

Jagdish Prasad and others

Vs

State of M.P.

Criminal Appeals Nos. 102 and 108 of 1981

(S. R. Pandian And Smt. M. S. Fathima Beevi JJ)

25.03.1992

JUDGMENT

1. Criminal appeal No. 108 of 1981 is taken on board along with Criminal appeal No; 102 of 1981.
2. The above two appeals are preferred by the appellants in the respective cases challenging the correctness of the common judgment rendered by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeals Nos. 425 and 397 of 1975, respectively. For the convenience and proper understanding of the case, we would like to refer the appellants herein in the order as arrayed in the trial court. The appellants in the Criminal Appeal No. 102 of 1981 were accused Nos. 2-4 before the trial court and the appellant in Criminal Appeal No. 108 of 1981 was Accused No. 5. As we have come to know during the hearing of C.A. No. 102/81 that there is another connected criminal appeal being criminal appeal No. 108 of 1981 preferred by the 5th accused, we, after issuing notice to the learned counsel Dr. N. M. Ghatate, have called for the file of the criminal appeal No. 108 of 1981 and heard that appeal also along with criminal appeal No. 102 of 1981.

2A. The brief facts of the case are as follows:-

On 5-7-74, the deceased Ravi Tiwari along with his friends viz. Shiv Shankar (P.W. 1), Munnilal (P.W. 2) and Rhola (PW-3) had gone to witness a second show cinema at Shyam Talkies. When they were purchasing tickets at the counter, the fifth accused abused them. PW-1 thought that the fifth accused was only abusing him as he had beaten the fifth accused on an earlier occasion. After witnessing the show they all came out and found all the accused persons numbering to six inclusive of these accused persons 2-5 standing near the gate with tabbal and lathies. When the deceased and his friends reached near a hotel on their way to their home they found all the accused persons standing on the way. Suspecting a foul play, they all turned back so that they would retreat through a road which runs behind the main hospital at Bilaspur. It appears from the evidence that when P.W. 1 and his friends reached 'near the back portion of the District hospital, the accused came near them from the opposite direction in two Rickshaws and directed them not to move away. The fifth accused caught hold of the deceased and beat him. Whilst the beating was going on, the other accused persons joined the accused No. 5. On being frightened P.W. I took to his heels and ran into the hospital and hid himself in a room. He left the hospital at 5 a.m. in the morning, met his father PW. 15 and narrated the incident. On the advice of his father he went to the Police Station and lodged a report at 7 a.m. On the basis of the report given by the P.W. 1, a case was registered and investigated, by P.W. 19, the Sub-Inspector of Police. P.W. 18, the medical officer conducted the post-mortem

examination on the dead body of the deceased and found seven incised wounds and one stab wound, all of different dimensions on different parts of the body. A stab wound on the left side of the chest was penetrating the thorax causing wound on the left ventricle of the heart. After completing the investigation, the charge-sheet was filed against all the six accused persons.

3. To substantiate the charge, the prosecution examined P.Ws. 1, 2 and 3 of whom P.Ws. 1 and 3 were treated as hostile to the prosecution as these two witnesses resiled from their earlier statements given during the investigation. Hence the prosecution rested its case only on the sole direct testimony of P.W. 1. The trial court for the reasons assigned in its judgment found that the prosecution has not made out the case against the first and sixth accused and acquitted them of the offence, charged, and found only these four accused, namely, accused Nos. 2-5, guilty of the offence of murder, convicted them thereunder and sentenced them as aforementioned. On being aggrieved by the judgment of the trial court, accused Nos. 2-4 preferred a separate criminal appeal while the 5th accused filed another criminal appeal as already mentioned in the earlier part of this judgment. The High Court agreeing with the findings of the trial court confirmed the conviction and the sentence awarded to the accused and dismissed the appeal. Hence, the present two appeals on grant of special leave.

4. Mr, S. S. Khanduja, learned counsel appearing in criminal appeal No. 102 of 1981 and Dr. N. M. Ghatate, learned counsel appearing in criminal No. 108 of 1981 assailed the findings of the Trial Court and the High Court contending that the courts below are not justified in recording the conviction against the appellants (accused Nos. 2-5) on the sole testimony of P.W. I whose evidence is unreliable and suffers from a number of manifest errors.

5. The occurrence is said to have happened after mid-night and before 1 a.m. on the intervening night of 5-6/7/74. Of course, the prosecution would lead evidence that there was electric light near the scene of occurrence. Of the eye witnesses examined by the prosecution, P.W. 2 and 3 have given a complete go-by P.W. 1 alone supported the prosecution version. Now, the question that falls for our consideration is as to whether the evidence of P.W. 1 is acceptable and reliable to sustain the conviction as recorded by the courts below.

6. As a general rule, a court can and may act on the testimony of a single witness though uncorroborated provided the testimony, of that single witness is found out entirely reliable. In that case, there will be no legal impediment for recording a conviction. But if the evidence is open to doubt or suspicion, the court will require sufficient corroboration. In this connection, reference may be made to a decision of this Court in *Vadivelu Thevar v. State of Madras*, AIR 1957 SC 614 wherein this court has classified the testimony of a witness into three categories viz. (1) wholly reliable (2) wholly unreliable, and (3) neither wholly reliable nor wholly unreliable and observed that though in the first two categories of classification, there may not be any difficulty in coming to a conclusion either accepting or rejecting the testimony but it is in the third category of cases that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony either direct or circumstantial.

7. Now, let us scrutinise the testimony of P.W. 1 in the light of the observation made by this court in the above decision. It is seen from the evidence that P.W.1 was an arch enemy of the fifth respondent as the former had. assaulted the fifth accused on a prior occasion. Probably this must have been the proximate motive for the occurrence in question. The trial court, in fact, took note of this and made the following observations :-

"The description given by the witness (P.W. 1) regarding the part played by each of the five accused in hitting the deceased also does not seem to be correct, because the object of assault was in fact against this witness because of the previous enmity and that he was first aimed at by accused Bawan, but escaped the assault and, therefore, in the natural course of conduct, the witness ought to have left the spot at the next moment to save himself."

It is far-fetched to visualise that P.W. 1 could have witnessed the entire occurrence viz., the actual assault perpetrated on the deceased when he was fleeing for his life and thereafter hid himself inside a room of the hospital till 5 a.m. Though P.W. 1 claims to have known all the six accused persons it appears he has not mentioned the name of the accused Pangoo (acquitted) in his first report. Surprisingly, before the trial court P.W. 1 has mentioned only the names of five accused and specifically and deliberately omitted the name of the first accused in his evidence. The High Court has commented upon the conduct of P.W. 1 in its judgment stating "he deliberately tried to help the acquitted accused Mishrilal". In fact, the trial court taking a very serious view of the conduct of P.W. 1 had gone to the extent of conducting a preliminary enquiry under S. 340 of the Code of Criminal Procedure for launching a prosecution against P.W. 1 for perjury.

8. The evidence of P.W. 1 is found to be discrepant in its material particulars by the High Court. We, after going through the evidence, hold that it is quite unsafe to act upon the evidence of P.W. 1 whose testimony is clouded with grave suspicion and serious doubts. For all the aforementioned reasons we are constrained to set aside the judgment of the High Court confirming the judgment of the Trial Court. In the result, the conviction of all the appellants (accused 2-5) u/ S. 302, IPC read with S. 34, IPC and the sentence of imprisonment for life imposed therefor are set aside and the appellants are acquitted. Their bail bonds are cancelled. The appeals are thus allowed. Appeals allowed.

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