differed on the point from the learned Sessions Judge. It is obvious that the High Court was so well satisfied by the written dying declaration as establishing the identity of the appellants that it ignored to consider the evidence of Umraodas, P.W. 1 and Chhotulal, P.W. 7 independently to see how far they were reliable. In an appeal against acquittal we think the High Court ought to have expressed itself more fully why it considered the learned Sessions Judge's conclusion was unreasonable. In our opinion that conclusion is unexceptionable.

8. But even if we assume that the High Court was right in concluding that the dying declaration established the identity of the appellants, it was certainly not of that character as would warrant its acceptance without corroboration. It is settled law that a court is entitled to convict on the sole basis of a dying declaration if it is such that in the circumstances of the case it can be regarded as truthful. On the other hand if on account of an infirmity, it cannot be held to be entirely reliable, corroboration would be required. See Khushal Rao v. The State of Bombay. (1958 SCR 552.) In this case, it must be first remembered that though the names of the appellants' fathers were known to Modsingh and others who accompanied him to the Police Station, their fathers' names and present residence have not been mentioned. It is rather unusual for Police Officers not to enquire and record in the first information the full name and address of the persons complained against. Secondly, the assault had taken place in a jungle on a dark night which may cause mistaken identity. Thirdly, neither Modsingh nor any of his relations had given any cause to the appellants, personally, to plan

and execute a murderous attack on him. Fourthly, there were other persons bearing the appellants' names in the same village and admittedly they were on inimical terms with the deceased. Fifthly, the deceased had named Hatesingh also as one of the assailants although it has now turned out in the evidence of Umraodas, P.W. 1 that the deceased and Hatesingh had cordial relations with each other. In these circumstances, sufficient corroboration would be required for acting on the dying declaration. Apparently, the High Court thought that corroboration was necessary and this it sought in the recovery of the blood stained shirt and bushshirt from the room of the appellants which the learned Sessions Judge had specifically discarded. We think that the learned Sessions Judge had given very satisfactory reasons for discarding this evidence and, in our opinion, the High Court was in error in taking a different view, especially, when the High Court had realised that there was something fishy in the manner in which a blood stained shirt was recovered from Hatesingh who had been acquitted. Hatesingh, like the appellants, had been arrested on the 10th. His shirt which he was wearing at the time was not seized. But next day his shirt was seized because some blood spots were noticed. It is rather extraordinary that the police should not see blood stains on the shirt when he was arrested but should notice them on the next day. The High Court, therefore, was right in discarding that evidence because it is plain enough that at the time of the arrest there must not have been really any blood stains on the shirt of Hatesingh. Similar considerations should have weighted with the court with regard to the alleged recovery of the shirt and the bushshirt from the room of the appellants. The appellants were living in a room close to the Police Station. They were arrested on the afternoon of 10th. One should have expected the Police to search the room immediately but it does not appear from the record that a search was made at the time. On arrest, the person of Gopalsingh was searched and an iron key with an iron ring attached to it was found on this person. See Ext. P. 6. The same, however, does not appear to have been sealed and it is obvious that the police had the key. Though the Police and the Pancha Madan Lal, P.W. 9 claim that the appellant Gopal Singh produced the key with which the door of the room is opened next day at 2.00 p.m. we feel no doubt at all that the key must have been in the possession of the police till that time. In these circumstances the learned Sessions Judge was quite right in suspecting the recovery of the blood stained shirt and bushshirt from the room. If Hatesingh's shirt could show blood stains on the 11th there was no difficulty in the shirt and the bushshirt recovered from the room of the appellants showing similar blood stains. There was no reason whatsoever why the room of the appellants was not immediately searched for finding blood stained clothes. The memos containing the disclosure statements are worthless and the High Court has rightly not relied upon those statements. In our opinion, therefore, there was no good reason for the High Court to discard the conclusion of the learned Sessions Judge that the recovery of the shirt and the bushshirt cannot be regarded as above board. In the result it must be held that the learned Sessions Judge had rightly acquitted the appellants and the High Court was not justified in interfering with the order of acquittal. The Order of conviction and sentence is, therefore, set aside and the appellants are acquitted. They have been already directed to be set at liberty.

9. Order : - For the reasons which would be stated later, this appeal is allowed and the conviction and sentence of the appellants are hereby set aside. The appellants are acquitted and they shall be released forthwith.

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