

Daryao Singh

Vs

State of Madhya Pradesh

Criminal Appeal No. 480 of 1979

(A. M. Ahmadi, Smt. M. S. Fathima Beevi, V. Ramaswami - II JJ)

15.02.1991

JUDGMENT

AHMADI, J. –

1. The appellant has been convicted under Section 302/34, IPC, for causing the murder of one Nagji, son of Parthesingh, of village Melakhedi. The prosecution case was that the family of the appellant and the family of the deceased were at loggerheads since quite some time and there was bad blood between them. In 1967, Bhowansingh, a member of the complainant's family is stated to have been murdered by the appellant's party. Thereupon, the deceased along with others is stated to have fatally assaulted Bhagwansingh and Bahadursingh and inflicted grievous injuries on Govardhansingh. These three are none other than the sons of the appellant. The deceased and his companions were, however, acquitted. It is said that the appellant, Daryao Singh was, therefore, keen to avenge the deaths of his sons. As a sequel to the earlier incident, it is said that the incident in question occurred on September 25, 1970 at about 4 p.m. The fact that the relations between the two families were strained is, therefore, not in dispute.

2. On September 25, 1970, the deceased, Nagji, was working in his field along with his son PW 4 - Bhanwar Singh. At that time the appellant went there in the company of Nagusingh, Govardhansingh and Bapusingh. Nagusingh was armed with a gun and a stick with dharia like blade, Govardhansingh was armed with a similar weapon, the appellant was armed with a sword and Bapusingh possessed a gun. They launched an attack on the deceased Nagji whereupon the latter raised an alarm which attracted the attention of PW 1 - Berusingh and PW 3 - Bhuwan Singh, who were working in the adjacent field. They reached the spot and witnessed the incident. On their raising a hue and cry, the appellant and his companions fled away. PW 4 had run away frightened when a shot was fired at him. The deceased, Nagji, sustained serious injuries on the head and his right leg was cut into two. PWs 1 and 3 went in search PW 4 but on the way met two police constables PW 8 - Chhotelal and PW 10 - Itratkhani. They narrated the incident and disclosed the names of the assailants to them. All the four returned to the place of occurrence, placed Nagji in a cart and proceeded towards the police station. But the injured passed away on the way. The dead body appears to have been taken to the hospital on the next day at about 5.20 p.m. PW 2 - Dr. Sharma, performed the post-mortem examination on September 27, 1970 at about 7 a.m. Except the appellant the rest of the assailants could not be put to trial as they were reportedly absconding.

3. The prosecution mainly relies on the evidence of PWs 1, 3 and 4. In addition, the prosecution seeks corroboration from the evidence of the two Police Constables PWs 8 and 10 to whom the names of the assailants were disclosed immediately after the incident. PW 8, however, turned hostile and was permitted to be cross-examined by the learned Public Prosecutor. This, in brief, is the

prosecution evidence against the appellant.

4. The learned trial Judge on an appreciation of the prosecution evidence concluded that having regard to the long standing enmity between the two families it was hazardous to place implicit reliance on the interested testimony of PWs 1, 3 and 4, more so because their testimony was not corroborated in material particulars by independent evidence. Besides, according to the trial Judge, the evidence of DW 3 - Keshav Shankar Varang established that the appellant was a physically disabled person who could not have wielded the sword with such ferocity as to cut the right leg into two pieces. To disbelieve the prosecution case the learned trial Judge referred to the evidence of the hostile Constable, PW 8, but failed to take note of the evidence of PW 10. As the three eyewitnesses were closely related to the deceased, the learned trial Judge applied the rule of prudence and thought it wise not to base a conviction on their uncorroborated evidence. He, therefore, acquitted the appellant.

5. Feeling aggrieved by the order of acquittal passed by the learned trial Judge, the State of Madhya Pradesh preferred an appeal to the High Court which was disposed of by a Division Bench by its impugned judgment and order dated April 3, 1979. The Division Bench held that although the three prosecution witnesses were closely related to the deceased their evidence could not be discarded solely on the ground that they were interested and partisan witnesses, but all that the rule of prudence demanded was to evaluate their evidence with caution. On a close scrutiny of the evidence of the said three witnesses, the High Court found that nothing was brought out in their cross-examination to doubt their credibility. On the contrary the High Court felt that their evidence was partly corroborated by PW 10 and medical evidence. So far as the evidence of PW 8 is concerned the High Court observed that he had turned hostile and had deliberately departed from his earlier statement to the police as well as the entry in his police diary. In this view of the matter, the High Court reversed the order of acquittal and convicted the appellant under Section 302/34, IPC. It is this conviction which is assailed before us in this appeal by the appellant.

6. The learned counsel for the appellant took us through the evidence of PWs 1, 3 and 4. PWs 1 and 3 are the brothers of the deceased and PW 4 is his son. Indisputably there was bad blood between the two families on account of past incidents which may have ignited a desire for vendetta in the appellant and his companions. At the same time, the High Court also cautioned itself to the possibility of false involvement on account of the long standing enmity. The High Court then scrutinised the evidence of the aforesaid three witnesses and found that their evidence had not been shaken by elaborate cross-examination. That means, according to both the courts, if their evidence can be trusted as credible, it would prove the appellant's involvement in the crime. Therefore, if their evidence is otherwise found to be reliable there can be no doubt that a conviction can be based on their evidence, notwithstanding (i) their close relations with the deceased, and (ii) the long standing enmity between the two families. We too have perused their evidence and taken at its face value we find no infirmity. Even the learned counsel for the appellant did not contend that there was any intrinsic infirmity in their evidence. All that he submitted was that it would be unwise to convict the appellant on their evidence without seeking corroboration. Since PW 8 has deliberately departed from his earlier version and has not told the truth his evidence cannot dilute their evidence. Immediately after the incident, while PWs 8 and 10 were passing by, they were informed of the incident and the names of the assailants were disclosed to them, in regard to which they made entries in their respective diaries. The contradiction brought on record in the cross-examination of PW 8 shows that the names of the assailants were disclosed to him. This was sought to be further reinforced by the entry in his diary wherein the name of the appellant appeared as one of the assailants. The learned trial Judge wrongly attributed this entry to the ingenuity of the investigation

officer. It is, therefore, obvious that PW 8 is not a dependable witness. The High Court's conclusion in this behalf is unassailable. The learned trial Judge made no reference to the evidence of PW 10. The High Court has referred to his testimony. This witness stated that while he and PW 8 were passing by, a frightened PW 1 approached them and reported that his brother was assaulted by the appellant and his companions. The High Court has accepted the testimony of this witness and we think rightly. The evidence of this witness, therefore, lends corroboration to the prosecution version regarding the involvement of the appellant. This disclosure was made to PW 10 immediately after the incident before there was any time for deliberation or concoction. The medical evidence shows that the deceased had as many as seven injuries, one of which was on the skull. The number and nature of the injuries clearly indicate that more than one person was involved in the assault. It is, therefore, clear that the medical evidence also lends corroboration to the prosecution version to this limited extent.

7. Strong reliance was, however, placed by the learned counsel for the appellant on the evidence of PW 2 - Dr. Sharma. This witness has after describing the various injuries stated that the body was cold, rigor mortis had passed off and the body was decomposed when he performed the post-mortem examination on the morning of September 27, 1970. He also noticed blisters containing reddish fluid all over the body. The abdomen was swollen and greenish discoloration was noticed. In his opinion death was caused on account of the brain injury. In paragraph 6 of his deposition he stated "the duration of injury since death was 36 to 48 hours". In cross-examination he said :

"As the dead body was decomposed externally and internally blisters had formed all over the body, scrotum distended, marks of swelling on body, presence of maggots on body; all these symptoms do indicate that the duration of injury since death could be 14 to 20 days also."

On the basis of these statements made by PW 2, counsel for the appellant strongly argued that death must have taken place long before September 25, 1970 since blisters had appeared on the body. In this connection he placed reliance on the table found at page 134 of Modi's Medical Jurisprudence and Toxicology (12th edn.). It reads as under :

#Putrefactive Changes Time1. Greenish coloration over the iliac fossae. 1 to 3 daysThe eyeballs, soft and yielding. after death.2. Green coloration spreading over the whole 3 to 5 daysabdomen, external genitals and other parts of after death.the body. Frothy blood from mouth and nostrils.3. Abdomen distended with gas. Cornea fallen in 8 to 10 daysand concave. Purplish red streaks of veins after death.prominent on the extremities, sphincters, nailsfirm.4. Body greenish-brown. Blisters forming all 14 to 20 daysover the body. Skin peels off. Features after death.unrecognizable. Scrotum distended. Body swollenup owing to distension. Maggots on the body.Nails and hair loose and easily detached.5. Soft parts changed into a thick, semi-fluid 2 to 5 monthsblack mass. Skull, abdomen and thorax burst. after death.Bones exposed. Orbits empty.##

It is indeed surprising that no such submission was made on behalf of defence before the trial court as well as the High Court. Even in the memo of appeal no such precise contention appears. However, we have thought it proper to examine the submission on merits rather than reject in on a technical ground.

8. Counsel for the appellant strongly relied on this statement of PW 2 - Dr. Sharma and contended

that the presence of blisters all over the body is a sure pointer to the fact that death had taken place 14 to 20 days before the post-mortem examination. It may be recalled that the deceased was 45 years of age and was the victim of violent attack with lethal weapons in which he had suffered a fatal semi-circular wound on the scalp 6" x 4" extended by 2" to the left mid-line. In addition thereto he had received incised wounds on his left forearm resulting in fractures. His right leg was cut into two pieces 6" below the tibia, liquefied blood was oozing out, maggots were present, blisters were seen all over the body and the soft cuticle peeled off easily. There was another cut wound on the left leg exposing the tibia. A 5" wound was seen at the right side of the mouth. It was the scalp injury which caused the death.

9. It is common knowledge that after death the body starts to cool down to the surrounding temperature. The cooling of the body is the earliest phenomenon which is followed by post-mortem lividity resulting from discontinuance of blood circulation and collection of blood in certain parts under gravitational action, depending on the position of the dead body. The stoppage of blood circulation and the inaction of the natural defensive mechanism results in the bacteria present in the body as well as those that enter from outside getting scattered in every part of the body setting in the process of putrefaction, unless special care is taken to prevent the same. Decomposition is thus essentially the process of putrefaction which is dependent on environmental and climatic conditions. In the present case death had occurred on September 25 and the dead body lay in the police station with the wounds exposed till it was brought to the hospital at 5.20 p.m. on the next day. The body remained in the same condition in the hospital till 7 a.m. on the next day when the post-mortem examination was undertaken. The body thus remained fully exposed to the heat and humidity of the month of September for over thirty hours and hence it is not surprising that the rigor mortis had passed off. Ordinarily after rigor mortis has passed off, the process of putrefaction sets in but it may set in even earlier during summer depending on the heat and humidity. Body changing colour and emitting foul smell, are the two special characteristics of the decomposition process. The first external evidence of putrefaction is the formation of greenish discoloration of the abdominal skin over the iliac fossae which occurs within six to twelve hours in summer and spreads all over the body within twelve to eighteen hours of death. As time passed they deepen in colour and become purple. With the spread of bacteria, there is gradual development of gases in the intestines within twelve to eighteen hours and liquefaction also takes place and soon spreads to other parts of the body. Putrefaction thus results in general disintegration of the tissues due to residual enzymatic activity in the cells causing widespread formation of gases emitting foul smell and if the body is exposed, as in the present case, flies lay eggs on exposed wounds forming maggots. The body gets bloated and liquefied, the skin loses coherence, the superficial layers peel off easily and blisters are formed. It is, therefore, not surprising that owing to the formation of gases the penis and the scrotum were swollen and there was the presence of maggots.

10. Before we answer the contention it is essential to notice a few facts. The evidence of PWs 1, 3 and 4 is that the incident occurred in the field of the deceased. This fact is corroborated by PW 5 - Motilal and PW 6 - Parbatsingh. The find of blood on the grass blades and on the earth attached under seizure memo Ex. P-8 confirms their testimony. The evidence of these witnesses further shows that the injured was taken in a cart to the village and from there to the Bhakheda police station. This is further established by PW 10 who has deposed that the victim was brought in a cart to the village. The Circle Inspector PW 12 also deposes that the corpse was brought to the police station and from there it was sent to the hospital for post-mortem examination which was undertaken on September 27, 1970 at 7 a.m. This evidence establishes the chain of events showing the movement of the dead body and rules out the theory that death had taken place many days before September 25, 1970, a theory not put to the witnesses in cross-examination. The direct

testimony, therefore, does not support the theory urged on behalf of the appellant.

11. Counsel for the appellant, however, emphasised that the statement of PW 2 in cross-examination clearly establishes the existence of blisters, an objective fact, which clearly supports the defense theory that death had taken place 14 to 20 days prior to the date on which the post-mortem examination was held and thereby disprove the prosecution version that the victim of assault died on the evening of September 25, 1970. It is interesting to note that the table on which the learned counsel for the appellant relies is omitted from the 19th and 20th edition of the book. But that apart at pages 128-129 to the book (20th edn.) it is stated as under :

"From twelve to eighteen hours after death in summer the green coloration spreads over the entire abdomen and the external genitals... Side by side with the appearance of the greenish patch on the abdomen the body begins to emit a nauseating and unpleasant smell owing to gradual development of the gases of decomposition, some of which are sulphuretted hydrogen, marsh gas, carbon dioxide, ammonia and phosphoretted hydrogen.

From twelve to eighteen hours after death in summer these gases collect in the intestine, consequently abdomen swells up. The sphincters relax, and the urine and faeces may escape.

From eighteen to thirty-six or forty-eight hours after death the gases collect in the tissues, cavities and hollow viscera under considerable pressure with the result that the features become bloated and distorted, the eyes are forced out of their sockets, the tongue is protruded between the teeth, and the lips become swollen and everted. A frothy, reddish fluid or mucus is forced from the mouth and nostrils. Ultimately the features become obliterated and unrecognizable. The abdomen becomes greatly distended; hence on opening the cavity the gas escapes with a loud explosive noise. Owing to the pressure of the gases the stomach contents are forced into the mouth and larynx and are seen running out of the mouth and nostrils. The breast of female bodies are greatly distended. The penis and scrotum become enormously swollen. The cellular tissues are inflated throughout, so that the whole body appears stouter and older than it actually is.

These gases form blisters under the skin containing a reddish coloured fluid on the various parts of the body. When these bursts, the cuticle being softened peels off easily. These are characterised by absence of vital reaction."

It will thus be seen that blisters appear after the process of decomposition sets in within eighteen to forty-eight hours. It shows that the existence of blisters does not mean that death had taken place 14 to 20 days ago. That is why PW 2 is cautious to use the phraseology 'the duration of the injury since death could be 14 to 20 days also'. Having regard to the nature of the direct testimony to which we have adverted earlier and the passage reproduced above, we find it difficult to accept the belated submission of the learned counsel for the appellant that the opinion of the medical expert PW 2 destroys the version of the prosecution witnesses, particularly PWs 1, 3, 4 and 10, that the deceased suffered a fatal wound on the evening of September 25, 1970 to which he succumbed on that very day. We, therefore, reject this submission.

12. It was lastly submitted that the evidence of the radiologist, Keshav Shankar Varang, DW 3 goes

to show that the appellant was a disabled person and it was not possible for him to cause an injury so serious as to cut the leg in two parts. In this connection, our attention was drawn to paragraph 7 of his deposition, wherein he has stated that looking to the fracture of the appellant's leg and his chest condition he was a disabled person who could not run fast or walk quickly and, therefore, argued counsel, he could not wield the sword with such ferocity as to cut the leg in two parts. In cross-examination he has admitted that he had not examined the muscle power of the appellant. He conceded that the elbow was free and, therefore, he could use the weapons but not with great force. The High Court has considered this submission in paragraph 8 of its judgment and has rejected it. We do not think that having regard to the fact that the appellant alone was wielding the sword, it is possible to rely on this opinion evidence in preference to the direct evidence of three witnesses. The High Court has rightly rejected this submission and we need not dilate on it.

13. For the above reasons, we see no merit in this appeal and dismiss the same. Bail cancelled. The appellant will surrender forthwith.

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