SUPREME COURT OF INDIA

Thanedar Singh

Vs.

State of Madhya Pradesh

Crl.A.No.1123 of 2000

(CJI, R.C. Lahoti and P. Venkatarama Reddi JJ.)

30.10.2001

JUDGMENT

P.Venkatarama Reddi, J.

1. This appeal arises out of the judgment of Madhya Pradesh High Court (Gwalior Bench) dated 6.7.2000 reversing the verdict of acquittal recorded by the first Additional Session Judge, Morena, in Sessions Case No. 178/83. The accused herein was charged alongwith six others for committing murder of one Rajbahadur Singh. The appellant was charged under Section 148 and Section 302 IPC whereas others were charged under Sections 148, 302 read with Section 149 IPC. The Sessions Judge acquitted all the accused. On appeal by the State under Section 378 Cr.P.C., the High Court granted leave to appeal only against the appellant. The High Court found the appellant guilty of murdering Rajbahadur Singh and convicted him under Section 302 IPC and sentenced him to life imprisonment. The High Court held that there was sufficient evidence that the appellant-accused had shot the deceased and the trial court committed serious error in acquitting him.

2. The prosecution case is that on the intervening night of 18/19th May, 1982, the deceased Rajbahadur Singh and his father Bhola Singh (PW6) were sleeping at the threshing floor of their field (Khalihan). Rajbahadur (deceased) was sleeping on the heap of Arhar gram and his father was sleeping on a cot nearby. About mid-night time, seven persons including the appellant and his father came to the spot. On exhortation by one of the accused-Charan Singh, the appellant Thanedar fired at the deceased from close range. Rajbahadur Singh died instantaneously. The father of the deceased Bhola singh who was witnessing the incident raised hue and cry after the accused persons left the scene. On hearing the sound of gun shot and the cries of Bhola Singh, his relation by name Surat Singh (PW 8) who was sleeping at the nearby Khalihan woke up and saw five persons (other than the appellant) armed with weapons going towards the village Sikrodi. He then went to the Khalihan of his uncle and found Rajbahadur Singh lying dead. He came to know about the incident through Bhola Singh. Surat Singh went to the Police Station, Sihania which is 6 K.M. away in the morning and lodged the report. ASI, Rajaram (PW10) recorded the FIR at 8.45 A.M. The FIR is Ex. P 10. In the FIR, amongst others, the name of the appellant is shown as the actual assailant.

There is also a recital in the FIR that there was enmity between the accused and the deceased last month in connection with the ploughing of Khalihan and there was a fight between Rajbahadur and Charan Singh (one of the accused). The crime was registered. ASI PW 10, who went to the spot found a gun shot wound on the chest of the deceased and he seized the dead body and prepared inquest panchanama (P 6). An empty cartridge of 7 mm bore which was found at the spot was seized under Ex. P 7. He sent the dead body for post-mortem which was conducted by Dr. D.S. Badukar (PW7) on the morning of 20.5.1982. He found a bullet entry injury measuring .7 X .7 cm in round shape on the right chest and an exit injury measuring 2.5 cm X 2.5. cm in round shape. The fourth and eighth ribs were found broken, middle portion of left lung and inner part of the chest was destroyed with the resultant damage to heart. According to him, the death occurred on account of haemorrhage and shock caused by the said injuries attributable to the bullet fired by rifle. According to PW7, the injuries were sufficient in the ordinary course of nature to cause death. PW 10 prepared an abscondence memo (Ex. P 13) pertaining to the accused on 19.5.1982. He arrested the accused- appellant on 5.6.1982 and the other accused later on. He seized a mouser rifle lying in Police Station Tighra in connection with crime No.14/82 under Ex. P 20 and this, according to the prosecution was the weapon used by the accused. It is said to have been stolen from one Balmukund a few days before the occurrence.

3. PW 6, the father of the victim, is the eye witness. PW 8 and PW 4 who are close relations of the deceased were examined in order to show that the accused were seen near the place of occurrence soon after the occurrence. The case of the defence broadly was that PW 6 was not the real eye witness and the FIR containing the names of accused was brought into existence two or three days after the incident. The trial court disbelieved the evidence of PWs 6, 8 and 4 and doubted the correctness of the prosecution version as regards the recording of FIR on the morning of 19th May. All the accused were acquitted. On appeal by the State which was confined to the appellant herein, the impugned judgment has been rendered by the High Court finding the appellant guilty under Section 302 IPC.

4. Having gone through the evidence and the record, we are of the view that the impugned judgment of the High Court shall not be allowed to stand.

5. The factors relied upon by the Trial Court as well as those which cast doubt on the prosecution version are the following:

> "5.1 Eye witness, namely PW 6, the father of the deceased could not have identified the accused persons as the occurrence took place according to PWs 6 and 8, at about mid-night (between 12 and 1 a.m.) and it was a dark night according to the evidence adduced by defence. The evidence of DW 1 that as per the almanac, the rising time of the moon was about 2.30 a.m. on the crucial day was relied upon by the Trial Court.
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> 5.2 PW 6 did not reveal to his kith and kin and the villagers who came to the place of occurrence in the morning about the names of any of the accused. However, he deposed that the names of the accused persons were mentioned to Jagjit, Balmukund and Maharaj Singh, but, they were not examined. As seen from the cross-examination

at paragraph 24, he did not even disclose the name of the alleged assailant to his son Banwari. Had he identified the accused, who were known to him, he would have in the normal course disclosed the names at least to his close relations. This fact should be viewed in the context of defence version that the FIR was not recorded at the time and date it was purportedly recorded. Complaint was supposed to have been lodged by PW 8 at 9 a.m. on the morning following the night of occurrence. The defence produced a certified copy of the FIR received by the Court of First Class Judicial Magistrate, Amba, in which a note written by the clerk of the court showed that it was received on 21.5.1982. That document is Ext. D 4. The evidence of the date of sending the copy of FIR to the Magistrates court was not adduced by the prosecution inspite of giving more than one opportunity, as borne out by the endorsements on the order sheets dated 28.11.1984 and 7.12.1984. On 28.11.1984, it was noted that adverse inference will be drawn if the record was not produced. Yet, the prosecution failed to adduce proof. A specific suggestion was put to PW 10. (S.H.O., Sihonia P.S.) that FIR was prepared 2 or 3 days after the occurrence which, of course, was denied. P.W.10 admitted that no attempt was made to apprehend the accused on 19th and 20th May. It is significant to note that the Crime No./FIR No. is not to be found in the inquest report (P.6), (P.5) site plan or (P.8) which is a requisition sent to the hospital for post-mortem. No reference whatsoever is made in Exh. P 6 about the information, if any, furnished by PW 8 or PW 6. All this would support the defence version that FIR (P-10) in which the names of accused were mentioned would have probably come into existence much later. In this context it is apposite to refer to the decision of this Court in *Meharaj Singh Vs. State of U.P.*[1] there also the question whether FIR was ante-timed to rope in the accused after some deliberations or to suit the investigation came up for consideration. Dr. A.S. Anand, J. (as his Lordship then was) speaking for the Bench observed thus:-

FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon; prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even

though the inquest report, prepared under Section 174 Cr.P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW8. Earlier, the fact that the number of FIR or Crime Number was not found in the inquest report or in the requisition for the post-mortem was adversely commented upon by the learned Judges. The fact situation is more or less the same here. We do not think that there is anything in the decision of this Court in *Shivram vs. State of U.P.*[2], which goes against the legal position laid down in Meharaj Singhs case. No broad proposition can be said to have been enunciated in that later case that inordinate and unexplained delay in sending the FIR to the Magistrate would be an immaterial factor liable to be ignored altogether.

5.3 The weapon is a 7 mm bore rifle with 20 long barrel which was seized by PW 10 on 25.8.82 at the Police Station, Tigra where it was lying in connection with Crime No. 14 of 1982, but it has not been connected to the accused. The prosecution version that this gun which was stolen from some other person two days earlier came into the possession of the accused and the same was used in the murder of deceased remained unsubstantiated. Moreover, the report of the Forensic Science Laboratory which is Ex. P 17 revealed that there was no nexus between the seized gun and the empty cartridge found at the site of occurrence.

5.4 The evidence of PW 8 (Surat Singh) who is supposed to have seen the accused persons at about the time of occurrence near the Khalihan of deceased, was not worthy of credence. There was no occasion for him to sleep in the fields when according to his own admission, he was not cultivating the lands. Moreover, PW 8, who lodged the complaint and closely related to the deceased, did not even mention the names of accused to any one in the village before lodging the complaint, according to his own admission. In any case, he stated in Ex. P.10 as well as in the deposition that he saw five accused (other than the appellant) on that crucial night soon after the occurrence and therefore his evidence does not go against the appellant."

6. The High Court was of the view that the judgment of the Trial Court was perverse and its approach was unreasonable. The first comment made by the High Court was that the Trial Court did not assign any reason for disbelieving the FIR. The High Court found no infirmity in the FIR having regard to the fact that the part played by the accused appellant was specifically mentioned in the FIR. But, the High Court missed to note the crucial facts adverted to in Para 5.2 (supra) which cast a serious doubt on the correctness of the FIR, especially the time and date of its recording. The learned Sessions Judge particularly

adverted to the fact that the prosecution did not produce the original record of police station relating to the receipt and despatch of FIR inspite of an order passed to that effect. Though the Trial Judge was not careful enough in recording a specific finding that the prosecution failed to clear the doubt regarding the date and time of recording the FIR, in sum and substance, that is what the learned Trial Judge purported to say. The observations of the Trial court were not properly understood by the High Court when it proceeded on the basis at paragraph 12 that the Trial court found fault with the delay in lodging the complaint at 9 A.M. on the next morning. But, it is to be noted that nowhere in the judgment, the trial court observed that the complaint having been lodged and recorded at 9A.M. next morning, that itself would tantamount to delay.

7. The second aspect commented upon by the High Court was that there was no basis for the finding of the Trial Court that the moon rise was at about 3 OClock on 19th May. The learned Judges commented that the almanac was not brought on record. But, it is to be seen that the learned Sessions Judge referred to the evidence of DW 1 Pandit Kedar Nath whose evidence need not be thrown out merely for the reason that almanac was not filed. DW 1 was clear in his deposition that according to Kashi Vishwa Panchangam, which he brought with him, on the intervening night of 18th and 19th, the moon rise would be at 2.31 a.m. This statement has not been challenged in the cross-examination. The only point elicited in the cross- examination was that according to some other almanac, there will be some difference and the moon rise may be at 2.45 a.m. The statement of PW 6 that the night became bright after 12, mid-night is liable to be doubted. There is no basis for the assumption of the High Court that the rising of the moon could be before mid night. However, on the aspect of identification, the High Court may be justified in commenting, based on *Nathuni Yadavs Vs. State of Bihar*[3] that the approach of the Trial court is faulty. In Nathuni Yadavs case (supra), this Court pointed out that under certain circumstances, the lack of moonlight or artificial light does not per se preclude identification of the assailants. Thomas J. speaking for the Court observed:-

> "Even assuming that there was no moonlight then, we have to gauge the situation carefully. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glow of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be borne in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, we must bear in mind the further fact that the assailants were no strangers to the inmates of the tragedy-bound house, the eyewitnesses being well acquainted with the physiognomy of each one of the killers. We are, therefore, not persuaded to assume that it would not have een possible for the victims to see the assailants or that there was possibility for making a wrong identification of them. We are keeping in mind the fact that even the assailants had enough light to identify the victims whom they targeted without any mistake from among those who were sleeping on the terrace. While the possibility of identification of the accused-appellant cannot be ruled out in the present case too having regard to the fact that the accused was not stranger and the occurrence was at an open place, there is one more factor which creates some difficulty in the matter of

identification. PW 6 was sleeping on a cot at a little distance from the spot where the victim was sleeping. PW 6 stated that as many as five persons including the appellant surrounded his son and two of the accused were standing in front of his cot. In this situation, assuming that there was faint light emanating from the open sky, would it be possible for PW 6 to observe the appellant firing the shot from the rifle? The possibility seems to be remote. At any rate, this aspect ought to have engaged the attention of the High Court before reversing the trial courts finding on the point of identification by PW 6."

8. The third comment made by the High Court is that no reason was assigned by the High Court for disbelieving the eye-witness PW 6 (wrongly noted as PW 3). This comment ignores the fact that the identification by PW 6 Bhola Singh was itself doubted by the Sessions Judge. That apart, as already pointed out supra, PW 6 categorically stated that he did not reveal the names of the accused to any one not even to his close relations after the occurrence. This point was also taken into account by the trial court (vide para 16 of the judgment). This fact which is not quite consistent with the professed knowledge of the witness about the assassin has not been taken into account by the High Court.

9. The High Court then commented that the Trial Court was not justified in disbelieving PW 8 (wrongly noted as PW 9) who is the cousin of the deceased merely on the ground that since the lands were leased out, there was no occasion for him to sleep at the barn. The High Court, however, did not express any view of its own on the credibility and worth of the evidence of PW 8. His evidence was not re-appreciated. As already noticed, according to his version, he saw five accused persons near his field soon after the occurrence and the appellant was not one amongst them.

10. The High Court found fault with the comment of the trial court that in Ex. P 5 (site plan), Ex. P 6 (inquest report) and Ex. P 8 (application for post mortem) the names of the accused were not mentioned. True, the details of the accused persons need not be mentioned in Ex. P.5 or Ex. P 8 but in the inquest report, it is not unusual to note the gist of FIR or the cause of death as narrated by the witnesses. We have already referred to the observations in Meharaj Singhs case in this regard. Be that as it may, the trial courts conclusion will not be vitiated merely because certain inappropriate observations were incidentally made.

11. As regards the motive for the crime, the High Court observed in Paragraph 3 that one of the reasons for acquittal was that the motive was not proved. This is again a factually incorrect statement. In the trial courts judgment, the learned Judge did not attach much importance to motive as seen from paragraph 8 of the judgment. Apart from observing that there was no evidence of enmity between the deceased and the accused, the trial court noted that much importance need not be given to this aspect as the case is based on eye witness account.

12. The foregoing discussion shows that the High Court was not justified in making the comments that the trial court did not give reasons on certain important aspects or misdirected itself in the appreciation of evidence. Though the judgment of the trial court is somewhat

perfunctory and lacking clarity in certain respects, on the whole, the approach and conclusions of the trial court cannot be said to be perverse or vitiated by any serious error warranting interference with the verdict of acquittal. The view taken by the trial court, in our opinion, is a reasonably possible view and, therefore, the High Court was not justified in reversing the acquittal insofar as the appellant is concerned. The High Court failed to address itself to certain crucial factors discussed above concerning the credibility of eye witness account and the correctness of the FIR.

13. For the aforesaid reasons, the appeal is allowed. The conviction and sentence of the appellant under Section 302 IPC is set aside and the appellant is directed to be set at liberty forthwith, if not required to be detained in any other case.

[1]*(1994 (5) SCC 188)*
[2]*(1998 (1) SCC 149)*
[3]*(1998 (9) SCC 238)*