

Prakash and Another

Vs

State of M. P.

Criminal Appeals Nos.7 and 8 of 1981

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

20.08.1992

JUDGEMENT

G. N. RAY, J.:-

1. These appeals arise out of a Judgment dated November 18, 1980 of the, High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.222 of 1977 (Prakash v. State of Madhya Pradesh) and Criminal Appeal No. 714 of 1976 (State of Madhya Pradesh v. Shibboo alias Shiv Narayan and two others). Criminal Appeal No. 222 of 1977 was preferred by the accused Prakash in the High Court of - Madhya Pradesh at Jabalpur against his conviction under S. 302, I.P.C. and sentence of life imprisonment in Sessions Trial No. 61/1974 in the Court of the First Additional Sessions Judge, Sagar. Criminal Appeal No. 714 of 1976 was preferred by the State of Madhya Pradesh against the accused Shiv Narayan and the other two accused Vishnu Prasad and Raju alias Raja Ram against the order of acquittal passed by the learned Additional Sessions Judge, Sagar in Sessions Trial 61 of 1974. It may be mentioned here that all the four accused persons were committed to sessions trial for the murder of one Vijay Singh on 14th February, 1974 but as accused Prakash became ill and could not be tried for long, the other three accused were tried and the aforesaid order of acquittal was passed by the Additional Sessions Judge, Sagar. The accused Prakash was later on tried and he was convicted under S. 302, I.P.C. and sentenced to life imprisonment for the murder of the said Vijay Singh. The Division Bench of the High Court of Madhya Pradesh at Jabalpur allowed the Criminal Appeal No. 714 of 1976 preferred by the State of Madhya Pradesh against the order of acquittal in part inasmuch as the acquittal of Shiv Narayan was set aside and he was convicted under S. 326 read with S. 34 of the I.P.C. and sentenced for imprisonment for the period already undergone in the jail. The acquittal of the other two accused namely Vishnu Prasad and Raju were affirmed and the appeal of the State against acquittal to that extent was disallowed. The appeal preferred by Prakash against his conviction under S. 302 and sentence of life imprisonment was however dismissed and the order of conviction and sentence passed by the learned Additional Sessions Judge was affirmed by the High Court.

2. Against the aforesaid judgment of the Madhya Pradesh High Court convicting Prakash and Shiv Narayan, the said accused persons moved petitions for special leave to appeal giving rise to the present appeals viz. Criminal Appeals Nos. 7 and 8 of 1981.

3. On 14th February, 1974 one Vijay Singh Chauhan was murdered at about 2.45 p. m. at the Bada of Mangal Singh in the town of Sagar. The prosecution case was that Vijay Singh had love affair with the daughter of Shiv Narayan, namely Kumari Geeta who was a student in the Girls School in

the town. Such love affair was not liked by Shiv Narayan, his brother Prakash Pathak and other members of the family. On the date of occurrence Vijay Singh had been to the school of Kumari Geeta and Kumari Geeta left the school and went with Vijay Singh to different places. Thereafter Vijay returned to the garage of Shiv Narayan where one Sri Vijay Kumar, the brother-in-law of one Sri S. K. Singh had come to the garage of Shiv Narayan for the purpose of finding out the residence of S. K. Singh. Vijay Singh and his younger brother Ajay Singh were asked by Shiv Narayan to accompany Vijay Kumar for the purpose of showing him the house of S. K. Singh. When they reached near about the Khara Well turning from the three way (Tigda) of Prem Narayan Tiwari, accused Raju came from behind and putting his hand on the shoulder of the deceased Vijay Singh asked him to come to discuss some matter. The deceased Vijay Singh told Vijay Kumar to wait for sometime and he along with his brother Ajay Singh went towards Prem Narayan Tigda. At that place the. Accused Shiv Narayan Pathak and the co-accused Prakash as also Vishnu appeared. Vijay Singh on seeing these people attempted to enter the house of Mangal Singh and went towards the back side. He tried to cross the barbed wire fencing at the back side of the Bada of Mangal Singh but his pant got stuck up in the barbed wire and he fell down. While he was trying to extricate himself from the barbed wire fencing, the accused persons reached the place by entering through the gate of the Bada and came upon Vijay Singh. Accused Vishnu shut the mouth of the deceased. The accused Raju caught hold of his hand and accused Shiv Narayan attacked him with knife and accused Prakash also inflicted injury with gupti and caused serious injuries on the chest and abdomen of Vijay Singh and he fell down. Thereafter, the accused persons ran away leaving Vijay Singh at the spot and Shiv Narayan threw away the knife at the spot. It-is the further case of the prosecution that when Ajay Singh found his brother being attacked by the said accused persons he ran to save his life but he was kicked away by Prakash. At that time the uncle of Vijay Singh namely. Chatter Singh was returning from the Bazaar. On hearing the cries Chatter Singh also went to the Bada of Mangal Singh and had witnessed the assault made on Vijay. Another witness Ram Gopal was also going to Kapra from the main Bazaar and seeing the crowd by the road side he also stopped and had seen the accused persons assaulting Vijay Singh. The prosecution also alleged that Muntizar Ali (P.W. 7), Bithal (P.W. 14), Laxmi Prasad (P.W. 16), Durga Prasad (P.W. 17) and Uttam Singh (P.W. 18) were also passing through the road, and standing by the road side they had also seen the incident. After the incident, Uttam Singh father of the deceased Vijay Singh was informed and he reached the place of occurrence by riding a scooter. Vijay Singh was removed to the local hospital with the help of a tempo and though he was immediately attended by the doctor at the hospital he died within 10-15 minutes after reaching the hospital. The defence case was that the cause of the murder was the love affair of Vijay Singh with Kumari Geeta. The members of the family of Geeta were displeased and Geeta herself apprehending trouble advised Vijay to remain alert against possible attack on him particularly by Prakash, her uncle who was highly displeased with Vijay Singh. Vijay Singh went to the school of Geeta and both went to different places on scooter taxi and while they reached near Prem Narayan Tigda they met Raju Pathak, Geeta's paternal uncle's son. Raju was accompanied by a friend. Seeing Raju Pathak, Geeta and Vijay entered the Bada of Mangal Singh. Raju came in search of Vijay and they saw Vijay and Geeta there. Seeing Raju Pathak, Vijay ran towards them with knife and Geeta left the place. The defence suggested that the incident .did not take place in the manner as alleged by the prosecution, and in all probabilities, Vijay Singh was injured in the hands of Raju Pathak and/or his friend.

4. It is an admitted position that Kumari Geeta was in love with the deceased and the family members of Geeta including her father Shiv Narayan and uncle Prakash did not like the love affair. On the date of incident, Vijay Singh came to the school of Geeta and Geeta left the school in the company of Vijay and both of them went to different places including a temple. A number of love

letters written by Geeta were also found in the pocket of the pant of the deceased which revealed that Kumari Geeta had love affair with Vijay and noticing that her family members did not like the relationship between the two and the deceased was likely to face trouble, she had advised Vijay to keep some weapon to protect himself.

5. The learned Additional Sessions Judge did not place reliance on the evidence of Muntizar Ali (PW 7), Bithal (PW 14), Laxmi Prasad (PW 16) and Durga Prasad (PW 17). Inasmuch as they were declared hostile by the prosecution.

6. The learned Sessions Judge considered the evidence adduced by Ajay Singh, Chatter Singh (PW 2) and Ram Gopal (PW 4) who according to the prosecution had seen the occurrence. The learned Judge discarded their evidences inter alia holding that they could not be believed. The learned Judge was of the view that it was quite likely that the injuries were inflicted either by Raju Pathak or his friend. He held that since the prosecution did not establish the case beyond reasonable doubt, the accused persons were entitled to the benefit of doubt. Accordingly, he acquitted the three accused namely Shiv Narayan, Vishnu and Raju by his Judgment delivered on 28th July, 1975 in Sessions Trial 61/1974.

7. As indicated earlier, the co-accused Prakash was not tried along with the said three accused and later on the said Prakash was tried separately and was convicted under Section 302, IPC and sentenced to life imprisonment. In basing the conviction of Prakash the learned Additional Sessions Judge relied on the oral dying declaration given by the deceased Vijay Singh.

8. As aforesaid, the Division Bench of the High Court of Madhya Pradesh at Jabalpur affirmed the conviction and sentence of Prakash and also allowed the appeal preferred by the State of Madhya Pradesh against the acquittal of the three accused in part inasmuch as only Shiv Narayan was convicted under Section 326 read with section 34, IPC and sentenced to imprisonment for the period already undergone by him.

9. Mr. Lalit learned counsel for the appellants very strenuously contended that the learned Additional Sessions Judge in his Judgment of acquittal dated 28th July, 1975 has elaborately discussed the facts and circumstances of the case and evidence adduced by the prosecution witnesses and by giving very cogent reasons discarded the evidences adduced by the witnesses for the prosecution. Mr. Lalit has contended that it is an admitted case of the parties that Vijay was in deep love with Geeta and such love affair was disliked by the family members of Geeta. He has submitted that it has been established beyond reasonable doubt, that up to very close to the time of murderous assault on Vijay, he and Geeta were moving together and came near Bada of Mangal Singh. He submitted that the knife which was found at the spot where the murder had taken place did not contain any blood stain. The prosecution case was that Shiv Narayan had inflicted knife injury on the person of Vijay and left the knife at the spot. Such case is completely belied by the fact that the said knife did not contain blood stain. On the contrary, the case of the defence was that on seeing Vijay Singh, Raju and his friend were chasing him when he was in the company of Geeta. At that stage Vijay Singh went to attack them with his knife which he was keeping on the advice of Geeta. He was however overpowered and ultimately done to death and the knife belonged to Vijay Singh. Precisely for the said reason there was no blood stain on the knife found at the spot. Mr. Lalit has contended that the learned Additional Sessions Judge has taken pains in analysing the facts and circumstances of the case as also the probabilities on objective basis for arriving at the finding that neither Ajay Singh nor Chatter Singh and Ram Gopal had any occasion to see the incident and they had falsely deposed. The learned Sessions Judge was quite justified in discarding the evidences of

the witnesses for the prosecution by giving cogent reasons and no exception could be made to such finding of the learned Additional Sessions Judge. Mr. Lalit has also contended that the other alleged witnesses were declared hostile and they did not support the case of the prosecution and the learned Sessions Judge was therefore justified in discarding their version altogether. Mr Lalit has also drawn the attention of the Court to the finding of the learned Additional Sessions Judge in so far as the same related to discarding the prosecution case of alleged oral dying declaration of the deceased Vijay. He has submitted that the learned Additional Sessions Judge has very carefully appreciated the evidences and has given very cogent reason in coming to the finding that the deceased with such fatal injuries was not in a position to make dying declaration as alleged and no reliance should be placed on such oral dying declaration. Mr. Lalit has contended that it is only unfortunate that a young man was murdered brutally. Though the incident is highly lamentable, the prosecution in its over zealousness to implicate the accused persons had not come out with true case. He has submitted that it was most likely that Raju Pathak and/or his friend were the assailants but in the absence of any evidence to that effect by the prosecution the truth or otherwise of the murderous assault remained undisclosed. The prosecution case as sought to be made out being absolutely incredible, no conviction of the accused persons can be made. He has further submitted that it is only unfortunate that the Additional Sessions Judge had not placed any reliance on the oral dying declaration of the deceased Vijay Singh when he was considering the case of the three accused namely Shiv Narayan, Vishnu and Raju but when he was considering the case of accused Prakash he had accepted the same dying declaration and on the basis of the dying declaration convicted Prakash under section 302, IPC and sentenced him for life imprisonment. Mr. Lalit has contended that if a dying declaration cannot be accepted to be true for deciding the case of the three accused persons the same dying declaration cannot also be accepted to be, true for deciding the case of the co-accused Prakash. The credibility of the dying declaration has not undergone any change in the matter of the trial of one accused or the other. Mr. Lalit has submitted that it is an accepted position in law that in an appeal against acquittal the Court should proceed with extreme care and caution and weigh the reasons given by the Trial Court in passing the judgment of. acquittal. Unless the finding of the Trial Court appears to be completely perverse or based on no evidence or on misreading of the evidence adduced in the case, no interference is called for against the verdict of acquittal. The Court of Appeal should not substitute its finding on its own appreciation of the evidence like the Trial Court in an appeal against acquittal. If the view taken by the Trial Court is a possible one it is not required to be interfered with. Mr. Lalit has submitted that unfortunately the High Court became oblivious of the admitted position that almost up to the time of occurrence of the murderous assault, Vijay Singh and Geeta were together. It was most unlikely that Vijay thereafter had returned to his house and was asked by his father to accompany Vijay Kumar for the purpose of showing Vijay Kumar the residence of S. K. Singh. On the contrary, the case suggested by the defence was highly probable that Vijay Singh did not go with Vijay Kumar but was attacked by Raju Pathak and his friend when he was coming back with Geeta. Mr. Lalit has contended that the alleged oral dying declaration of Vijay Singh should be tested very critically and the court should be extremely careful in basing any conviction on the alleged oral dying declaration. He has contended that the injuries were so fatal that it was unlikely that the deceased was in a position to make dying declaration in the manner in which it was alleged. He has stated that after the said fatal injuries, intimation was sent to the father of the deceased and admittedly the father had to come to the spot which is situate at a distance comprising few furlongs. Even if the father had come by a scooter one would reasonably accept that sufficient time was taken to go to the place of the father to inform him and considerable time was also taken by the father to reach the spot. In such circumstances, it will be very difficult to accept the prosecution case that the deceased was, fully conscious to make the alleged dying declaration naming the assailants. The learned Additional

Sessions Judge in giving his judgment of acquittal has indicated the infirmities in the prosecution case in so far as the alleged oral dying declaration is concerned. The reasons by the Additional Sessions Judge in discarding the dying declaration in the judgment of acquittal are so convincing, that the same should be accepted by this Court, and the case alleged by the prosecution should be discarded. The learned Counsel has therefore submitted that the conviction of Prakash cannot also be sustained and the appeal should be allowed by setting aside the judgment of conviction. He has also submitted that the conviction of other accused Shiv Narayan under section 326 read with section 34 of the IPC should also be set aside because complicity of the accused could not be established beyond reasonable doubt by the prosecution.

10. The learned counsel for the State of Madhya Pradesh however contended that the High Court was fully aware of the implications of the judgment of acquittal and has very dispassionately analysed the facts and circumstances of the case and evidences on record. The evidences adduced in the case, despite minor discrepancies, clearly established the involvement of the accused Prakash and Shiv Narayan in the act of murderous assault on the deceased on the date of occurrence. The High Court has given benefit of doubt to the two accused persons namely Raju and Vishnu Prasad and did not interfere with the order of acquittal passed in their favour because they were entitled to benefit of doubt. Even in the case of Shiv Narayan, the High Court has not accepted the prosecution case that Shiv Narayan had himself inflicted knife injuries on the deceased, although Shiv Narayan was found to have taken very active part in the matter of inflicting injuries on the person of the deceased. The High Court on a dispassionate analysis of the case came to the finding that the common intention to cause the death of the deceased could not be convincingly attributed to the accused, Shiv Narayan in the absence of sufficient material to prove otherwise particularly when no blood stain was found on the knife found at the spot. Since he was also armed with knife and was party to attack on the deceased, the High Court has taken a very lenient view in convicting the accused Shiv Narayan not under section 302, IPC but under section 326 read with S. 34, IPC and even in the matter of awarding the sentence, the High Court -has taken a very lenient view in so far as Shiv Narayan is concerned. The learned counsel for the State has contended that dying declaration should not have been discarded by the learned Addl. Judge. There is no evidence to warrant the finding that the deceased was not in a position to make a dying declaration. The learned counsel has contended that the deceased was alive at least for 30 to 45 minutes after the incident and the doctor who had treated the deceased in the hospital and had held post mortem did not state that it was not possible for the deceased to make a dying declaration. The learned counsel has also submitted that the reasons given by the High Court are so convincing that no other view is warranted. He has submitted that there is no occasion for interfering with that judgment passed by the High Court and appeals should be dismissed.

11. After giving our anxious consideration to the facts and circumstances of the case and the arguments advanced by the counsel for the parties and judgment delivered both by the Additional Sessions Judge and the High-Court of Madhya Pradesh, it appears to us that the fatal injuries had been inflicted by Prakash with the gupti. The gupti was recovered at the instance of the accused and such recovery was not otherwise possible if the accused himself had not assisted for such recovery of the gupti. The said gupti was stained with human blood and no reasonable explanation has been given by accused for such blood stain. The injuries found on the person of the deceased could be inflicted by a gupti and complicity of Prakash in inflicting the fatal injuries by gupti has been corroborated by the eye-witness. There may be some minor discrepancies in the evidence of the eye-witness but so far as the complicity of Prakash is concerned, the depositions of the eye-witnesses were consistent. In discarding the evidence of the brother of the deceased namely Ajay Singh the learned Additional Sessions Judge was influenced by the tender age of Ajay (about 14 years) and

was of the view that he was likely to be tutored. We do not think that a boy of about 14 years of age cannot give a proper account of the murder of his brother if he has an occasion to witness the same and simply because the witness was a boy of 14 years it will not be proper to assume that he is likely to be tutored. The High Court has given very convincing reasons for accepting the evidence of Ajay Singh as an eye witness of the murderous act and we do not find any infirmity in the finding made by the High Court. In so far as the dying declaration is concerned, we are inclined to accept the finding of the High Court that the deceased was alive at least up to half an hour after the assault. He had been taken to the hospital where he received some treatment for about 10-15 minutes. It is not borne out from the evidence of the doctor that the injuries were so grave and the condition of the patient was so critical that it was unlikely that he could make any dying declaration. In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is perverse and requires to be interfered with. As a matter of fact, on second thought, the learned Additional Sessions Judge has accepted the dying declaration and has convicted Prakash on the basis of dying declaration. The injuries inflicted by Prakash were very serious on vital parts of the body causing death of the deceased within a very short time. In such circumstances, conviction under Section 502, IPC and sentence of life imprisonment of the accused Prakash is justified and no interference is called for. In our view. the High Court has taken a very reasonable view in convicting the other accused namely Shiv Narayan under Section 326 read with Section 34, IPC and has considered his case with such sympathy as the said accused deserved by sentencing him for imprisonment for the period already undergone by him, for an offence under Section 326 read with Section 34, IPC. We, therefore, find no reason to interfere with the conviction or the sentence passed against the accused Shiv Narayan. The appeals therefore fail and are dismissed. The bail bond of the accused Prakash is discharged and he would surrender and serve out the sentence. Appeals dismissed.

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