

State of M.P.

Vs

Surbhan

Criminal Appeal No. 593 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

15.04.1996

JUDGMENT

1. Delay condoned.

2. Leave granted.

3. We have heard learned counsel on both sides.

4. This appeal by special leave arises from the order of acquittal passed by the High Court of Madhya Pradesh, Jabalpur Bench in Criminal Appeal No, 53 of 1987 on 28-6-1990. The case of the prosecution is that on 11-7-1986, at about 6.30 p.m. while the deceased was returning after taking water from the tank, the respondent-accused came from behind and gave a blow with 'falia' and went away. PW 2, Ratan Singh, son of the deceased who is an eyewitness to the occurrence raised an alarm upon which PW 3, Vesta, PW 4, Nawal Singh, PW 5, Amar Singh and others came to the scene of occurrence whereat Ratan Singh, PW 2 narrated that the accused came from behind and attacked the deceased. The deceased was taken to the hospital and was declared dead. The FIR was lodged at 9.30 p.m. on the same day. After investigation, the accused was apprehended and after all the witnesses were examined, the trial court convicted the respondent-accused for offence of murder under Section 302 IPC and sentenced him to undergo life imprisonment. On appeal, the High Court acquitted the respondent. Hence this appeal.

5. The question for consideration is: whether the evidence of PW 2, a child eyewitness to the incident is consistent with the medical evidence? The medical evidence indicates as under:

"Three incised wounds were found, viz., (1) oblique incised wound about 5" x 2" bone deep, bral spine present over anterolateral aspect of left side neck up to nape of the neck, 7 body, lamina and spine of the chakeal spine were cut; (2) incised wounds about 1 1/2" x 1" deep up to mandible over left cheek and (3) incised wound about 2 1/2" x 1/4" over posterolateral aspect of left side elbow joint, on dissection, internal injury was found and spine lamina and vertebral body is almost completely set at like level of 7th cervical vertebral spine and is almost completely severed at this site."

6. A reading of the medical evidence clearly indicates that three incised wounds were inflicted upon the deceased, one on the nape of the neck, another on the left side of mandible and third on the left side of the elbow joint. In other words, there are three separate injuries inflicted upon the deceased, by three separate blows but PW 2 does not speak of the accused having inflicted those three injuries. Prosecution case is that the accused-respondent had inflicted the injury once and that too from

behind. The single blow cannot cause three incised injuries of different dimensions at three different places. Under these circumstances, the High Court had not placed implicit reliance on the evidence of PW 2. If the evidence of PW 2 is excluded from consideration, we do not find any other evidence to support the prosecution case.

7. It is contended that the FIR mentions the names of above persons who were specifically mentioned and it lends corroboration to the evidence of PW 2. We find no substance in this contention. The FIR cannot be used as substantive evidence or corroborating a statement of third party, i.e., PW 2, FIR cannot be used to corroborate the evidence of PW 2. It can be used either to corroborate or for contradiction of its maker.

8. It is then contended that PWs 3 to 5 have consistently spoken the version narrated to them by PW 2 but there is nothing to establish from their evidence of the offence. It may be that PW 2 had narrated that the accused had attacked the deceased. If the evidence of PW 2 is excluded from consideration, the evidence of PWs 3 to 5 does not remain to be of much assistance to the prosecution since it is not their case that they had seen the accused running away from the scene of occurrence. In these circumstances, we do not find any compelling reason to disagree with the finding of the High Court leading to order of acquittal.

9. The appeal is accordingly dismissed.