SUPREME COURT OF INDIA

Babu Lal

Vs.

State of M.P.

Crl.A.Nos.532-534 of 2003

(Doraiswamy Raju and A. Pasayat JJ.)

31.10.2003

JUDGEMENT

Arijit Pasayat, J.

1. Twelve persons faced trial for alleged commission of offences punishable under Ss. 147, 148, 302 read with S. 149 of the Indian Penal Code, 1860 (in short the 'IPC'), were convicted by First Additional Sessions Judge, Shivpuri and sentenced to undergo imprisonment for life in respect of offence punishable under S. 302 read with S. 149, I.P.C. and three years for the rest of the offences. They preferred three appeals before the Madhya Pradesh High Court. By the impugned judgment the appeals were dealt with together and conviction and sentence in respect of Tulua (A-1), Babulal (A-2), Mahesh (A-6), Sahab Singh (A-9), Kishan Singh (A-10), Netram (A-11) and Jagdish Prasad (A-12) were maintained. Sentences of Tulua (A-1), Babulal (A-2) and Netram (A-11) were reduced to one year and two years respectively for offences relatable to Ss. 147 and 148 respectively. The conviction in respect of Uttam Singh (A-3), Phool Singh (A-4), Sobran Singh (A-5), ant (A-7) and Sarman Singh (A-8) was set aside. Tulua, Babulal and Netram (A-1, A-2 and A-11 respectively) were acquitted of the offence relatable to S. 148. They were convicted of the offence punishable under S. 147, I.P.C. while the convictions of Sahab Singh (A-9), Kishan Singh (A-10) and Jagdish Prasad (A-12) under S. 148, I.P.C. were maintained with modified sentences. The said judgment is impugned in these appeals.

2. Prosecution version in a nutshell leaving out unnecessary details is as follows:

> "Mahila Raj Kunwar (P.W. 20) was previously the wife of accused-Babulal (A-2). This marriage was performed while she was a minor. Since the character and reputation of Babulal was not without blemish and he was a habitual drunkard and used to gamble and had illicit relations with ladies, there was tension in the relationship between Raj Kunwar and Babulal. When the former tried to reform the latter and requested him to follow the correct path in life, she was beaten and was thrown out of his house in December, 1985. Thereafter, she started living in the house of her father. According to the customs prevalent she was remarried on 3rd March,

1986 with Chhatar Singh (hereinafter referred to as the deceased). This led to hostility and Babulal became inimical to deceased. He tried to arouse the communal and caste feelings. On the date of occurrence i.e. 9th March, 1986 while deceased was drawing water from his well all the accused persons reached there. Accused-Jagdish, Sarman and Kasiram were armed with a Luhangi each. Accused Sabo was armed with a gun, accused-Mahesh was armed with a knife and accused-Pappu was armed with a hockey stick. Accused-Sobran, Kishan Lal and Phoola were also each armed with Luhangi. In addition, accused-Netram, Tulua and Babu were holding lathis in their hands. After reaching the place where deceased was standing accused-Jagdish caught hold of him and other accused persons with common intention to cause his death inflicted injuries by respective weapons. Though the deceased cried for help no one immediately came to save him. However, when his mother (P.W. 2) reached near him, all the accused persons left the place. The deceased along with his mother (P.W. 2) and Pran Singh (P.W. 1) went to the Police Chowk, Magrauni and lodged a First Information Report regarding the incident with the then Station In-charge. Pran Singh (P.W. 1) had gone to the place on hearing from Brijesh Kumar (P.W. 11). When report was lodged Shiv Baksh Singh (P.W. 16) sent the deceased for medical examination where Dr. Ajay Kumar Pathak (P.W. 19) conducted medical examination. He found nearly 17 injuries on his body. There were four internal injuries also. Most of them were inflicted with sharp edged weapons whereas some were caused by hard and blunt weapons. The deceased was referred to the District Hospital, Shiv Puri for better treatment. Subsequently, the deceased breathed his last at the Primary Centre itself and could not be taken to the referred hospital. On completion of investigation, charge-sheet was placed and the accused persons faced trial. They claimed innocence and false implication."

3. Though the trial Court did not place much reliance on the evidence of the so-called eye-witnesses, yet placed implicit reliance on evidence of the deceased which was given before the police by way of an information which formed the First Information Report and was treated as a dying declaration. Accordingly, the appeal was allowed to the extent indicated, and in respect of some of the accused there was confirmation of the conviction and sentence. During the pendency of the appeal accused-Tulua has died and by order dated 5-6-2003 it was directed that the appeal has abated so far as he is concerned.

4. In support of the appeals, learned counsel for the appellants submitted that the approach of the High Court is erroneous. The evidence has not been analysed in detail which was required to be done, even though the High Court concurred with the reasoning and the conclusions. The dying declaration is not acceptable and even there is no material to show that he was in a fit condition to make the dying declaration. Even the eye-witnesses were not very sure that the deceased was in a fit condition, and even Murali and Brijesh Kumar (P.Ws. 3 and 11 respectively) have given varying statements regarding his consciousness and Dr. Ajay Kumar Pathak (P.W. 19) was vague about his consciousness. Though Pran Singh (P.W. 1) stated that the deceased had put his signatures in the FIR, the original documents show that it was a thumb im-pression.ased was involved in a number of criminal cases. Therefore, it is not unlikely that he had many enemies and accused persons

had been falsely roped in. Though the trial Court had disbelieved the evidence of P.Ws. 1, 2, 3 and 11 the High Court by erroneous conclusion had placed reliance on their evidence.

5. In response, learned counsel for the State submitted that the High Court has elaborately analysed the materials on record and has come to the right conclusion relying on the dying declaration. Though there was no necessity for any corroboration, the same was provided by the evidence of P.Ws. 1, 2, 3 and 11 on which the High Court has acted upon.

6. Coming to the plea of appellants relating to detailed analysis of evidence, it can only be said that while concurring with the conclusions there need not be elaborate analysis which would be in essence a repetition of the conclusions and the reasoning. However, that does not do away with the requirement of High Court in analysing the evidence and to indicate sufficient reasons even for the concurrence. There cannot be total absence of reasons. The position is different when the appellate Court reverses the findings and the conclusions. In such a case there is an imperative requirement for detailed analysis of the evidence and reasoned conclusions. In the case at hand the High Court has dealt with the evidence and it cannot be said that there was total absence of reasons. Though analysed in brief, yet the vital aspects have been touched.

7. The pivotal point which was pressed into service with some amount of vehemence was acceptability of dying declaration. There is no legal bar for the information given by the deceased to be treated as a dying declaration. This position was stated succinctly by this Court in *Munnu Raja and another v. State of M.P.*[1]. Section 32 of the *Indian Evidence Act, 1872* (in short the 'Evidence Act') deals with dying declaration. A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his maker with a lie in his mouth" (Nemo moriturus praesumitur mentire). Mathew Arnold said, "truth sits on the lips of dying man." The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice (See *R. V. Woodcock 1 Leach 500)*[2].

8. The materials on record clearly established that the deceased was in mentally fit condition, though battered in the physical frame. The High Court has rightly held that presence of P.Ws. 1 and 2 did not result in any presumption of tutoring, when the FIR was recorded. Merely because there was a thumb impression on the FIR, and not the signature as stated by P.W. 1, that does not falsify the prosecution version. The same has been clarified by the High Court. It has to be noted that P.W. 16, who had scribed the FIR, stated that the contents were read over to the deceased, who had thereafter put his thumb impression. In fact the defence itself has suggested to P.W. 1 during cross-examination that the thumb impression was taken on

the paper first and thereafter the writings were inserted. In other words, there was acceptance of the fact that the thumb impression was there but writings were done later which have been denied by P.W. 1. We do not find any reason to discard the dying declaration only on this ground. The High Court has also found in analysing the evidence that the plea relating to anti-dating or anti-timing of the FIR is a myth. Though some of the accused persons have been acquitted by the trial Court, the High Court has carefully analysed the evidence and have sifted the grain from the chaff and disengaged truth from falsehood. Merely because some persons have not been named in the FIR and have given the benefit of doubt, that cannot be a reason for discarding the dying declaration or the evidence of the witnesses.

9. As far as the condition of the deceased at the time of dying declaration is concerned it has been clearly established by the eye-witnesses that the declarant was in a condition to make the dying declaration. It is to be noted that at the time of dying declaration, the presence of P.W. 2 has been clearly mentioned. The evidence of P.Ws. 1, 2 and 3 was treated to be as partisan. Relationship is not a factor to wipe out the credibility of any witness's evidence. The Court in a case where relatives are witnesses has to test their version on the touchstone of acceptability and credibility. If after careful analysis the evidence is found credible, it can be relied and acted upon to form the basis of conviction. (See *Munshi Prasad v. State of Bihar*[3]*; Hukum Singh v. State of Rajasthan*[4]*; Bhagwan Singh v. State of M.P.*[5]). The High Court has precisely done that. The trial Court had entertained a shadow of doubt merely on account of their relationships. As rightly observed by the High Court the approach is indefensible. That being the position, the evidence of eye-witnesses, which has a ring of truth deserves acceptance, which the High Court has done. Though the evidence of P.W. 11 was attacked on the ground of having traces of tutoring, yet his whole evidence does not get wiped out even if it is assumed, as urged, that it contains exaggerations and embellishment. P.W. 2 who is the mother of the deceased had reached the place first. The presence of P.W. 2 (mother of the deceased) has been established by ample evidence. The appeals are sans merit and deserve dismissal, which we direct.

Appeals dismissed.

[1]*(AIR 1976 SC 2199)*
[2]*1976 Cri LJ 1718*
[3]*(2002 (1) SCC 353*
[4]*(2000 (7) SCC 410*
[5]*(JT 2002 (3) (SC) 387)*