Meharban and Others

Vs

State of M.P.

Civil Appeal No. 585 of 1986

(G. N. Ray, B. L. Hansaria JJ)

27.09.1996

JUDGMENT

HANSARIA, J.

1. Four accused - Meharban, Rugga Singh, Baje Singh and Jagannath - faced trial on the principal charge of murder of one Ranjit Singh on the night between 22-2-1981 and 23-2-1981. The charge against the first three accused was under Sections 302/34 and against the fourth under Sections 302/109 IPC. Meharban had faced trial also under Section 379 IPC for the alleged offence of theft of a bicycle belonging to PW 3 Bham Singh. The learned Sessions Judge acquitted all the accused under all the charges. The State preferred appeal against the first three accused and the High Court has come to convict them under Sections 302/34. The acquittal of Meharban under Section 379 has been maintained. Hence this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appeal Jurisdiction) Act, 1970.

2. There is no dispute at the bar that the conviction is based primarily on the dying declaration of Ranjit Singh which has been deposed to by his sons PW 1 Meharban, PW 8 Sujan Singh; his widow PW 2 Reshamabai; and PW 3 Bhan Singh, a (would-be) close relation. According to the prosecution, the dying declaration has received corroboration from finding of some materials from the possession or at the instance of the appellants which had contained human blood. The trial court disbelieved the testimony of these witnesses relating to dying declaration on ten grounds noted in para 3 of the impugned judgment. The High Court has gone into each of the grounds and has taken the view that the trial court was not right in rejecting the dying declaration for the reasons ascribed by it. Shri Bachawat, the learned Senior Counsel appearing for the appellants, has contended that the view of the trial court being also reasonable did not merit reversal. Shri Shukla, the learned Senior Advocate appearing for the State, has, however, urged that the appreciation of the evidence by the High Court should receive our concurrence.

3. The basic reason which led the trial court to disbelieve the evidence of the PWs is the improbability of recognising the assailants as the occurrence was on a dark night and inside a hut where the deceased was sleeping. Now, if the occurrence had really taken place inside the hut we would agree with Shri Bachawat that it would not have been possible to recognise the assailants; but then, as pointed out by the High Court, and rightly, the trial court missed the point that the assault had taken place about 160 yards away from the hut in an open place. This conclusion of the High Court is based on the recovery of one bloodstained shoe of the deceased found at that place, which has been marked as (6) in the sketchmap prepared by the IO, PW 10. Shri Bachawat has urged that this shoe, which was marked as MO4, had not been identified by any of the PWs to have belonged to the deceased. The shoe to be identified, according to Shri Bachawat, was the one which was

found inside the hut. This, however, is not so, as would appear from the evidence of the IO, to which we were referred by Shri Shukla, as in his evidence the IO stated in para 7 that "shoe Item 4 was recovered from the spot, another shoe Item 10 was recovered from Ranjit Singh's hut". PW 2 had in her evidence identified MO 4 to be her husband's shoe.

4. This being the position, we would accept the prosecution case that the assault on the deceased was in an open place as the shoe was bloodstained and bloodstained earth and leaves were also found from where the shoe was recovered. The High Court was, therefore, right, according to us, when it observed that the deceased, after being assaulted about 160 yards away from the hut, ran to take shelter inside the hut where he collapsed on his bed. There is not much force in Shri Bachawat's contention that even if the occurrence was in an open place the assailants could not have been identified as the assault must have been during night time, as by early morning Ranjit Singh was found in a dying condition when the members of his family first met him. The appellants being persons having their fields in the neighbourhood were known to the deceased, because of which it would not have been difficult to identify them in an open field. In the sketchmap figure (7) indicates the place where the cots of accused Meharban and Rugga were lying. The place marked (7) is close to the place of assault indicated by figure (6) - the two are really intervened by a road.

5. We have then to decide whether Ranjit Singh had really named the appellants as his assailants. As already indicated, this has been deposed by PWs 1, 2, 3 and 8. The High Court has not placed reliance on PW 8 because of his contradictory statements on material points. Even if his evidence is excluded, we are left with the evidence of the three other witnesses. As to them the submission of Shri Bachawat is that PW 3 being not a co-villager, his presence in the village is doubtful. But then he being a person who had proposed marriage of his daughter with the son of the deceased was not a stranger to the family. This apart, we are assured of his presence because he had accompanied PW 1 to the police station on the morning of 23rd February. As to reliance on PW 1 by the High Court, the grievance of Shri Bachawat is that his statement made to the police under Section 161 CrPC was not available, which caused prejudice to the defence, which is one of the grounds mentioned by the trial court in disbelieving the prosecution case. That PW 1 had made such a statement is his evidence; what the IO stated in this regard was that though PW 1 had made some statements after lodging of the FIR, the same was not recorded in the case-diary because it was not deemed necessary. The IO might have taken this view because when PW 1 had gone to the police station his version had been recorded, and so, repetition of the same in the case-diary was not necessary. On these facts the view taken by the High Court, as against the one by the Sessions Judge, appears just and proper to us.

6. The other important submission advanced by Shri Bachawat is that there were many other persons in nearby villages bearing names of the appellants. Indeed from the impugned judgment it appears that the names of such 12 persons were cited. But these persons being of different villages and the evidence of PW 2 being that the deceased, apart from naming the assailants, had given the surnames also, and there being nothing to suggest that the similarly named persons of some other villages had assaulted the deceased, this submission has no cutting edge.

7. Shri Bachawat's other criticism relating to the evidence is regarding some improvements and exaggerations. It is known that what the court has to adjudge is the substratum of the case and, in doing so, grain has to be separated from chaff. It is settled law that some improvements here and some exaggerations there or some minor discrepancies in the evidence do not hurt the prosecution case. As to the core of the present case - the same being dying declaration of Ranjit Singh - we are fully satisfied, and so, the decision of this Court in Jagga Singh v. State of Punjab [1994 Supp (3)

SCC 463 : 1994 SCC (Cri) 1798], which has been referred by Shri Bachawat, has no application, as in that case the dying declaration had not inspired confidence, whereas one at hand does. We have said so because the evidence of PW 4 Dr Das, who had done post-mortem, does not in any way show if Ranjit Singh was not in a position to speak, because his evidence in the cross-examination is that the head injury sustained by Ranjit Singh might or might not have resulted in loss of consciousness. His further statement is that the deceased might have expired at about 10 or 11 a.m. long before which he had been contacted by the aforesaid PWs.

8. There is also force in the submission of Shri Shukla that the dying declaration has received corroboration because of finding of one bloodstained shirt from appellant Meharban; one bloodstained keduwa from appellant Rugga and bloodstained lathi recovered at the instance of appellant Baje. No doubt it is correct that the serologist had not given the blood groupings; but, the finding of extensive stains of human blood does incriminate the appellants, because when they were questioned about these findings in their examination under Section 313 CrPC they had not given any explanation, which it was their duty, if the bloodstains had been contacted, not in the course of the occurrence but due to injury received somewhere else, as contended by Shri Bachawat.

9. We may deal with yet another submission of Shri Bachawat which relates to the failure of the prosecution to bring on record any motive for the assaults. There are two answers to this submission. The first is that the motive lies locked in the heart of a man, and so, it becomes difficult to know the same. Failure to bring on record any evidence regarding motive does not, however, weaken a prosecution case, though existence of the same may strengthen the same. Secondly, there is also nothing on record to show as to why the dying man would have falsely implicated the appellants. Natural presumption is that a dying man does not lie, if there be no motive for the same. If false implication would have been the motivation, Ranjit Singh would have involved accused Jagannath also, with whom he had some dispute; but he was not named as one of his assailants.

10. Reference may also be made to the contention of Shri Bachawat that one Goppu, in whose presence also the dying declaration was made, was not examined. He being an independent person, would have been a better witness, according to Shri Bachawat. We are, however, of the view that the prosecution case has not been weakened in any measure of the non-examination of aforesaid Goppu in the face of the evidence of the aforesaid witnesses, who being closely related to the deceased, would have been loathe to shelter the real culprit. Normally, a relation witness does not do so.

11. The aforesaid being the state of evidence, we confirm the conviction as awarded by the High Court; so too the sentence which is imprisonment for life. The appeal is, therefore, dismissed.