

Ramesh S/o Laxman Gawli

Vs

State of M.P. and Others

State of M.P.

Vs

Ramesh

Criminal Appeals Nos. 587 and 588 of 1996

16.09.1999

JUDGMENT

PATTANAİK, J.:-

1. These two appeals, one by the convict, Ramesh and the other by the State are directed against one and the same judgment of the High Court of Madhya Pradesh and were, therefore, heard together and are disposed of by this common judgment.

2. Appellant Ramesh along with two others, Dalla alias Dayaram and Ramesh, son of Jagannath, commonly known as Ramesh (Junior), was convicted by the learned Sessions Judge for having committed offence under Sections 302 and 302/34 IPC and sentenced to imprisonment for life. On appeal, the High Court confirmed the conviction and sentence imposed by the learned Sessions Judge on accused Dayaram as well as Ramesh, son of Laxman, the present appellant but set aside the conviction of Ramesh (Junior) under Section 302/34 IPC and acquitted him of all the charges. The appeal preferred by the State is against the acquittal of Ramesh (Junior) on the charge under Sections 303/34 IPC. It may be stated, at this stage, that the learned Sessions Judge has acquitted three other accused persons who stood trial along with the appellant and against their order of acquittal, the State moved the High Court in appeal and the State's appeal being dismissed, the State has preferred special leave petition [SLP (Crl.) No 295 of 1996] which stood dismissed by this court on 8-9-1999.

3. The prosecution case in a nutshell is that the accused and the deceased belonged to the "Gawli" community and had been divided in two factions one led by Mangilal, Jagannath and Pancham. Pancham is the father of accused, Dalla. Kanhaiyalal, the deceased was outcasted and on that score, there had been some dissension. On the date of occurrence and on that score, there had been some dissension. On the date of occurrence i.e. 1-10-1985, the said Kanhaiyalal was proceeding to the Kali Temple for offering "Puja" accompanied by Nandlal, PW 1. While they were proceeding, the accused persons came together armed with weapons in their hands and stated mercilessly assaulting Kanhaiyalal. Accused Dalla had an axe in his hand and gave blows on the head of the deceased by means of the axe. The present appellant, Ramesh (Senior) also gave an axe-blow and Kanhaiyalal tried to prevent him but his left hand was cut and Kanhaiyalal fell down. The other accused, Ramesh (junior) pierced "gupti" in his chest. The further prosecution case is that the three other accused persons, who have since been acquitted, also caused injuries on the deceased with the weapons in

their hands. "Halla" was raised and a telephonic message was given to the police station, which was duly recorded in the "roznama" and PW 11 came to the spot. Kanhaiyalal was taken to the hospital and he was declared dead. PW 1 Nandlal gave a written report which was treated as first information report and the police then registered as case and started investigation. On completion of the investigation, a charge-sheet was filed and the accused persons stood their trial, as already stated. The prosecution examined a number of witnesses of whom PWs 1, 2 and 3 are the eyewitnesses to the occurrence. PW 3 did not support the prosecution case and was allowed to be cross-examined. PW 8 is post-occurrence witness and PW 12 is the doctor who had conducted the autopsy on the dead body of the deceased Kanhaiyalal. The post-mortem report indicates that there were five injuries on the dead body of the deceased, four were incised and one was an abrasion. On the basis of the medical evidence, the Sessions Judge came to hold that Kanhaiyalal met a homicidal death and the same finding is not assailed before us. Relying upon the evidence of the doctor, PW 12, the learned Sessions judge convicted three of the accused persons while acquitting three others, as already stated. Appeal being preferred, the High Court considered the inter se inconsistency between the eyewitnesses with regard to the finding as to which accused person caused the injury on the chest by means of "gupti", inasmuch as while PWs 1 and 4 had stated that "gupti" was pierced by Ramesh (Junior), PW 2 stated that the "gupti" was pierced by Devilal and accordingly held that the said accused Ramesh (Junior), son of Jagannath is entitled to the benefit of doubt. But so far as appellants Ramesh and accused Dalla are concerned, the High Court on reapplication of the evidence of the three eyewitnesses came to hold that the prosecution case has been proved beyond reasonable doubt and, therefore the conviction and sentence passed by the Sessions Judge was affirmed. It may be stated that no appeal has been preferred by Dalla.

4. Mr. Bhimrao Naik, learned Senior Counsel appearing for appellant Ramesh (Senior) vehemently contended that the oral evidence of PWs 1, 2 and 4 cannot be accepted in this case as right from the beginning the prosecution has proceeded with fabricated documents and in fact the document which has been treated as FIR and is said to have been lodged on 1-10-1985 is a fabricated document and no FIR had been given till 3-10-1985.

5. The entire basis for the aforesaid argument is that in a letter dated 3-10-1985 to the Superintendent of Police to which the informant himself was a signatory, it had not been indicated that an FIR had already been lodged earlier. This argument made by Mr. Naik, learned Senior Counsel is wholly misconceived inasmuch as the said document indicates that several persons had already been arrested by them and persons can be arrested only after lodging of FIR and not before that. PW 1 is himself the informant and has categorically stated that he had given the report to the police on 1-10-1985 itself and there is no reason why his statement should be discarded. Learned counsel, Mr. Naik in this context had urged that the fact that the FIR reached the Magistrate only on 3-10-1985 substantiates his allegation that there was no FIR on 1-10-1985, as alleged by the prosecution. But the investigating officer has indicated the alleged by the prosecution. But the investigating officer has indicated the reason that 2nd of October being a holiday on account of Gandhi Jayanti, he has sent the documents on 3rd October and this explanation has been accepted by the learned Sessions Judge as well as by the High Court. We do not think that a separate view could be taken by this court on this score.

6. Mr. Naik then placed before us the evidence of the three eyewitnesses and contended that their evidence does not inspire confidence and should be rejected. Normally, this Court, sitting in appeal against the conviction passed by the Sessions Judge and upheld in appeal, does not reappreciate the evidence of the witnesses again. But the evidence having been placed before us and having been argued at length by the learned Senior counsel, we have scrutinised the same. Nothing substantial

has been brought to our notice in the cross-examination of these witnesses for which this Court would come to the conclusion that the witnesses are not believable. As stated earlier, PW 1 was accompanying the deceased right from the beginning when the deceased has gone to supply milk and was proceeding to offer "puja" and PWs 2 and 4 are independent witnesses who happened to be at the scene of occurrence and have narrated the occurrence vividly. The argument of Mr. Naik, appearing for the appellant against acceptability of Witnesses 2 and 4 is that they were examined by the police under Section 161 CrPC on 6-10-1985 and 4-10-1985 respectively. This delay in examining the two witnesses ipso facto cannot be ground to discard their testimony, more so, when in the cross impeach their testimony. On the other hand, the evidence of PWs 2 and 4 fully corroborates the reliable evidence of PW 1 and therefore, the court below were justified in maintaining the conviction of appellant Ramesh of the charge under Section 302 OPC. In course of arguments, Mr. Naik, learned Senior Counsel also raised a contention that the prosecution has not examined the independent witnesses though available and that an adverse inference the independent witnesses though available and that an adverse inference should be drawn. But on going through the evidence on record, we do not find nay material from which it can be said that the other independent witnesses were available and the same were not examined. That apart, PWs 2 and 4 are independent witness and, therefore, it is not necessary for the prosecution to multiply the witnesses. We, therefore, do not find any substance in the aforesaid submission of Mr. Bhimrao Naik.

7. In the net result, we do not see any infirmity with the judgment of the High Court convicting the appellant under Section 302 IPC requires interference by this Court. Criminal Appeal No. 587 of 1996, therefore, fails and is dismissed.

8. So far as Criminal Appeal No. 588 of 1996 preferred the State is concerned, the same is directed against the order of acquittal of accused Ramesh (Junior), son of Jagannath of the charge under Sections 302/34 IPC by the High Court. A bare scrutiny of the impugned judgment of the High Court would indicate that the role ascribed by the prosecution to accused Ramesh (Junior) is that he pierced a "gupti" on the chest of the deceased. But found to be inconsistent. While, according to PWs 1 and 4, Ramesh (Junior) pierced the "gupti" but according to PW 2, it is Devial who pierced the "gupti". This discrepancy as to the alleged role played by the accused accordingly, the Counsel appearing for the State of Madhya Pradesh was not in a position to assail the said conclusion of the High Court. We, therefore, do not find any merit in the appeal preferred by the State of Madhya Pradesh. In the result, this appeal is also dismissed.

9. Accordingly, both the criminal appeals are dismissed.