SUPREME COURT OF INDIA

Munna

Vs.

State of M.P.

Crl.A.No.1269 of 2002

(N. Santosh Hegde and B. P. Singh JJ.)

16.09.2003

JUDGEMENT

Santosh Hegde, J.

1. This appeal against the judgment and conviction made by the High Court of Madhya Pradesh, Gwalior Bench in criminal appeal (Case No. 270 of 1986) is filed by the 4th accused before the trial Court who was 4th appellant before the High Court who has been convicted by the High Court by reversing the judgment of the trial Court for offences punishable under Sections 302, 307 and 324, IPC and was sentenced to undergo imprisonment for life under the principal Section 302, IPC and other varying sentences for other lesser offences. Brief facts necessary for the disposal of this appeal are :

> "Original accused A-1 Premnarayan and his supporters which included the appellant herein were angered by the fact that Harsewak P.W. 12 was allowing their enemies Bharta Gawli and Moharman to sit at his doorsteps, therefore, said Premnarayan complained to Dilip Singh P. W. 3 to prevent P.W. 2 from allowing those two persons from sitting at his doorsteps. It is stated that on 7-6-1983 at about 8 p. m. in the village Gata of which the complainant accused and other witnesses were residents, the appellant herein brought out his 12 bore gun to settle his disputes with P. W. 12 and without heeding to the request of P. W. 3 to allow him to settle the dispute, the appellant started firing indiscriminately, consequent to which one Raghuvar son of Naktu died and Ms. Mithilesh P.W. 5 and Parasram P. W. 6 were injured. According to prosecution, P.Ws. 3, 4, 5, 6, 12 and 18 witnessed the incident in question. It is the further case of the prosecution that Puttu Singh Yadav P.W. 19 who was then SHO of Mehgaon Police Station, on coming to know of the said incident, came with his Police force to Gata village. He found on the way P. Ws. 5 and 6 injured witnesses being taken to the hospital in a bullock-cart hence he directed Kundan Singh P.W. 8, Police Constable to accompany them to the Police Station and came to the place of incident and on an information given by P. W. 3 recorded Ex. D/4 Dehati Nalishi and sent the same with P.W. 14 another Constable to the Police Station where a crime was registered on the basis of said complaint. On completion of investigation a charge-

sheet under Sections 302, 109, 307/109, 324, 324 and with 109, IPC was submitted against four accused persons including the appellant herein which came to be tried by the 1st Additional Sessions Judge, Bhind, M.P. Before the trial Court the prosecution relied upon the evidence of P.Ws. 3 to 6, 11, 12 and 18 who according to the prosecution, were the eye-witnesses to the incident in question apart from other official witnesses. During the trial, P.Ws. 5 and 11 did not support the prosecution case. While P.Ws. 3, 4, 6, 12 and 18 supported the prosecution case. The defence had taken a specific plea before the trial Court that there were two factions in the village who were opposed to each other and consequent upon a certain misunderstanding, there was a fight between the two factions which included the complainant and others on one side and the accused and others on the other. In the said fight, the complainant party resorted to shooting by fire-arms indiscriminately consequent to which many people got injured and the victim Raghuvar died, P.Ws. 5 and 11 got injured apart from the injuries suffered by the accused themselves. They also contended that they had filed a cross-complaint against the members of the complainant party. The trial Court disbelieving the prosecution case acquitted all the accused primarily on the ground that the evidence of eye-witnesses being full of contradictions cannot be relied upon even though they were injured witnesses and so far as P.Ws. 6, 12 and 18 are concerned, they were absconding for nearly 2 months and their statements were recorded only after they became available to the investigating agency, hence it was not safe to rely on their evidence and the incident as projected by the prosecution could not have taken place. Therefore, giving benefit of doubt, it acquitted the accused persons."

2. State of M.P. preferred an appeal before the High Court which as stated above, came to be allowed as against the appellant herein while the High Court agreed with the trial Court that the prosecution did not establish the case as against the other 3 accused persons out of whom Premnarayan A-1 had died during the proceedings. The High Court having come to the conclusion that the approach of the trial Court in appreciating the prosecution case was not proper, it re-appreciated the evidence and for reasons recorded therein, came to the conclusion that the finding of the trial Court was perverse and arbitrary so far as it pertained to the appellant, hence, allowing the appeal in part, convicted the appellant, as stated above.

3. Dr. T. N. Singh, learned senior counsel appearing for the appellant, relying on a number of judgments of this Court, contended that the High Court was not justified in interfering with the well-considered judgment of the trial Court merely because another view was possible on the very same set of facts. He further contended even the view taken by the High Court on the material on record was not possible to be arrived at because of various omissions, contradictions and improvements in the evidence of the prosecution. However, he conceded that for sufficient and compelling reasons and for good, sufficient and cogent grounds, the High Court can interfere with the findings of fact of the Courts below but such reasons according to the learned counsel did not exist in the present case. He also contended that from the sketch plan produced by the prosecution itself, it is clear that the case put forth by the prosecution cannot be accepted i.e. the appellant could not have caused such injuries to the deceased and, the injured eye-witnesses standing on the Baithka of Premnarayan's house

because of the distance involved. He also contended from the evidence of the doctor who treated the injured witnesses P.W. 4 and others, it is clear that they had suffered gun-shot injuries which had showed signs of blackening at the place of pellet injuries which can be caused only by using the gun very close to the body of the person injured. In the instant case, since the prosecution itself has alleged that the indiscriminate shooting by the appellant was done by the appellant standing on the Baithka of Premnarayan's house, such injuries with blackening could not have been caused by the appellant i.e. assuming he did use the fire-arm in the incident in question. Learned counsel also pointed out that the prosecution has pleaded the recovery of a 12 bore gun which was examined by the ballistic expert but the same was not recovered in a manner known to law inasmuch as the prosecution has neither produced any witness to prove the said recovery nor such recovery was made by drawing any Panchanama therefore, the recovery of this gun has remained a mystery which should also go against the genuineness of the prosecution case. He relied upon a number of judgments of this Court in regard to the principles applicable to the appreciation of evidence of eye-witnesses where such evidence consists of contradictions, omissions and improvements. It was also the argument of learned counsel that in such cases the benefit of doubt ought to have gone to the accused, therefore, the judgment of the High Court is unsustainable.

4. Mr. Sidharth Dave, learned counsel for the respondent, supported the judgment of the High Court and pointed out from the material on record that the entire shooting by the appellant did not take place only from the Baithka of Premnarayan but the appellant had followed P. W. 3 into the lane and continued to shoot from there consequent to which pellets hit the deceased and he died in the street. In that process, the accused had gone very close to P.Ws. 5 and 6 who got injured by the spray of pellets from the gun of the appellant, therefore, the argument of blackening of the wound will have no force. He also contended that the presence of blackening around the gun-shot wound does not always indicate the proximity of the weapon to the wound. In support of his contention, he relied upon a judgment of this Court in *Mohan Singh and another v. State of M. P.*[1]. Commenting on the argument of learned counsel for the appellant that there is some mystery in regard to the recovery of a gun, he submitted that though in the judgment it has come that a gun was recovered from the appellant, the prosecution has never relied upon this as a part of its case, therefore, the trial Court instead of drawing an adverse inference ought to have rejected this fact which came only in the nature of argument addressed by the learned counsel.

5. Before the Courts below, the defence has questioned the admissibility of Ex. D/4 Dehati Nalishi on the ground that the same is hit by Section 162, Cr. P.C. because the I.O. already had received information by way of a complaint, therefore, a subsequent statement got recorded by P.W. 3 would only be a statement recorded in the course of investigation hence, was inadmissible. The trial Court had accepted this argument but the High Court rejected the same. Learned counsel for the appellant, in our opinion, very fairly submitted that he is not going into that question, on the contrary, he would proceed on the basis that Ex. D-4 was the complaint and tried to point out certain discrepancies and improvements in the oral evidence based on the said statement Ex.D-4.

6. In the instant case, the judgment impugned being a judgment of reversal, we have gone through the evidence led by the prosecution to satisfy ourselves whether there was any justification for the High Court to have interfered with the finding of the trial Court. In that process, we have noticed that the High Court has discussed all the findings given by the trial Court with reference to the evidence relied upon by the prosecution and found the finding of the trial Court to be perverse and arbitrary arrived at by misreading of the evidence. If this finding of the High Court is correct then the High Court is definitely justified in reversing the finding of the trial Court. The High Court in that process came to the conclusion that the trial Court has given undue importance to minor discrepancies and ignored the basic features of the case. While so holding the High Court disagreed with the trial Court that the entire shooting took place from the Baithka of either Premnarayan's house or Vidya Ram's house. It accepted the evidence of P.W. 3 that after he tried to persuade the appellant not to resort to violence he move towards the Baithka of P.W. 12 and the deceased started following him on the road and started firing indiscriminately. At that point of time the deceased, witnesses and others who were sitting in the Baithka of P.W. 12, started running away to cover themselves and in that process the deceased Raghuvar suffered an injury in his chest and died on the road. It was during this melee P.W. 5 an innocent pedestrians suffered injuries and fell down and P.W. 6 who was also scurrying for cover, also suffered injuries. We are in agreement with this finding of the High Court because it is clear from the evidence of P.W. 3 that the appellant had come down from the Baithka of Premnarayan or Vidya Ram as the case may be, into the road and proceeded towards the Baithka of P.W. 12. In that process he not only came to the road level but also came within the proximity of the injured witnesses. This fact, if accepted, decimates the two arguments addressed on behalf of the appellant; one regarding blackening of wounds at the entry point and the other in regard to the trajectory of the pellet wound which, according to the learned counsel for the appellant, had gone straight and not in a downward angle which would have been the consequence if the appellant was shooting from the Baithka which was about 5 ft. higher than the road level. Because there was proximity between the appellant and P.Ws. 5 and 6 and the appellant being on road level the injury would not also be in a downward angle. Similarly, having perused the evidence led by the prosecution through P.Ws. 3, 4 and 6, we are in unison with the High Court that the discrepancies and accompanying contradictions pointed out by the learned counsel in their evidence are not of such nature as would make their evidence incredible. In this context, we may also notice that P.W. 5 though treated as hostile witness, has admitted in her evidence that she suffered the injuries at the place and time as stated by the prosecution. The only area in which she did not support her previous statement was in regard to the identity of the assailants. Otherwise, she has supported the prosecution case. In our opinion, her evidence also corroborates the evidence of P.Ws. 3, 4 and 6 to the extent of the taking place of incident as stated by the prosecution. Therefore, we are of the opinion that the High Court on the facts of this case was justified in reversing the judgment of the trial Court.

7. Before concluding, we must consider the argument of learned counsel for the appellant that in the course of judgment of the trial Court, it is noticed that an argument was addressed on behalf of the appellant that a 12 bore gun was recovered from the appellant which when sent to the ballistic expert was found to have a defective firing pin but the barrel of the gun showed signs of discharge. Having perused the entire prosecution evidence, we find though

this fact was brought out in the course of arguments, the prosecution has nowhere based its case on this fact. It may or may not be true that such a gun was recovered but since the prosecution has not relied upon this piece of evidence, the fact that it was not properly recovered, would not make the prosecution case any weaker; at the most that piece of evidence would have to be rejected. Any argument that in the absence of the recovery of a gun from the appellant, there could be no conviction, will also have to be rejected. It may be possible that the learned counsel for the prosecution out of his over-zealousness might have pointed to the trial Court this fact which certainly is neither a legal evidence nor the basis of the prosecution case.

8. For the reasons stated above, this appeal fails and the same is hereby dismissed.

Appeal dismissed. .

[1]*(1999) 2 SCC 428*