SUPREME COURT OF INDIA

Mahendra Singh

Vs

State of Madhya Pradesh

(S. B. Sinha and Markandeya Katju, JJ)

05.04.2007

JUDGMENT

S. B. SINHA, J.

Delay condoned.

Leave granted.

Sole appellant is before us questioning the correctness of a judgment of the High Court of Judicature of Madhya Pradesh in Criminal Appeal No. 459 of 1998 whereby and whereunder a judgment of conviction and sentence passed by the Ist Additional Sessions Judge, Dabhra District dated 20.07.1998 under Section 302/34 and Section 324 of the Indian Penal Code was affirmed.

The parties are related to each other. Complainant Kanto Bai (PW-1) had a bull. Appellant borrowed the same for carrying fodder. He did not return it. Avtar Singh (deceased) - son of PW-1 - went to the hut of the accused persons to take it back on 27.06.1995. Appellant and his co-accused named Harbhajan Singh refused to part with it. The deceased requested his mother Kanto Bai (PW-1) to get the same whereupon both the deceased and PW-1 went to the hut of accused persons. They intended to bring it back without informing the appellant. They found their bull grazing. They had been bringing back the same quietly. Appellant and the said Harbhajan Singh carrying 'bake' and 'luhangi' respectively came behind them to the field of Ajit Singh. They made an attempt to snatch the bull from the deceased. When he resisted, the appellant is said to have assaulted him with bake and

Harbhajan Singh assaulted him by luhangi. PW-1 intervened and tried to save her son. She fell on his body. She was pulled up by her hair. She started crying. The deceased Avtar Singh died on the spot. The incident took place at about 8 a.m. in the morning. An information in that behalf was received by the officer in-charge of the concerned police station. The police officer came to the spot, took the statement of PW-1. A First Information Report was registered round about 10.30 a.m. Both the accused persons were put on trial upon completion of the investigation.

Before the learned Trial Judge, the appellant and Harbhajan Singh pleaded not guilty. Upon consideration of the deposition of the witnesses examined on behalf of prosecution, the appellant and the said Harbhajan Singh were convicted under Sections 302/34 and 324/34 of the Indian Penal Code.

The High Court by reason of the impugned judgment, while upholding the conviction of the appellant, found the said Harbhajan Singh guilty only under Section 304 Part I of the Indian Penal Code and sentenced him to the period already undergone by him.

Both the Trial Judge as also the High Court in arriving at their respective findings relied upon the testimony of the complainant PW-1.

Mr. R.C. Kohli, learned counsel appearing on behalf of the appellant, would submit that the learned Trial Judge as also the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that:

(i) The First Information Report was ante-timed as the same was received by the Magistrate on 26.06.1995.

(ii) Although PW-1 categorically stated that the deceased did not take any food in the morning, some digested food was found in the stomach of the deceased.

(iii) The chappal of the deceased as also the blood stained clothes of PW-1 were not seized and, furthermore, the medical opinion in relation to the injuries purported to have been received by PW-1 being doubtful, her presence at the place of occurrence should not have been accepted.

Ms. Vibha Datta Makhija, learned counsel appearing on behalf of the State, on the other hand, supported the impugned judgment. According to the learned counsel, the learned Magistrate committed an error in putting the date 26.06.1995 instead of 27.06.1995 which was evidently a mistake. It was urged that in view of the clear statements of the eye-witness PW-1, no case has been made out for this Court to interfere with the impugned judgment.

We have been taken through the deposition of PW-1 in its entirety by Mr. Kohli. Nothing has been pointed to discredit her testimony. Her demeanour has been noticed by the learned Trial Judge. She demonstrated as to how and in what manner the accused persons killed her son and how she tried to

save him from repeated assault on him with sharp weapons. She, in her statement, fully supported the contents of the First Information Report. According to her, the police came at the spot in a jeep at about 10 a.m. and recorded her statement. We, therefore, are of the opinion that PW- 1 was a reliable witness. Her evidence, in our opinion, was also corroborated by the post mortem report which was proved by PW-4 Dr. R. Vimlesh. The deceased was found to have suffered the following ante- mortem injuries:

"(i) Incised wound with clear cut margin. Haris roots cut measuring 18 cm x 5 cm x 6 = cm, transversely placed over the upper part back of neck at the level of cervical 1 vertebrae;

(ii) Incised would with clear cut margin, hairs roots are cut 4 cm x = cm x muscle deep. Mid upper part of neck at the level of cervical vertebrae;

(iii) Incised wound 8.8 cm x 2 cm x bone deep over the left lower occipital area of head;

(iv) Incised wound 9 cm x 2.5 cm x 1cm, fracture of skull bone cut off on left mastroid area.

(v) Incised wound 3 cm x 1 cm x bone cut off. Posterior inferior part of parietal bone fractured transversely placed on posterior inferior part of left side of extended to mid of lower part of occipital area.

(vi) Incised wound and clear cut margin 3.2 cm x 1.2 cm x 1 cm left upper scapular area; (vii) Incised wound with clear cut margin 6 cm x = cm x = cm left lateral back of shoulder; (viii) Abrasion 8 cm x cm vertically placed over the left medical upper part and back;

(ix) Abrasion 6 cm x cm obliquely left medical scapular area."

It is now a well-settled principle of law that conviction can be based on the basis of the testimony of a sole eye-witness. [See Ramji Surjya Padvi and Another v. State of Maharashtra, Â , Anil Phukan v. State of Assam, Â 1993 (3) SCC 282 and Sewaka Alias Ramsewak v. State of M.P. and Another, Â 11

It may be true that the chappal and blood stained clothes of PW-1 were not seized but it is also well-known that deficiency in investigation shall not stand in the way of the court in arriving at a finding of guilt if it is otherwise found to have been proved. [See Rotash v. State of Rajasthan, Â 2006 (13) Scale 186 and Acharaparambath Pradeepan and Anr. v. State of Kerala, Â 2006 (13) Scale 600

So far as the contention of Mr. Kohli to the effect that the First Information Report was ante-timed is concerned, we do not see any reason to accept the same. Occurrence had taken place on 27.06.1995 in the morning. All material witnesses were examined by the Investigating Officer on

that very day. The post mortem examination was also held at 3 p.m. on that day.

The learned Chief Judicial Magistrate, therefore, as has rightly been found by the learned Trial Judge as also the High Court, merely made a mistake in putting the date as 26.06.1995 instead of 27.06.1995.

The very fact that some digested food was found in the stomach of the deceased, the same by itself was sufficient to show that he had taken food only in the morning of that date, i.e., within four hours from his death. Even if he had taken some food, the same may not be within the knowledge of PW-1.

Absence of motive is also not a relevant factor in this case. The reason for the appellant doing away with the deceased is evident. He had taken back the bull without the consent of the accused persons. They must have become enraged because of the said act of the deceased and his mother. They probably wanted to take the bull back or otherwise felt offended that the deceased had been taking the bull away from their possession without their consent as also in view of the fact that they had refused to part with it.

There is another aspect of the matter which cannot be lost sight of. If the motive as assigned by the prosecution as against the appellant and the said Harbhajan Singh for commission of the said offence was not correct, nothing has been shown as to why despite such close relationship between the parties, they would be falsely implicated.

In the facts and circumstances of this case, we are of the opinion that there is no merit in this appeal which is dismissed accordingly.