SUPREME COURT OF INDIA

Motilal

Vs.

State of Rajasthan

Crl.A.No.117 of 2003

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

05.05.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Rajasthan High Court, Jaipur Bench holding the appellant guilty of offence punishable under Section 302 read with Section 34 of the *Indian Penal Code, 1860* (in short 'IPC'). Eight persons faced trial for allegedly committing murder of one Gyan Chand (hereinafter referred to as the 'deceased') on 11.11.1993 which happened to be on the election day for the one Assembly election constituency. One of the accused persons was acquitted by the trial court and seven persons were convicted in terms of Section 302 read with Sections 149 and 148 of the Indian Penal Code, 1860 (in short 'IPC'). They were also convicted of some minor offences. During the pendency of the appeal before the High Court, one of the accused-appellants died. By the impugned judgment three of the appellants before the High Court were acquitted. Two persons were convicted in terms of Section 302 read with Section 34 while in case of one accused, the conviction was altered to Sections 324 and 341 IPC. He was sentenced to undergo imprisonment for the period of custody already undergone.

2. The prosecution version primarily rested on the evidence of three eye-witnesses. One of them was the mother of the deceased and the other two were the injured witness. The accused persons pleaded innocence. According to them the deceased and two purported eye witnesses were causing disturbance on the polling day and therefore the members of the public were agitated and in the process they may have been beaten; but because of political rivalry the accused persons were falsely implicated. The trial court placed reliance on the three eye-witnesses and recorded conviction and imposed sentence as aforesaid. In appeal,, the stand basically taken was that there was ante dating of the first information report. The report was purportedly lodged on 11.11.1993 at about 10.50 a.m. The Elaqa Magistrate received it on 16.11.1993. The delay has not been explained. Apart from that the place of incident has been shifted. It was also pointed out that the ante dating of the FIR it is evident from the fact that the admitted case of the prosecution is that the FIR was lodged on 11.11.1993 at 10.50 a.m., but strangely, the inquest report shows that the inquest was started

at 10.30 a.m. The stand of the State before the High Court was that merely because there was delay in despatch of the FIR to the Elaqa Magistrate that cannot throw any doubt on the credibility of the prosecution version. There were two injured witnesses even if there was a discrepancy between the time indicated in the FIR and the inquest, that was a lapse on the part of the Investigating officer and it cannot be a factor in favour of the accused persons.

3. The High Court accepted the stand of the State and record the conviction as afore noted.

4. Learned counsel for the appellants submitted that the prosecution version is so brittle that no credence can be put on it. There was not one but several factors which show that the prosecution had not come out with clean hands. The High Court should not have brushed aside the discrepancy in time of the lodging of the FIR and the conduct of the inquest report. The fact that there was considerable delay in sending the report to the Elaqa Magistrate and the absence of blood on alleged spot of incident have great relevance. According to the prosecution version, the deceased suffered 19 injuries but the blood stains which were supposedly collected from the spot of occurrence were so small that same could not be sent for a foresenic examination.

5. Learned counsel for the respondent-State on the other hand supported the judgment. It is his stand that even if there was a deficiency in the investigation that cannot be a factor in favour of the accused.

6. It is true as observed by the High Court that if the FIR is timely lodged and investigation is undertaken immediately, in a given case, the delayed receipt of the report by the Elaqa Magistrate would not be fatal to the prosecution. It would depend upon the facts of each case. There cannot be any generlisation. There is a purpose behind the enactment of Section 157 of the *Code of Criminal Procedure, 1973* (in short the 'Code'). The statutory requirement that the report has to be sent forthwith that itself shows that the urgency attached to the sending of the report. In a given case it is open to the prosecution to indicate reasons for the delayed despatch or delayed receipt. This has to be established by evidence. Apart from that, the unexplained discrepancy in the timings as recorded in the inquest report and the FIR has to be kept in view. It is prosecution version that the FIR was lodged at 10.50 a.m. If was so it was required to be explained by investigating officer by plausible evidence on record, as to how the inquest was undertaken at 10.30 a.m. at a point of time when the FIR was not not in existence. The High Court has lightly brushed aside the plea of the appellants that it may be the lapse on the part of the investigating officer. It is true that a faulty investigation cannot be a determinative factor and would not be sufficient to throw out a credible prosecution version. But in the instant case there is no explanation offered even to explain the discrepancies cummulative effect of the factors highlighted above would show that the prosecution has miserably failed to establish the accusations. The appeal succeeds. The bail bonds executed to give effect to the order of bail dated 12.7.2004 shall stand discharged.