

(SUPREME COURT OF INDIA)

Prithvi (Minor)

Vs

Mam Raj and others

HON'BLE JUSTICE K. G. BALAKRISHNAN AND HON'BLE JUSTICE B. N. SRIKRISHNA

19/02/2004

Criminal Appeal Nos. 1844-1846 of 1996 (With Crl.A. Nos. 1856-1858 of 1996)

JUDGMENT

The Judgment was delivered by SRIKRISHNA, J.

-These appeals are directed against the common judgment of the Rajasthan High Court in Criminal Death Reference No. 1 of 1995, Criminal Appeal No. 201 of 1995, 169 of 1995 and 146 of 1995 by which the High Court was pleased to acquit respondents 1 to 4 who had been found guilty of charges under Section 302 r/w S.307 and 460 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). The appellant in Crl. A. No. 1844-46 of 1996 is a person aggrieved by the acquittal of the accused, being closely related to the deceased persons. Criminal Appeal Nos. 3036-38 of 1996 are at the instance of the State of Rajasthan impugning the same judgment of the High Court.

2. Prithvi, the appellant in the above set of appeals, at the material time when the incident occurred, was aged about 13 years. He used to reside, along with his cousin-sister deceased Kumari Lali, with his Uncle, deceased Hansraj and Aunt, deceased Mahadi, in village Kotputali. Hansraj and his elder brother Gheesa both sons of Dhonkal, were residing in adjoining houses in village Kotputali. Hansraj was married to Mahadi, the sister of Surja (PW-34) and Rameshwar (PW-35). Hansraj had no issues and, therefore, he desired to bring up and kept with him Hardan (PW-5), the son of his brother Gheesa. For some reason, Hansraj was annoyed with Hardan and threw him out of his house. He, thereafter, allowed Prithvi (PW-31), who was the son of his brother-in-law Surja (PW-34) and Lali, the daughter of his brother-in-law Rameshwar (PW-35) to live in his house. Respondent No.1 - Mam Raj, s/o Bhagwana, r/o Village Naurangpura, respondent No.2 - Jai Ram, s/o Bhagwana, r/o Village Naurangpura; respondent No.3 - Rameshwar, s/o Ghisa, r/o Village

Kuhara; and respondent No.4 - Bharta, s/o Sohanlal, r/o Village Khatoli, are all close relatives of Gheesa. Mam Raj and Jai Ram are the brothers of Gheesa's wife, Rameshwar is the father-in-law of the younger brother of the Hardan and Bharta is Gheesa's sister's son. Hansraj had certain agricultural land, which he desired to give away to Prithvi in preference to Hardan. On this account, the respondents were angry with Hansraj and on some occasions, prior to the date of occurrence, threatened him with serious consequences if his agricultural land was not given to Hardan and if he failed to turn out Prithvi and Prithvi's cousin Lali from his house. Hansraj, however, refused to comply with these demands despite the threats.

3. On the night of 14th/15th August 1993, Hansraj and Prithvi were sleeping on charpais outside the house of Hansraj. Mahadi and Lali were sleeping on charpais in the courtyard inside his house. The case of the prosecution is that in the dead of the night, between midnight and 1.00 AM, the four respondents came to the spot armed with lathis in their hands. Rameshwar gave a lathi blow on the head of Prithvi, but since he was sleeping with his hand over his head, the lathi immediately hit his hand as a result of which he got up and saw the respondents Mam Raj, Jai Ram and Bharta giving lathi blows to Hansraj. Prithvi attempted to raise an alarm whereupon all the four accused gave him lathi blows on his head, eye, hand and others parts of his body. Respondent No.2- Jai Ram thereafter stated to the other respondents that all the victims had died and that they all should run away from the spot. Accordingly, the respondents ran away from the spot.

4. Prithvi thereafter raised an alarm, which attracted the attention of Ganpat and Sona (PW-32) who were residing nearby. Sona was lying on a cot by the side of his neighbouring house and upon hearing the barking of the dogs, he came awake. He saw some people running by near his charpai within a few feet and flashed his torchlight on them. He recognised Mam Raj, Ram and Rameshwar who were seen running towards village Naurangpura. The noise also attracted the attention of Bhagwan (PW-17), Birbal (PW-18) and Rameshwar (PW-19) who were also sleeping outside their adjoining houses and they came running to the house of Hansraj. These people noticed Hansraj lying dead on the charpai and Prithvi was lying in injured condition and weeping. On entering the house, they also noticed Mahadi's and Lal's bodies lying on the charpai with extensive injuries.

5. Telephonic information was given to SHO of Police Station Kolputali. PW-36 Badri Prasad Sharma reached the spot along with his staff at about 5.00 AM. PW-17 Bhagwan gave him a written report which was sent to the Police Station and a formal FIR bearing No. 326 of 1993 was recorded at about 6.00 AM. Though Prithvi was semi-conscious at that time, because of the serious head injury, he was unable to talk coherently, but made incoherent and incomprehensible sounds. He was sent to BDM Hospital, Kotputali for treatment. The bodies of the three deceased were sent for post mortem and the Investigating Officer, Badri Prasad Sharma continued with the investigation. The post mortem reports of the three bodies showed extensive lacerated wounds on the parietal region. Although the Investigating Officer carried out the investigation at the spot of the crime and recorded the statements of the witnesses found there, including Sona (PW-32), he was unable to record the statement of Prithvi as Prithvi was moved to the hospital in Jaipur. The attending Doctor there was of the opinion that Prithvi was unconscious and was, therefore, unable to have his statement recorded. After Prithvi was discharged from the hospital, the Investigating Officer (PW-36) learnt about the same, went to Prithvi's father's village khiwari (where Prithvi had been moved) and recorded his statement there on 29.8.1993. The Investigating Officer thereafter arrested the respondents and on their statements recovered the lathis, which had been used for committing the offence.

6. The accused were thereafter put up for trial before the Additional Sessions Judge, Kotputali. The learned Sessions Judge convicted respondents under different sections of the IPC and sentenced them as under:-

Res. No.

Name of Accused

Offence Convicted Under

Trial Court Judgment dated 20.2.1995

1.

Mam Raj

U/s 302 r/w 34 IPC

Sentenced to Death

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U/s. 307 r/w 34 IPC

R.I. for 7 years and fine of Rs. 1,000/-

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U/s. 460 IPC

R.I. for 7 years and fine of Rs. 1,000/-

2.

Jai Ram

U/s 302 r/w 34 IPC

Life imprisonment and fine of Rs. 2,000/-

3.

Rameshwar

U/s. 302 r/w 34 IPC

Life imprisonment and fine of Rs. 2,000/-

4.

Bharta

U/s. 307 r/w 34 & 460 IPC

R.I. for 7 years and fine of Rs. 1,000/-

7. A reference being Death Reference No. 1 of 1995 was forwarded to the High Court. Simultaneously, the four accused also appealed against their convictions and the High Court by the impugned judgment disagreed with the findings of the Trial Court and acquitted all the four accused. Prithvi, the injured person and the State of Rajasthan are in appeal there against.

8. The linchpin of the evidence for the prosecution is the deposition of Prithvi who was an injured witness. In addition, thereto, the learned Sessions Judge also relied on circumstantial evidence. The four assailants being seen running away from near the spot of crime soon after the occurrence of the crime by Sona (PW-32), their being seen by Ghisa (PW-27) son of Shalla, with lathis in their hands at the turning of Gopalpura, Delhi-Jaipur Road on 14.8.1993 were the circumstances. The High Court acquitted all the respondents-accused by disbelieving the evidence of the main prosecution witness,
PW-31 Prithvi.

9. We are aware that this is an appeal against acquittal and with all its entailing constraints. The normal rule is that this court does not interfere under Article 136 of the Constitution in an appeal against acquittal unless the judgment of the High Court is perverse. We are constrained to say that the judgment appealed falls into this category and requires interference at the hands of this Court. #

10. In State of U.P. vs. Gokaran and others, at p.486 (para 6), this Court pointed out that while it ordinarily does not interfere with the acquittal recorded by a High Court, when however, incriminating evidence of a satisfactory character is brushed aside mainly by relying upon a few circumstances which do not go to detract from the value of such incriminating evidence, it becomes the duty of the Court to interfere with the acquittal in order to redeem the course of justice. That Prithvi was an eye-witness is indubitable, that he was an injured witness who sustained serious injuries gives credence to the prosecution story and that he was at the spot when the offence was committed. The medical certificates show that Prithvi suffered grievous multiple internal and external injuries including fracture of the skull and the lower 1/3rd shaft of right ulna. The evidence of the people in the neighbourhood, who came to the spot on hearing the cries, PW-4 Malaraj, PW-7 Mahesh Kumar PW-13 Hemchander and PW-16 Prahlad clearly show that Prithvi was unable to speak and communicate to them the reason for his agony. Dr. K.G. Lakhera (PW-23), Badri Prasad Sharma (PW-36/ the Investigating Officer), also vouch for the fact that, immediately after the incident, Prithvi was only making incoherent noises, moaning aloud and saying 'arre brre', which made no sense. Notwithstanding this evidence on record, the High Court disbelieves the explanation tendered by the Investigating Officer for the delay in recording the statement of Prithvi. The Investigating Officer (PW-36) stated that when he arrived at the spot, Prithvi was unable to speak except making moaning noises. Prithvi was thereafter moved to the BDM Hospital, Kotputali where his condition was the same, as is deposed to by Dr. Lakhera (PW-23). He was, thereafter, moved to the hospital in Jaipur. Despite trips made by the Investigating Officer to Jaipur, he was not allowed

to record the statement on the ground that Prithvi was semi-conscious. The Investigating Officer periodically sent his constable to the Jaipur hospital to find out the condition of Prithvi. On one such trip, on 28th August, 1993 the Constable learnt that Prithvi had been discharged. As soon as the Investigating Officer came to know of it, he went to village Khiwari, where Prithvi had been moved, and recorded Prithvi's statement on 29th August, 1993. This more than adequately explains the delay in recording the statement of Prithvi. Unexplained delay in recording the statement may render it support, but the High Court cannot make a fetish out of a rule of prudence. In Mohd. Khalid vs. State of West Bengal, 4 at p. 349 (para 12), this Court observed that:-- "*Mere delay in examination of the witnesses for a few days cannot in all cases be termed to be fatal so far as the prosecution is concerned. There may be several reasons. When the delay is explained, whatever be the length of the delay, the court can act on the testimony of the witness if it is found to be cogent and credible.*" *

11. In the present case, the circumstances are eloquent and ought to have been accepted by any reasonable standard. #

12. Another reason given by the High Court for disbelieving the Investigating Officer is non-production of the record from the SMS Hospital, Jaipur to show that Prithvi was unable to speak. As to the effect of a serious head injury on the faculties of the victim, Modi's Medical Jurisprudence and Toxicology (21st Edition) at p.310, has this to say:--

*"In addition to loss of memory, concentration and confidence in himself, throbbing headache, giddiness, or transient blackout, weakness, mental irritability, neurasthenia, vertigo and loss of hearing, vision or speech persist for weeks and months after recovery. Post conclusion syndrome manifesting as anxiety or terror neurosis, hysteria etc. is of medico-legal significance..." **

13. To our mind, it appears that unless one went about looking for lacunae, there was no justification to summarily brush aside the evidence of Prithvi, which is fully corroborated by the evidence of Dr. Lakhera, Badri Prasad Sharma (the Investigating Officer, PW-36) and atleast half a dozen of the neighbours who unanimously said that Prithvi was unable to speak, was making incomprehensible sounds and was moaning. Though he was able to comprehend what was asked, he was unable to communicate # .

14. The High Court also found fault with the Investigating Officer that he did not take a statement in writing from Prithvi since it was admitted by Dr. Lakhera that Prithvi was in a position to write and could have written if he was literate. Appreciation of witness's evidence requires an empathetic approach. The court must place itself in the situation in which the witness was to appreciate the circumstances. Hence we have a child of about 13 years who receives a stunning blow on his head sufficient to make him semi-conscious, if not, unconscious. The head injury renders him speechless, literally and figuratively. In these circumstances, it is inhuman to expect an Investigating Officer to interrogate the child at that stage and ask the child to write down what he knows. Neither the witness nor the Investigating Officer was a robot bereft of humanity to do this. Taking to totality of the picture, it appears to us that this reasoning for disbelieving witness Prithvi was wholly perverse.

15. The other reason given for disbelieving Prithvi is that all the victims appeared to have received blows at the same regions of the anatomy. The High Court further says:-

"If, in fact, all the four appellants had given lathi blow to Hansraj, as has been deposed by

Prithvi, there ought to have been many injuries on the person of Hansraj and if the appellants had given fatal injuries on the persons of Mahadi and Lali with the help of lathis, there would have been many injuries on their person. The fact that the injuries were on the same portion of the body of each of the three deceased persons and the same mode had been used by the assailants for causing the said injuries, as has been deposed by Dr. Lakhera (PW-23), it is not possible to believe that injuries could have been caused by the lathis used by the respondents."

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16. We are afraid that mathematics does not strictly work in appreciation of such evidence. A child who is rudely woken upon from his slumber by a lathi blow on his head is not expected to count the number of lathis or the number of blows given so that the court could co-relate them mathematically to the post-mortem certificate. That the child survived the murderous attack itself is a piece of extreme good fortune. To accept this exactitude from the evidence of such a witness, is asking for the impossible.

17. A further reason for disbelieving the evidence of Prithvi is that, while Prithvi stated that he could see the assailants because there was light on the spot coming from a bulb fitted in an electric pole near the chakki of Birbal, (which was situated about 1 steps from the place of occurrence) the Investigating Officer (PW-36) when cross-examined said that he did not remember anything about it nor did he include any electric pole in his site plan. Assuming that this was faulty investigation by Investigating Officer, it could hardly be a ground for rejection of the testimony of Prithvi which had ring of truth in it. We may recount here the observation of this court in Allarakha K. Mansuri vs. State of Gujarat, at p.64 (para 8) that:-- *"The defects in the investigation holding, it to be shaky and creating doubts also appears to be the result of the imaginative thought of the trial court. Otherwise also, defective investigation by itself cannot be made a ground for acquitting the accused."* *

18. We see no such contradiction between the statement of Prithvi and the investigating Officer which would require the statement of Prithvi to be rejected as unreliable. That Prithvi was well acquainted with the assailants and could recognise them, is obvious. They were known persons, and related in one way or the other. In our view, the reasons given for disbelieving Prithvi's evidence are utterly perverse. #

19. The evidence of Sona (PW-32) to the effect that, he came awake because of barking of dogs and saw four persons running by and when he flashed the torch he noticed three of the respondents and a fourth person whom he could not recognise, is also disbelieved by the High Court on the ground that the place where Sona was sleeping was not shown on the site plan. The High Court also attached importance to the fact that the Investigating Officer had not put the date on which the statement of this witness was taken, although the Investigating Officer explained that he had forgotten to mention the date. The High Court assumes that on the date of the incident itself, the Police knew the names of the assailants, therefrom, it deduces that the fact that they were not arrested till 30.8.1993 makes the statement of the witness unreliable. This, to say the least, is another piece of perverse reasoning.

20. Evidence of Ghisa (PW-27) that he had seen the four accused at Gopalpura turning on Delhi-Jaipur Road is disbelieved on the flimsy ground that the reason why he came from his village to Kotputali i.e. to look up Rameshwar (a relative) who was admitted there with kidney pain, was not believable. Actually, the fact that Ghisa (PW-27) saw the four respondents at the Gopalpura turning was itself an innocuous fact and the High Court went all out to explain it away by saying that they

had a good reason to be there, Gheesa, who is the brother of Hansraj and also a close relative of the accused, was lying admittedly at the hospital.

21. As to the motive of the crime, the High Court has completely ignored the totality of the evidence before it and observed that the motive for the crime was not satisfactorily proved. As to bad blood between the accused and Hansraj on the issue of throwing out Hardan and accommodating Prithvi and Lali in the house, the evidence is overwhelming. There is also overwhelming evidence that Hansraj had declared his intention to give away his agricultural land to Prithvi and this had caused extreme annoyance to the accused. There is acceptable evidence of several witnesses who deposed that on account of this reason the accused had threatened to kill Hansraj. In these circumstances, the short shrift given to the evidence on the issue of motive is perverse. #

22. The respondents placed reliance on the observations of this Court in Balakrushna Wain vs. State of Orissa, and in State of Orissa vs. Brahmananda Nanda, (at p.2489, para 2) and contend that the evidence of appellant Prithvi was not believable because of the long delay in recording the statement. We are afraid that neither case lays down an absolute proposition of law that delay per se destroys the credibility of witnesses' statements. The judgments merely point out that unexplained delay in recording the statement gives rise to a doubt that the prosecution might have engineered it to rope the accused into the case. Delay in recording the statement of the witness can occur due to various reasons and can have several explanations. It is for the court to assess the explanation and if satisfied, accept the statement of the witness.

23. The respondents have also relied on Harijana Thirupala & others vs. Public prosecutor, High Court of A.P. Hyderabad, 5 at p.476 (para 11), in support of the proposition that where the evidence is ambivalent, the view favourable to the accused should be accepted by the court in a criminal trial. To similar effect are the observations of this Court in Kali Ram vs. State of Himachal Pradesh, at pp. 819-821 (paras 23, 25-28). In our view, this principle has no application for the reason that we are more than satisfied that the evidence on record gives only one view, which is neither ambivalent nor capable of an alternate appreciation consistent with the innocence of the accused.

24. Considering the totality of the circumstances as evidenced from the record, we are satisfied that the reasoning of the High Court for acquitting the accused is wholly perverse; had there been a reasonable approach to the appreciation of evidence, there would have been no reason to interfere with the findings recorded by the learned Addl. Sessions Judge. #

25. In the result, we set aside the judgment of the High Court and affirm the convictions rendered by the learned Addl. Sessions Judge. However, we are unable to accept the reasoning, of the learned Addl. Sessions Judge that accused Mam Raj deserved the punishment of death. There is no doubt that accused Mam Raj was the ringleader and was responsible for the planned murder of Hansraj, Mahadi and Lali. Nonetheless the circumstances of the case do not suggest that it is one of the 'rarest of rare cases' where the death sentence has to be awarded. #

26. In the result, we maintain the convictions rendered against the accused Mam Raj, Jai Ram, Rameshwar and Bharta. We also maintain the sentences awarded to Jai Ram, Rameshwar and Bharta. With regard to Mam Raj, however, the sentence is reduced from one of death of life imprisonment under Section 302 IPC. The other sentences handed down to

him

are

also

maintained.

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27. **The appeal is accordingly allowed.** # The learned Addl. Sessions Judge, Kotputali is directed to take the respondents into custody for serving out the sentences imposed on them.