

SUPREME COURT OF INDIA

Hari

Vs.

State of Maharashtra

Crl.A.No.669 of 2007

(S.B. Sinha and Asok Kumar Ganguly JJ.)

23.03.2009

JUDGEMENT

A.K.Ganguly, J.

1. This appeal has been filed by Hari s/o Mansingh Rathod impugning the judgment and order of conviction passed by the Aurangabad Bench of Bombay High Court in Criminal Appeal No. 523 of 2004.
2. The appeal to the High Court was taken from a judgment dated 20.7.2004 rendered by the First Ad-hoc Additional Sessions Judge, Aurangabad in Sessions Case No. 248 of 2003.
3. Before the Trial Court there were several accused persons. The Trial Court in its judgment only convicted the appellant herein and accused No.2 - Baliram s/o Janu Rathod.
4. Appellant - Hari was convicted for an offence punishable under Section 302 of Indian Penal Code and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.100/- in default, simple imprisonment for ten days.
5. Accused No.2 - Baliram was convicted for an offence punishable under Section 324 of the Code and was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for one month.
6. Both the accused were granted benefit under Section 428 of the Code and they were acquitted of the rest of the charges.
7. Other accused persons were acquitted of all the charges.
8. The case arises basically out of land dispute and the prosecution allegations are as follows: On 9.6.2003 in the morning hours, the complainant Santosh - P.W.1 was sitting in front of his house at Parundi-Tada, Tq. Paithan. His father Khemsingh and brother Gulabsingh were sitting at a cot in front of their house. At that time, Baliram Rathod and the appellant came to the place.

“Appellant - Hari assaulted the complainant's father with a knife and Baliram Rathod - accused No.2 assaulted the complainant's brother Gulabsingh with a knife. Being so assaulted, the complainant's father and brother started running but at that time several accused persons came in front of the complainant's house and started pelting stones aiming at the complainant's father and brother.

Some of the stones hit complainant's father's head and back. As a result of the knife blow on the chest of Gulabsingh, there was profuse bleeding and the injured felt giddy and sat on the ground.”

9. Hearing the noises, complainant's mother with some other persons came to the spot and tried to stop the quarrel.

10. Due to knife blow, complainant's father died on the spot. Gulabsingh was taken to the Government Hospital, at Pachod and was referred to the Ghati Hospital, Aurangabad for further treatment.

11. P.W.12 - Shivaji, PSI attached to Rathod Police Station recorded the complaint of P.W.1 - Santosh on 9.6.2003 and an offence came to be registered vide Crime No. 67/03. Thereafter, investigation was carried on and the accused were charged for committing offences punishable under Sections 302 and 307 r/w 34 I.P.C. and accused were also alternatively charged for offences under Sections 147, 148, 302, 307 and 504 r/w 149 of the Code.

12. The statement of injured witness P.W.2- Gulabsingh was recorded. The dead body of Khemsingh was sent for post mortem examination which was carried out by P.W.5 - Dr. Narayan Dhumal, who noticed the following injuries on the body of Khemsingh:

“i. CLW on (Lt) parietal region of scalp middle region 3 cms x 2 cms x 1 cm. Bleeding present.

ii. Incised wound on (Lt) side chest infra auxiliary region in the midline oblique. Blood oozing through the wound 2 cms x 1 cms width of the chest wall.”

13. PW5 opined that the injuries are ante mortem and on internal examination he found that pleura and both the lungs were pale. Stab injury was there on the left side of pericardium and clotted blood was found. There was also a stab injury to the heart and to the base of left ventricle on lateral part 2 x = cms. and the left ventricle of the heart had been pierced causing death. The opinion of PW5 was that the death was due to cardio respiratory arrest brought about by hemorrhagic shock as a result of stab injury to the left ventricle of the heart. It is clear therefore, that the injuries which were inflicted on he deceased are on vital parts namely on the scalp and on the chest which pierced the left ventricle of the heart. These injuries are sufficient to bring the case within Section 302 IPC.

14. The learned counsel for the defence urged that the court should not have believed the three PWs, who claimed to be eye witnesses, namely, PW1, PW2 and PW8 for the reasons that they are all close relations of the deceased. It has also been stated that there is admitted enmity between the parties.

“The other ground which was urged is that, there was delay in lodging the FIR. According to prosecution version, the incident took place early in the morning hours and the FIR was lodged at 1:30 p.m.

It was also stated that there are certain injuries on the accused persons, which have not been explained and, therefore, the genesis of the prosecution has been suppressed and no reliance shall be placed on the same.”

15. This Court finds that the High Court has relied on the evidence of PWs.1, 2 and 8 and has noted that no reliance could be placed on the testimony of PWs.9, 10 and 11. In paragraphs 4, 5, 6 and 7 of the High Court judgment, the evidence of PWs1, 2 and 8 have been discussed in detail. PW1 is the first informant who stated that at about 8:30 a.m. on the day of occurrence, he was in his house and deceased-Khemsingh and PW2-Gulab were also in their house and both of them were sitting on a cot.

“Accused No.4, who owns the adjoining house was also sitting in front of his house on a cot. The deceased asked accused No.4 to transfer certain land in the name of the deceased. According to PW1-informant, in the consolidation proceedings the land of the family of the deceased was entered in the name of the accused No.4 and the land of the accused No.4 was entered in the name of the deceased. As a result of the same, a dispute had cropped up. It also has come in evidence that the land of the deceased was acquired for construction of dam and compensation for the same was not yet received. Therefore, there was some land dispute between the parties.”

16. On the date of the incident, when the deceased and the accused No.4 were conversing on those lines, the appellant, who is the cousin of the deceased, came to the spot and inflicted fatal knife injury on the deceased and PW2 was also inflicted with an injury by knife by accused No.2 on his chest. As a result of the fatal knife injury, the deceased died on the spot and PW1 took PW2-Gulab to Ghati Hospital at Aurangabad for treatment. In respect of the incident he has lodged a complaint to the police. In cross examination the evidence of PW1 could not be discredited. PW2, the brother of PW1 and an injured witness gave the same version of the incident. He has also stated about injuries which he received and also the fact that he was taken to hospital by PW1. He was initially taken to Government Hospital at Pachod and then referred to Ghati Hospital, Aurangabad.

17. PW8 is the wife of PW1 and also claims to be an eye witness. According to PW8, her father- in-law, Khemsingh and brother-in-law, who is PW2 and the injured witness, were sitting in a cot in front of their house. She also repeated the same version which is given by PW1.

18. This Court finds that the evidence of PW1- the informant, PW2-the injured witness and PW8 are virtually consistent in unfolding the prosecution case. Both the Trial Court and the High Court found that the presence of PW1, 2 and 8 at the place of occurrence was natural and nothing was elicited from them in cross examination to show that these witnesses were elsewhere and not in the place where the occurrence took place.

19. In so far as the delay in lodging the FIR is concerned, the High Court has dealt with the question in paragraph 12 of the judgment and has come to the conclusion that immediately after the incident PW1 went to the police station with PW2 and the Court finds that there is nothing wrong on the part of the police in not lodging the FIR immediately and in giving greater attention to ensure prompt treatment to the injured person.

“This has come from the evidence of PW12, P.S.I Shirsath, who revealed that initially when PW1 went to the police station he recorded his complainant but the FIR came to be registered on the basis of complaint of PW1 at 1:30 p.m. There was thus a delay of few hours but this does not vitiate the prosecution case, rather this is consistent with normal human conduct. It would be the effort of everyone to try to first save the life of a severely injured person rather than spend time in anything else.”

20. So far as injuries on the accused persons are concerned, it has been recorded by the High Court that accused persons never brought on record the nature of injuries sustained by them. The injury certificates were not produced. PW1 has not disputed that there is counter case which has been registered against them and the same is pending in the Sessions Court. PW12 has also admitted that two of the accused persons who were acquitted had sustained injuries but the nature of injuries has not been brought on record. In the absence of the injury report and especially in view of the facts stated hereinabove, it cannot be urged that the prosecution tried to suppress the genesis of the case.

21. It may be true that all the vital witnesses, namely, PW1, 2 and 8 are relations of the deceased but that by itself cannot discredit their evidence. It is a fight between the relations it has come on record that the appellant is the cousin of the deceased. In such a case, the relations are likely to be the most appropriate witnesses.

22. Certain decisions have been cited at the Bar which need to be considered and explained. About appreciation of evidence of witnesses who are related to the deceased, learned counsel for the appellant relied on a decision of this Court in 524. In that case the facts were totally different and it was opined by the learned Judges, in the peculiar facts of that case, that enmity and bad blood between the rival groups was established beyond doubt. In that case no report was lodged with the police regarding the occurrence and this Court looked into the evidence and opined that the story about making an effort to lodge a report earlier was not true. In that case the nambardar and the chowkidar who were alleged to have accompanied PW 1 to the police station were not examined and there was a categoric denial by PW 6 - Station House Officer about anyone reporting the incident to him before 4.12.1989. This Court found that the High Court has not at all noticed the facts. In the background of those

facts, this Court held that proper caution was not exercised by the High Court in appreciating the highly partisan evidence adduced by the prosecution.

23. But in the instant case, the factual scenario is totally different. Here the occurrence took place within the house at the instance of the close relatives and in such a situation only relatives would be the witnesses. Of course, in the present case also there was some enmity in view of the land dispute but that by itself is not a ground to discard the evidence of the witnesses, who are relatives when their evidence is cogent and credible. Factually, the decision of this Court in Avtar Singh (supra) stands on a completely different footing.

24. On the question of appreciating the evidence of witnesses, who are related, this Court spoke very eloquently through Justice Vivian Bose. In that case the learned Judge clearly laid down the law relating to appreciation of evidence by relations with such lucidity that it deserves to be quoted:

"26. ...Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that here is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

25. The principle laid down in the aforesaid passage has been subsequently reiterated by this *Rajasthan*². Justice Beg, as His Lordship then was, quoted the said passage in para No. 11 of the said report.

26. The said principle was also followed by a Constitution Bench of this Court in Masalti and The Constitution Bench speaking through Chief Justice Gajendratgadkar approved the decision in the case of Dalip Singh (supra) and held as under:

"14.But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.

Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

27. Justice Thomas, speaking for this Court, *others*³, held that over insistence on witnesses having no relation with the victim will result in the criminal justice system going awry. In para 20, the learned Judge held that when any incident happens in a dwelling house, the most natural witnesses would be the inmates of the house and in such a situation "it is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen anything". The learned Judge further clarified;

28. The prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighborhood may be replete with other residents also'. The aforesaid observation fits in with the fact situation in this case in as much as the incident took place within the precincts of the house of the deceased and the relations are the only natural witnesses. this Court extracted the above passage in Dalip Singh (supra) in paragraph No.12 of the report. The ratio in Dalip Singh (supra) has been reiterated by this Court very recently in, in para 7 of the report.

29. We find that in the instant case, the evidence of the eye witnesses, namely, P.W.s 1, 2, and 8 has been considered by the High Court with due caution and care before accepting the same.

“Therefore, we cannot accept the contention of the learned counsel for the appellant that the evidence of the aforesaid eye witnesses should be rejected just because they are related to the deceased.”

30. On the other question, namely, non- explanation of injury on the accused persons, learned counsel for the appellant has cited a *Bihar*⁶. In the said case, this Court while laying down the principle that the prosecution has a duty to explain the injuries on the person of an accused held that non-explanation assumes considerable importance where the evidence consists of interested witnesses and the defence gives a version which competes in probability with that of the prosecution case.

31. But while laying down the aforesaid principle, learned Judges in paragraph 12 held that there are cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This would "apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries."

“Therefore, no general principles have been laid down that non-explanation of injury on accused person shall in all cases vitiate the prosecution case. It depends on the facts and the case in hand falls within the exception mentioned in paragraph 12 in Lakshmi Singh (supra).”

32. In the instant case no defence plea has been put up. Apart from that the High Court found that the defence did not bring on record the injury report and the nature of injuries was not made known to the Court.

33. Therefore, the ratio in *Lakshmi Singh* (supra) is not attracted in the instant case. In this context, this Court may refer to the decision and *Anr.*⁷, which has been followed in *Lakshmi* (supra). In *Bai Fatima* (supra), learned Judges have laid down the following principle in paragraph 17, which is quoted below:

"17. In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self- defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all."

34. In the opening words of the aforesaid paragraph 17, learned Judges were thinking of a case where private defence was pleaded. In the instant case, no plea of private defence was taken. So here and especially when the injury report is not on record, the third "result" pointed in *Bai Fatima* (supra) would apply.

35. On the aforesaid point, learned counsel for the appellant relied on a decision of this. In that case, this Court was considering the State's appeal against an order of acquittal. It is well known that the considerations which weigh with this Court in deciding a State's appeal against an order of acquittal by the High Court are totally different from a case where there are concurrent findings both by the Trial Court and the High Court about the guilt of the appellant.

36. In a case leading to an appeal against acquittal, the Court is to consider whether the view taken by the High Court is a possible view.

But that is not the position in a case like the present one where there are concurrent findings of guilt against the appellant. Therefore, the decision in *Rajendra Singh* (supra) has to be considered in the facts of that case.

37. On this point, reliance was also placed by the learned counsel for the appellant on a decision *T.N.*⁹. In that case plea of right of defence was taken and the Court while considering the said plea laid importance on the failure of the prosecution to explain the injuries.

In that case the Court held as under:

"26.though the appellants had suffered injuries on vital parts of the body, even though simple, the prosecution failed to give any explanation for such injuries. We are not persuaded to accept the submission of learned counsel for the State that the injuries being simple, the prosecution was not obliged to give any explanation for the same. Having regard to the facts of the case the omission on the part of the prosecution to explain the injuries on the person of the accused may give rise to the inference that the prosecution is guilty of suppressing the genesis and the origin of the occurrence and had thus not presented the true version...."

38. In the instant case, those considerations are not present. Private defence is not pleaded and virtually could not be pleaded in the facts of this case and the injury report was not brought on record.

39. For the reasons aforesaid, this Court does not find that any error was committed by the High Court in affirming the judgment of conviction passed by the Trial Court. There is no merit in the appeal, which is dismissed accordingly.

¹*AIR 1953 SC 364*

²*(1974) 3 SCC 698*

³*(1999) 3 SCC 507*

⁴*(2007) 1 SCC 699*

⁵*AIR 2009 SC 157*

⁶*(1976) 4 SCC 394*

⁷*(1975) 2 SCC 7*

⁸*AIR 1998 SC 2554*

⁹*(2002) 7 SCC 210*