

Ashok Kumar Chatterjee

Vs

State of M. P.

Criminal Appeal No. 417 of 1978

(B. C. Ray, S. R. Pandian JJ)

02.05.1989

JUDGMENT

S. RATNAVEL PANDIAN, J.-

1. This appeal under special leave is directed against the judgment passed by the High Court of Madhya Pradesh at Jabalpur disposing Criminal Reference No. 1 of 1977 submitted by the learned Sessions Judge, Raipur under Section 366(1) of the Criminal Procedure Code for confirmation of the sentence of death awarded by him in Session Trial No. 5 of 1977 and the criminal Appeal No. 307 of 1977 preferred by the appellant, Ashok Kumar Chatterjee challenging the correctness and legality of the judgment made by the trial court convicting him under Section 302 and 201 IPC and sentencing him to death and to undergo rigorous imprisonment for 3 years respectively.

2. The facts of the case briefly stated are as follows :

The deceased Ravindra, who was 19 years of age at the time of occurrence in 1976 was the son of Pritosh Kumar Chatterjee who was employed in Bhatapara as Laboratory Assistant in Government Multi-Purpose Higher Secondary School. He hailed from West Bengal. The appellant, aged about 22 years, is a cousin of Pritosh.

3. Pritosh was living with his wife (PW 2), his only daughter, aged about 15 years namely Supriya @ Bina and the appellant in Bhatapara in the house of PW 11. The deceased who was a student in Raipur College had come to Bhatapara during the summer vacation.

4. Though the motive for the appellant to murder Ravindra, as put forth now by the prosecution, is that there was a quarrel between Ravindra and the appellant on some money matters, the real motive seems to be a story of shameful intrigue as disclosed from the evidence of PW 2, the wife of Pritosh. According to PW 2, her husband Pritosh was a man of very bad and indecent character and he was living in a private hell of his own satisfying his lust with his own daughter, Supriya. In the cross-examination also PW 2 affirms that her husband had illicit relations with Supriya. On account of this abnormal sexual and obnoxious behaviour of Pritosh, there used to be frequent quarrels between PW 2 and her husband. It further transpires from the evidence that the appellant who was none other than the cousin brother of Pritosh, was also making overtures to Supriya and this was resented by the deceased Ravindra who was in the prime of his youth.

5. During that summer vacation, PW 2 along with her daughter Supriya had been to her village Gangoria, leaving her husband, the appellant and the deceased at Bhatapara. Some time later, Pritosh also come to the village where PW 2 and her daughter Supriya were staying. After the

arrival of Pritosh, PW 2 left the village taking her daughter with her to Bhadria by travelling in a bus. But even before she reached Bhadria, she sent her daughter back to Gangoria from Barasal, probably a place midway between Gangoria and Bhadria. In Gangoria, PW 2's mother and brother were living.

6. Pritosh came to Bhadria from Bhatapara. By that time Supriya also came there. PW 2 took a strong objection to the conduct of her husband coming to Bhadria and had a quarrel with him. Then she sent Supriya back to Gangoria on the very next day of the arrival of her husband. Thereafter PW 2 and her husband went to the village Mongram where the appellant also joined with them. It may be stated that the appellant's parents and brothers were residing at Mongram. At Mongram, PW 2 made enquiries with the appellant about her son Ravindra to which the appellant replied that Ravindra had gone to Bombay in search of some employment. Leaving the appellant and Pritosh at Mongram PW 2 went Gangoria. After some days PW 2 with her mother came to Bhatapara and asked her husband and the appellant about her son Ravindra to which both of them replied that Ravindra had gone in search of a job somewhere. PW 2 asked them to make a search for her son and if they failed to do so, she would herself make a search by handing over a photo of her son to the police.

7. Be that as it may, it appears from the evidence that the deceased was last seen with the appellant in Bhatapara on June 8, 1976. On June 11, 1976, a headless body of a male without the limbs was found by PW 1 and the villagers in the field at Bhatapara. Some of the limbs of the body were also found at different places on the same day. At about 8.15 a. m. on June 11, 1976, PW 1 lodged a report (Ex. P-1) before PW 20, the then Section House Officer of Bhatapara Police Station. On the basis of Ex. P-1, the first information report, Ex. P-57 was prepared.

8. PW 20 took up investigation, proceeded to the scene, held inquest over the headless body and the limbs and prepared the inquest report Ex. P-23. He also prepared a sketch of the scene Ex. P-50 and seized a rope, a pair of shoes and a cycle lying there.

9. He sent that trunk and the limbs for post-mortem examination. On the very next day i. e. on June 12, 1976 on information, near the railway station he seized the decapitated head, over which he held an inquest and prepared the report Ex. P-59. He caused the photograph of the head to be taken under Ex. P-12. Then he sent the head for post-mortem.

10. PW 10, the Medical Officer who conducted the autopsy on the headless trunk and the decapitated head opined that both were parts of the same body of a male of fair complexion of an estimated age of 17 to 25 years. According to the prosecution, the dead body was of Ravindra who of a fair complexion, aged 19 years at that time. Exs. P-45 and 47 are the post-mortem certificates. PW 10 states the body had not decomposed.

11. PW 21, at the instruction of PW 20, inspected the house of the deceased and drew a sketch Ex. P-60. He found blood stains at wooden door at three points which he scraped.

12. While the matter stood thus, PW 2 not being satisfied with the reply of her husband and the appellant both at Mongram and thereafter at Bhatapara about the missing of her son Ravindra, went to the police station of Bhatapara and handed over two photographs of her son Ex. P-2 and Ex. P-3 and also gave a report Ex. P-82 dated July 13, 1976.

13. On the same day i. e. on July 13, 1976 after PW 2 had submitted the report Ex. P-82 to the

police, Pritosh committed suicide by throwing himself before a running train.

14. PWs 6 and 7 who were the Lecturers of the High School in which Pritosh was employed and in which the deceased studied and completed his matriculation, came to the police station and informed the suicidal death of Pritosh to PW 30 (Station House Officer). While PWs 6 and 7 were returning from the station, they saw the appellant entering the police station. The appellant told both these two witnesses that he knew of the death of Pritosh and further confessed that he was the person who murdered the deceased Ravindra and added that he had come there to surrender before the police.

15. PW 30 arrested the accused, examined him and recorded his confessional statement in the presence of PWs 6 and 7. In pursuance of that statement, several articles and letters were seized. On June, 16, 1977, certain applications written by Pritosh were also recovered. During the inspection of the house, PW 30 found blood stains on the walls of the house which he scraped and recovered Ex. P-20 is the recovery mahazor. Among the letters seized, Exs. P-13 to P-15 (letters written in Bengali) and Ex. P-29 and Ex. P-31 (letters written in Hindi) and the envelopes Exs. P-30 and P-32 were found. Exs. P-61 and P-63 are the specimen Hindi writings of the appellant and Exs. P-18 to P-20 are the specimen Bengali writing of the appellant. These letters along with specimen handwriting were sent to PWs 22 and 23 who were the Additional and Assistant Station Examiners of Questioned Documents (i. e. handwriting experts) for comparison of the writings of these letters with the specimen writings of the appellant. The experts on comparison have opined that all the seized letters were in the handwriting of the appellant.

16. Besides the opinion of the experts, PW 2 who claims to have studied up to 3rd standard and to have been conversant with the handwriting of the appellant also has deposed that the writings in Exs. P-13 to P-15, P-29 and P-31 are in the handwriting of the appellant. In Exs. P-13 and P-15 (addressed to his father), and in Ex. P-14 (addressed to Jamai Baboo), the appellant had given the detail of his love towards Supriya (@ Bina) and of his guilt of murdering the deceased. It may be pointed out that these letters were not posted. Exs. P-29 and P-31 (dated nil) found in the postal covers (Exs. P-30 and P-32) were addressed to the Collector and the Station House Officer but they too were not posted. The contents of those letters reveal that the appellant wanted to put an end to his life by committing suicide for the sin of murder he committed. It seems that the appellant could not muster courage to end his life and so surrendered before the police. Before leaving for the police station, the appellant wrote Ex. P-104 a postcard addressed to his father and posted the same. This postcard (Ex. P-104) written in Bengali was posted on July 13, 1976 at Bhatapara and it reached his father in Kalopur village on July 17, 1976. This is an important document about which we shall discuss in the ensuing portion of the judgment.

17. During the investigation, a knife and some letters inclusive of Ex. P-104 were seized from the house of the father of the appellant in Kalopur village by PW 18. Exs. P-5 to P-11, P-16 and P-17 are the letters proved to be in the handwriting of Pritosh through PWs 2, 3 and 22. The contents of these letters show that after Pritosh and the appellant returned to Bhatapara from West Bengal the appellant confessed to Pritosh about his involvement in the murder of the deceased, and Pritosh who loved his son Ravindra and the appellant, without disclosing this confession of the appellant, decided to put an end to his life and ultimately did so. Two other letters (Exs. P-6 and P-33) further show that at the initial stage both Pritosh and the appellant decided to commit suicide. However, the sequence of events reveal that Pritosh alone committed suicide after his wife lodged the complaint with the police. We may point out at this juncture that though the letters written by Pritosh cannot be made use of as legal evidence against the appellant, we are mentioning those letters and their

contents only for the proper understanding of the sequence of events and the complete narration of the prosecution case.

18. Exs. P-184 and P-185 are the reports of the Chemical Examiner and Serologist respectively. As per the report of the Serologist the scrapings of the wall of the house and the pillow recovered from the house were stained with human blood. The blood stains on some of the items of the properties were disintegrated and as such their origin could not be determined. After completing the investigation PW 30 filed the charge-sheet on October 28, 1976.

19. The appellant in his statement under Section 313 CPC has denied his complicity in the offence in question and added that he does not know anything about the letters produced by the prosecution and that he was tortured and pressurised to write certain letters and documents inclusive of a postcard at the police station and under pressure his signatures were obtained thereon.

20. The trial court, as pointed supra, convicted the appellant under Sections 302 and 201 IPC and sentenced him to death and to undergo rigorous imprisonment for a period of 3 years. The High Court for the reasons assigned in its judgment affirmed the convictions recorded by the trial court but modified the sentence of death to imprisonment for life while retaining the rigorous imprisonment for 3 years under Section 201 IPC.

21. The learned counsel appearing on behalf of the appellant assailed the judgment of the High Court, inter alia, contending :

(1) That the prosecution has not satisfactorily established the guilt of the appellant through cogent, reliable and trustworthy evidence from which the guilt of the accused is to be drawn and the evidence available on record does not lead to any irresistible conclusion that the appellant alone, and none else, committed this heinous crime;

(2) All the letters except Ex. P-104 have not been posted and they were all fabricated only at the police station under pressure brought on the appellant who was pressurised to sign those letters and as such the contents of all those letters should be rejected in toto :

(3) The date, July 11, 1976 mentioned in Ex. P-104 would indicate that the appellant had been taken into custody by the police either on July 11, 1976 or much earlier and that this letter had been fabricated while he was in the police custody and was posted on July 13, 1976. This postcard (Ex. P-104) raises a cloud of suspicion on the veracity of the prosecution case.

22. Incidentally, a feeble argument was advanced that the prosecution has not established the identity of the trunk, limbs and the severed head as that of Ravindra beyond all reasonable doubt.

23. This Court in a series of decisions has laid down the principles of law governing the exercise of powers by this Court to interfere in an appeal against conviction under Article 136 of the Constitution of India of which we shall make reference to a few.

24. In Hem Raj v. State of Ajmer this Court has clearly made the position of law thus : (SCR pp. 1134-35)

Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, this Court does not exercise its overriding powers under Article 136(1) of the Constitution. . . .

25. In *Ramaphupala Reddy v. State of Andhra Pradesh* this Court expressed its view on this proposition of law thus : (SCC p. 478, para 14)

Although the powers of this Court under that article (Article 136 of the Constitution) are very wide, this Court following the practice adopted by the Judicial Committee has prescribed limits on its own power and in criminal appeals, except under exceptional circumstances it does not interfere with the findings of facts reached by the High Court unless it is of the opinion that the High Court had disregarded the forms of legal process or had violated the principles of natural justice or otherwise substantial and grave injustice has resulted. This Court does not ordinarily reappraise the evidence if the High Court has approached the case before it in accordance with the guidelines laid down by this Court unless some basic error on the part of the High Court is brought to the notice of this Court. It is best to bear in mind that except in certain special cases, the High Court is the final court of appeal and this Court is only a court of special jurisdiction.

26. Chandrachud, J as he then was in *Balak Ram v. State of U. P.* speaking for the bench said : (SCC p. 227, para 26)

The powers of the Supreme Court under Article 136 are wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances. In *Ramaphupala Reddy v. State of A. P.*, it was observed that it was best to bear in mind that normally the High Court is a final court of appeal and the Supreme Court is only a court of special jurisdiction. This Court would not therefore reappraise the evidence unless, for example, the forms of legal process are disregarded or principles of natural justice are violated or substantial and grave injustice has otherwise resulted.

27. This Court in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* wherein the High Court had affirmed the pure findings of facts recorded by the Sessions Court, observed : (SCC p. 222, para 5)

Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established : (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded.

28. In a recent decision in *Appabhai v. State of Gujarat* the following dictum is laid down : (SCC p. 244, para 8)

Before we consider the contentions urged for the appellants, we may recall that these are appeals by special leave under Article 136 of the Constitution. If conclusions of the courts below are supported by acceptable evidence, this Court will not exercise its overriding powers to interfere with the decision appealed against. This Court also will not consider the contentions relating to re-appreciation of the evidence which has been believed by the courts below. The fact that the special

leave has been granted should not make any difference to this practice. The grant of special leave does not entitle the parties to open out and argue the whole case. The parties are not entitled to contest all findings recorded by the courts below unless it is shown by error apparent on the record that substantial and grave injustice has been done to them.

29. We shall now, bearing in mind the scope of interference by this Court in an appeal against concurrent findings, dispose this appeal in this light of the principle of law enunciated by this Court in the abovementioned authoritative judicial pronouncements.

30. This appeal arises against the concurrent findings of facts except for the modification of the sentence made by the High Court. There is no direct evidence to prove this case and the conviction is founded solely on circumstantial evidence. This Court in a line of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests :

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established :

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused :

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir v. State of Maharashtra.*)

31. See also *Rama Nand v. State of Himachal Pradesh*, *Prem Thakur v. State of Punjab*, *Earabhadrapa v. State of Karnataka*, *Gian Singh v. State of Punjab* and *Balwinder Singh v. State of Punjab*.

32. Before advertng to the arguments advanced by the learned counsel, we shall first of all dispose of the contention with reference to the identity of the victim.

33. The unfortunate victim in this case is one Ravindra who was aged about 19 years at the time of the occurrence and who was the only son of Pritosh and PW 2. According to the prosecution, the scene of occurrence was the house of the deceased himself and he was done away with at about 4.45 a. m. on June 10, 1976. Indisputably, it is a very macabre incident in which the deceased had been brutally parts of Bhatapara city. Though the headless body and the various limbs were seen and recovered on June 11, 1976, the decapitated head was seen and recovered only on June 12, 1976. A photograph of the head was taken under Ex. P-12. Though PW 2, the mother of Ravindra on seeing Ex. P-12 identified it to be that of her son, the learned Judges held that since the features of the face in x. P-12 cannot be deciphered, it is impossible for any person to identify the deceased from Ex. P-12. In view of this, they were reluctant to place reliance on the identification by PW 2 on seeing Ex. P-12. However, the High Court relying on other facts of the case concurring with the trial court came to the conclusion that the deceased was Ravindra. According to the evidence, Ravindra was of a fair complexion aged about 19 years. The Medical Officer has deposed that the skin of the deceased was of fair complexion. In the post-mortem certificate (Ex. P-45), the approximate age of

the male body is given as 18 to 29 years and the skin was of fair colour. The Medical Officer has further stated that the decapitated head was that of the body recovered on the earlier day. The scrapings of the wall of the kitchen portion of the scene house are proved to have been stained with human blood. The pillow recovered from the house also is proved to have been stained with human blood. These circumstances indicate that the occurrence had taken place inside the house of the deceased. In the number of letters inclusive of Ex. P-104 the appellant himself has unequivocally conferred that the deceased was Ravindra. The letters written by Pritosh about which we have made reference in the narrative portion of this judgment also refers to the murder of Ravindra. In view of the above unassailable circumstances, we are fortified in our view that both the courts have rightly found that the dead body was that of Ravindra and we do not see any reason to dislodge that concurrent finding.

34. The prosecution rests its case on a number of attending circumstances, which establish the guilt of the appellant. As was pointed out during the earlier part of this judgment though the prosecution has suggested the motive for the accused to commit this murder on a money dealing, the real motive behind the occurrence seems to be a gross indecent behavior of the appellant towards Supriya @ Bina, who is done other than the sister of the deceased. It is in the evidence of PW 2 that even Pritosh, the father of Supriya had sexually assaulted his own daughter on earlier occasions and that this appellant was also making overtures towards Supriya thereby exhibiting his asinine behaviour. Therefore, it is but natural that the deceased should have taken a strong objection to the conduct of the appellant and this had resulted in the murder of Ravindra.

35. At the time when the victim was murdered except the appellant and the deceased, there was none in the scene house because PW 2 had left Bhatapara with her daughter and Pritosh and followed them some time later. In the evidence of PW 11 who is the landlord of the scene house it is said that Ravindra was seen in the house in the company of the appellant up to June, 1976. The appellant was not found in the village after this murder till he surrendered before the police i. e. on June 13, 1976. After this incident, the appellant went to Mongram where his parents and brothers reside and met Pritosh and PW 2. When PW 2 asked the appellant at Mongram about her son's whereabouts, the appellant falsely replied that Ravindra had gone to Bombay in search of some employment. The conduct of the appellant in giving this manifestly blatant false reply to PW 2's enquiry, spells out his guilty conscience. The number of letters namely Exs. P-13 to P-15, Exs. P-29 and P-31 written in Bengali and Hindi were seized from the house. These letters are proved to be in the handwriting of the appellant, as seen from the evidence of PW 22 and PW 23 who were the State Examiners of Questioned Documents. PW 2 who claims to have studied up to 3rd standard has also deposed that the writing of those letters are in the handwriting of the appellant. In fact the accused also did not deny his handwriting but would try to explain that those letters were got written under pressure brought by the police on him. In these letters which were not posted, the accused had confessed that he had murdered the deceased. There is one more clinching evidence connecting the appellant with the crime in question is the contents of the postcard (Ex. P-104). This postcard had been posted at Bhatapara on July 13, 1976 i. e. on the very same day of the suicidal death of Pritosh. Much argument was advanced on this postcard. According to the prosecution this postcard which was posted at Bhatapara on July 13, 1976 reached the appellant's father on July 17, 1976 at Kalopur. This postcard is written in Bengali. PW 23 has testified that the writing in the postcard is that of the appellant. This Ex. P-104 is dated July 11, 1976. The learned counsel for the defence advanced his argument contending that since the postcard is dated July 11, 1976, the appellant should have been taken to the police custody even much earlier to July 13, 1976 and this letter was fabricated. We are unable to accept this contention. In fact, a similar argument was raised before the High Court which repelled the same. Admittedly Pritosh committed suicide on July 13, 1976. In the postcard

there is reference to the death of Pritosh Therefore, it is evident that this postcard should have been written after the death of Pritosh and then posted. Presumably, the appellant would have put the date on the postcard as July 11, 1976 by mistake. In view of the surrounding circumstances and the contents found in the postcard we are in total agreement with the finding of the High Court that the appellant should have put the date by mistake, and hold that this argument of the learned counsel for the appellant is not acceptable. The contents of this letter clearly show that Ravindra was murdered by the appellant on June 10, 1976 and that the appellant coming to know about the suicide of his cousin brother, Pritosh had decided to surrender before the police and suffer the consequences. Though the appellant in general had stated that he was tortured by the police and pressurised to write certain letters and documents and to sign them, he when specifically questioned under Section 313 CPC answered that he did not know anything about those letters.

36. The learned defence counsel in support of his contention that there was police torture would draw the attention of this Court to certain admissions of PW 2 in the cross-examination admitting that the police had harassed all of them and persistently enquired about the reason for Pritosh to commit suicide, and that the appellant on being arrested by the police was highly perplexed and all of them went on admitting what the police said. We have carefully scanned these admissions of PW 2 but found that these admissions could not in any way affect the veracity of the prosecution case. As we have pointed out Pritosh committed suicide in very tragic circumstances by throwing himself before a running train only after PW 2 had approached the police by lodging Ex. P-82 and handing over two photographs of her son with the request to make an investigation about the missing of her son. Evidently Pritosh who on being put to painful ignominy by his obnoxious conduct of having sexual relationship with his own daughter should have resorted to putting an end to his life apprehending that the whole shameful intrigue would come out and he would be exposed to the public. PW 2 by then had not come out with the story of her husband's abnormal sexual behaviour. Therefore, the police in order to unearth the real cause for the suicidal death Pritosh would have taken all the inmates of the house to the police station and subjected them to intensive and searching examination. It was only during such examination of these witnesses over the cause of the death of Pritosh, the whole truth about this case came out. It is not surprising that the appellant would have been in an agitated and perplexed state of mind because he was in exclusive knowledge of his own conduct of having committed the murder of the deceased which led to the suicidal death of Pritosh who on account of his uncivilized and filthy conduct in our opinion was only a beast in the human form.

37. Hence we hold that this argument of the earned counsel does not merit consideration.

38. For all the discussions made above we are of the view that there are number of impelling circumstances attending this case leading to an irresistible and inescapable conclusion that it was the appellant and the appellant alone who caused the death of the deceased, Ravindra in a very ghastly manner by cutting him into pieces and throwing his various parts of body at different parts of the city, Bhatapara and there cannot be any dispute that this cold-blooded murder is diabolical in conception and extremely cruel in execution. The evaluation of the findings of the High Court does not suffer from any illegality, or manifest error or perversity nor it has overlooked or wrongly discarded any vital piece of evidence. Hence was hold that the findings of facts recorded by the courts below do not call for any interference.

39. In the result, the appeal is dismissed.

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