

Ramsai and others

Vs

State of M.P.

Criminal Appeal No. 346 of 1981

(K. Jayachandra Reddy, G. N. Ray JJ)

31.07.1992

JUDGMENT

1. There are three appellants before us. They are original accused numbers 1,2 and 3. They along with 25 others were tried for offences punishable under Section 302 read with 149, Section 323 read with 149, Section 324 read with Section 149, Section 449 read with Section 149 and under Sections 147 and 148, I.P.C. The case rested mainly on the evidence of 4 eye-witnesses and the oral dying declaration spoken to by P.W. 18, P.W. 20 and 3 others. The trial Court rejected the evidence of the three eyewitnesses and also others who spoke about the dying-declaration. The trial Court relied on the evidence of one of the eye-witnesses P.W. 29 only. The conviction of the appellants rests entirely on the oral dying declaration said to have been made to P.W. 18, P.W. 20 and P.W. 29. The trial Judge convicted four accused, viz., the three present appellants and Bindrawan. Against their conviction an appeal was filed in the High Court. The High Court acquitted Bindrawan and rejected the appeal of the present appellants. The State also preferred an appeal against the acquittal of other accused. The Division Bench of the High Court rejected the evidence of P.W. 29, the sole remaining eyewitness. The High Court, however, convicted four other accused u/S. 147 simpliciter accepting part of the prosecution case and allowed the appeal by the State and sentenced them to the period already undergone. We are not concerned with their conviction and sentence since they are not before us. The High Court, however, relied on the evidence of P.W. 18 and P.W. 20 who spoke about the oral dying declaration and since it is alleged that the deceased mentioned only the names of three appellants before them, to that extent the oral dying declaration was accepted and convicted the appellants before us under Section 302 read with Section 149, I.P.C. and sentence of imprisonment for life was confirmed. The High Court acquitted A-6 on the ground that his name was not mentioned by the deceased while making the oral dying declaration.

2. It is submitted before us that the evidence of P.W. 18 and P.W. 20 is highly unreliable since their conduct was unnatural and they have no explanation whatsoever as to why they did not inform the police till the statements were recorded, i.e., on the 3rd day after the occurrence. It is further submitted that having regard to the nature of the injuries and the medical evidence it would have been impossible for the deceased to make any oral dying declaration. We may state facts before we proceed to consider these submissions.

3. The accused are residents of village Bodsara within the limits of Janjgir Police Station. There was a partition of agricultural land of the joint family property between the deceased and his brother which took place some years ago. Thereafter there was a land dispute. Some of the accused are related to other two brothers. The civil dispute led to some criminal proceedings also. One

Ramadhar was murdered and the accused No. 1 Ramsai suspected that the deceased in this case, viz., Girdhari had murdered his brother Ramadhar. 8 to 10 days prior to the incident the deceased Girdhari along with his son P.W. 5 came to the village along with cattle. They stayed there for few days. On the day of incident, i.e., on 24-7-71 at about sun rise time P.Ws. 2, 3 and 5 were going towards the tank. Then it is alleged that the 28 accused including three appellants armed with various weapons like lathis, tabbals, bhala etc. attacked the deceased and inflicted multiple injuries. In the said occurrence P.W. 2 also received injury. P.W. 2 went and gave report to the police in which several details are mentioned including distribution of weapons in the hand of the each of the accused. The further case of the prosecution is that the deceased who received injuries, was conscious and was lying at the place of the occurrence. P.Ws. 18 and 20 the Kotwars of the village came there and in the presence of P.W. 13 and two others asked the deceased as to how he received injuries and it is alleged that he mentioned the names of three appellants who one after the other inflicted injuries on him. At the time of making this oral declaration he was conscious, thereafter he could not give the details. The deceased while being carried died on the way. Thereafter the police entered the picture. The investigating officer held the inquest and sent the dead body for post-mortem. The doctor P.W. 34 who conducted the post-mortem, found as many as 27 injuries all over the body. He found that the injuries resulted in fracture of radius and ulna, fracture of parietal bone and opined that death was due to shock resulting from multiple injuries and the injuries numbers I and 3 were sufficient to cause death in the ordinary course of nature. After completion of the investigation the charge-sheet was made.

4. As mentioned above the prosecution examined P.Ws. 2, 3, 4, 5, 17, 28 and 29 and also relied on the evidence of P.Ws. 13, 18, 20 and two others who spoke about the dying declaration. Out of those direct witnesses the trial Court relied only on the evidence of P.W. 29 and discarded others. The High Court discarded the evidence of P.W. 29 also. Therefore, we are left only with the evidence of P.Ws. 18 and 20 who spoke about the alleged oral dying declaration. P.W. 18 is a kotwar of village for the last 36 years. He deposed that on the day of occurrence he was informed that A-1 and others have broken the new house of Daya Prasad and killed, the deceased. Thereupon P.W. 18 went to the house of P.W. 20 another Kotwar and both of them came to the place of occurrence. They found the deceased was alive with injuries all over the body. Then on being questioned the deceased told that A-1 to A-3 and other persons assaulted him. In the cross-examination he admitted that they were examined on the 3rd day only. He did not inform anybody about the alleged oral dying declaration and it is only on that day he disclosed to the Police Inspector. There is no explanation as to why he has not informed anybody earlier. He admitted in the cross-examination that the deceased was not speaking clearly and he was vomiting at that time. He further added that the tongue of the deceased was out of the control. To the same effect is the evidence of P.W. 20. He also came forward with this version only on Monday. Now we have the evidence of one more important witness PW 26 who is the Sarpanch of the village. He deposed that after coming to know about the occurrence, he went to the place of the occurrence and found the deceased lying on the cot and he stated that he did not inquire anything from the deceased. He further stated that P.Ws. 18 and 20 were present. He does not say that either of them mentioned anything about the oral dying declaration. As a matter of fact he asked P.W. 20 to go to the Police Station and accordingly he left even at that time. P.W. 20 did not inform him the name of the appellants said to have been mentioned by the deceased. These are all serious infirmities which we find in the evidence regarding the oral dying declaration. The medical evidence also shows that it is highly doubtful whether the deceased could have made, any such statement. The oral dying declaration is no doubt an important piece of evidence. But it should be free from all infirmities. There is no other corroboration worth mentioning. Further as mentioned above the conduct of P.Ws. 18 and 20 is highly unnatural and they say that for three days they did

not inform anybody about the alleged oral dying declaration. We find that it is highly unsafe to base the conviction on the oral dying declaration because of the many infirmities pointed out. Accordingly we give the benefit of doubt to the appellants. Their convictions and sentences are set aside. If they are on bail their bail bonds shall stand cancelled. The appeal is allowed accordingly. Appeal allowed.

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