SUPREME COURT OF INDIA

State of Madhya Pradesh

Vs.

Kriparam

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

25.09.2003

JUDGMENT

Santosh Hegde, J.

1. State of Madhya Pradesh has preferred this appeal against a judgment of the High Court of Madhya Pradesh at Jabalpur Bench.

2. While granting leave to this appeal, this court by its order dated 22nd April, 1996 confined the same only as against the first respondent.

3. The prosecution case from which this appeal arises is as follows: The respondent in this appeal and two others were chargesheeted by the Maharajpur police for an offence punishable under Section 302 read with Section 34 I.P.C. for having committing the murder of Bati in the intervening night between 10 and 11 of April, 1985, while the said Bati was sleeping in his thrashing yard along with his brother Suraj Prakash (PW-1) and his uncle Nand Ram (PW-3).

4. Prosecution alleged that at that time the three accused persons attacked the deceased with deadly weapons like axe, farsa etc. and the deceased died instantaneously. It is stated that PWs. 1 and 3, being afraid of the assailants, did not move away from the place where they hid themselves and later in the morning at about 8 O'clock they informed the other relatives including Nathu Ram (PW-4), father of the deceased and the information as to the crime was lodged at Maharajpur police station at about 8.15 A.M. and the police station was about 3 k.ms. away from the place of incident. During the course of investigation, the prosecution alleges that they recovered blood stained clothes worn by A-1 as also a blood stained axe which was used in attacking the deceased.

5. The trial court, accepting the prosecution case convicted the three accused persons for offences punishable under Section 302 IPC read with Section 34 IPC. The trial court imposed the sentence of imprisonment for life on the said accused.

6. It was against the said judgment of the Sessions judge Chhatarpur, the accused filed an appeal to the High Court of Madhya Pradesh at Jabalpur in Crl. A. No. 60 of 1996. The High

Court on re-appreciation of the evidence by the impugned judgment came to the conclusion that the prosecution has failed to establish a case against the accused hence acquitted the accused.

7. As stated above it is against the said judgment of acquittal the State has preferred this Appeal and this Court at the time of granting leave has confined the leave to appeal as against the first respondent only who was the first accused in the Trial Court. Shri R.P. Gupta, learned Senior Counsel appearing for the State contended that the Trial Court has meticulously considered the evidence on record and accepted the eye witneeses' version of PW-1 and PW-3 and has further relied upon the recoveries made at the instance of first accused. He also submitted that little contradictions and embellishments even if present in the evidence of these witnesses have been dealt with by the Trial court which came to the conclusion that these contradictions would not in any manner make the prosecution case unbelievable, hence it based a conviction on the said evidence led by the prosecution.

8. He submitted in such cases the High Court should not sit as a court of appeal and interfere with the judgment and finding of the trial court by re-appreciation of the evidence and substituting its own subjective satisfaction. It was the contention of the said learned counsel that the presence of PWs.1 and 3 at the place of incident was natural and they did not have any grievance or motive to implicate the accused falsely.

9. Shri S.K. Dhingra, learned counsel appearing for the respondent countered the said argument and submitted that the finding of the trial court is on wrong appreciation of evidence and evidence of PWs.1 & 2 are so artificial and so full of contradictions that no reasonable person would place any reliance on such evidence to base a conviction.

10. Having heard the arguments of the learned counsel and perused the record, we notice that the prosecution relies on evidence of PWs.1&3 as eye witnesses and also on the recoveries allegedly made at the instance of the first accused/respondent herein. Since the judgment of the High Court is a reversing judgment we thought it proper to scrutinise the evidence led by the prosecution very carefully and in that process we notice that there is sufficient force in the contention of the defence that the presence of PWs. 1&3 at the time of incident was doubtful and the incident in question which led to the death of the deceased could not have been noticed by said witnesses. This is for the following reasons;

11. The original case of the eye witnesses was that they were all sleeping together when the attack in question took place and the intention of the attackers was clear from what was stated during the attack which was to kill all. Thereafter during the course of evidence these witnesses conveniently changed the said part of their evidence by stating that PWs. 1&3 slept on the roof of the pump house while the deceased slept on a cot under a tree. The reason for this change, as observed by the High Court, is obvious because if they were sleeping together and the intention of the accused as proclaimed was to kill all these three then there would have been no occasions for these witnesses to escape the attack. Therefore, obviously they had to find an explanation and for this purpose they made the later statement that the deceased and the two eye witnesses were sleeping separately. Apart from this, these

witnesses have stated that immediately on seeing the attack on the deceased they ran away and hid themselves until next day morning being afraid of the assailants. But then there is so much contradiction in regard to the direction and the place the witnesses ran away that it creates a suspicion as to their presence. PW1 says that he ran in the direction of river while PW2 says he ran in the direction of the hill which according to the defence are in opposite directions. This apart, assuming they did hid themselves , there is absolutely no explanation why these witnesses till about 8 O' clock in the morning did not try to seek any help from sources available to them. It has come in evidence that near about thrashing yard of PW-4 where the incident took place, there were other thrashing yards where people were sleeping, therefore, they could have easily sought help from them which was not done. Then again we notice that the incident in question has taken place in the month of April, and being summer month, we can take judicial notice of the fact which has been done by the courts below that the sun rise would have been around 6 O' clock in the morning. If that be so we find no explanation whatosever why these witnesses did not go to their house or contact anybody upto 8 O' clock in the morning to inform them of the incident in question.

12. This act of PWs. 1&3 in informing the relatives and the villagers of the attack only at 8 O'clock in the morning was obviously to explain the delay in filing the FIR, which was lodged in the police stated which was about 3 K.ms. away from the place of incident only at 8.15 O'clock in the morning. Here again in regard to the lodging the complaint there is direct contradiction in evidence of PWs 1 & 3. While one of the witnesses states they went straight from the place of incident to the police station, the other states they went to the village first to inform the relatives and then went to the police station. If the evidence of these eye witnesses were otherwise believable for good reasons some of the contradictions referred to hereinabove by us might not have damaged the veracity of their evidence. But in the back ground of the defence as to the falsity of PWs. presence, the existence of these contradictions makes a lot of difference, more so when the prosecution has failed to explain the delay in filing the complaint. This is because of the fact that according to the defence the incident in question must have taken place without their being eye witnesses, and when noticed in the morning a complaint was lodged after due deliberation involving these accused persons.

13. As noticed above the prosecution has also relied on certain recoveries made at the instance of A-1. Firstly it is stated that the blood stained clothes worn by the accused at the time of arrest were seized by the police . In regard to the place from where these were seized , there is contradiction as to whether it was taken off from the person of A-1 or was taken from a place where the clothes were kept in his house. Be that it may the prosecution case is that these clothes were blood stained though washed, still the stains were visible hence was sent to chemical examination which has established the stains were of blood.

14. Therefore the same was sent to Serologist who opined that he could not give an opinion as to the origin of the blood meaning thereby the blood stain that was noticed by him on the clothes cannot be said to be that of human origin. In such situation this circumstance of recovery of blood stained clothes will be of no assistance to the prosecution.

15. Similar is the case in regard to recovery of an axe. In regard to this, witnesses for the recovery say they found small stain of blood on it. The serologist in regard to this blood also states that it is not possible to find out the origin of the same. Therefore, even this recovery would not in any manner help the prosecution in this case.

16. Even otherwise if the prosecution case in regard to Pws. 1& 3 are not acceptable then these recoveries by themselves would not take the prosecution case any further.

17. In this background if we consider the alleged motive, we notice that the prosecution has stated that there was some theft in the house of PW-4 about a month prior to the incident in regard to which PW-4 had complained to the police blaming A-1's family. Police were investigating the said case, and this was the motive for the murder. We notice according to the prosecution case itself after the lodging of complaint and till the date of incident there has been no untoward incident of any kind between the two families though they are neighbours. In such a situation it is extremely difficult to accept that the respondent herein would entertain a motive to eliminate the son of PW-4 for having made a complaint against him or his family. Thus even the motive suggested, in our view, is very weak. It is based on these facts available from the evidence of the prosecution, the High Court rightly came to the conclusion that it was not safe to base a conviction on the accused, hence it allowed the appeal.

18. We agree with the said finding of the High Court and dismiss this appeal.