

SUPREME COURT OF INDIA

Rakesh & Anr.

Vs.

State of M.P

Crl.A.No.339 of 2008

(P.Sathasivam and B.S.Chauhan,JJ.,)

19.09.2011

JUDGMENT

Dr.B.S.Chauhan,J.,

1. This criminal appeal has been preferred against the judgment and order dated 15.12.2006 passed by the High Court of Judicature at Jabalpur in Criminal Appeal Nos. 518 and 890 of 1997.

2. Facts as explained by the prosecution have been that:

“A. On 5.3.1996, on the day of `Holi' at around 11.30 a.m., one Kailash @ Killu was assaulted by the appellants alongwith another accused in front of the house of one Rama Tailor. Anil (PW.11), nephew of the deceased, who had been following Kailash (deceased), raised an alarm and the assailants were caught at the spot. Various persons gathered at the place of occurrence but the assailants managed to flee. The injured Kailash was taken to the hospital but succumbed to his injuries. In view of the above, an FIR was lodged under Section 302 of Indian Penal Code, 1860 (hereinafter called as `IPC') and Section 25 of the Arms Act, 1959, within one hour of the incident at 12.30 p.m., wherein both the appellants and other accused were named. In the FIR it was also stated that two policemen, namely, Ramdas Havaladar and Pannalal Sainik came at the scene and got the accused persons released from the mob and, thus, they succeeded in running away.

B. Dr. R.K. Singhvi (PW.8), conducted the post-mortem on the body of the deceased on the same day. In his opinion, there were three incised wounds found on his body, one on the neck, one on the chest and another in the abdomen. All the injuries had been caused by sharp edged weapons and Kailash had died within three to six hours prior to conducting the post-mortem examination.

C. During the course of investigation, the appellants were arrested and the weapons used in the offence were recovered on their disclosure statements. After concluding the investigation, chargesheet was filed.

D. The case was committed for Sessions trial. The prosecution examined a large number of witnesses in support of its case. One Halle (DW.1) was examined in defence and after conclusion of the trial, all the three accused were convicted for the offence punishable under Section 302 IPC vide judgment and order dated 21.2.1997 and were awarded sentence of rigorous imprisonment for life and a fine of Rs. 2,000/- each, in default thereof, to serve further sentence of one year.

E. Being aggrieved, all the three accused/convicts preferred two appeals i.e. Criminal Appeal Nos. 518 & 890 of 1997 before the High Court of Judicature at Jabalpur, which were decided by judgment and order dated 10.2.2005 in absence of their counsel.

F. Being aggrieved, the present two appellants preferred criminal appeals before this Court i.e. Criminal Appeal Nos. 1463-64 of 2005 which were allowed vide judgment and order dated 20.7.2006 and this Court after setting aside the judgment and order dated 10.2.2005 of the High Court of Judicature at Jabalpur, remanded the appeals to be heard by the High Court afresh.

G. In pursuance of the said judgment and order of this Court dated 20.7.2006, the appeals have been heard afresh and dismissed vide judgment and order dated 15.12.2006 by the High Court.

Hence, this appeal.

3. Before proceeding with the case on merit, it may be pertinent to mention here that so far as the case of the appellant Rakesh is concerned, he had already served the sentence of more than 14 years and has been granted premature release by the State. Appellant Rajesh has served about 7 -1/2 years and is still in jail. The third person Dinesh did not prefer any appeal so we are not concerned with him so far as this appeal is concerned.

4. Shri Siddharth Aggarwal, learned counsel appearing for the appellants, has submitted that the Trial Court had placed very heavy reliance upon the alleged eye-witnesses Khemchand (PW.10) and Anil (PW.11) who, in fact, could not be the eye-witnesses at all. The deposition of other witnesses examined by the prosecution, falsify the prosecution's case in entirety. There have been material inconsistencies in the depositions of Khemchand (PW.10) and Anil (PW.11), and their entire evidence has to be discredited. The High Court after considering the circumstances, did not find the evidence of Khemchand (PW.10) trustworthy, however, failed to appreciate that the evidence of Anil (PW.11) was also liable to be treated similarly. The ocular evidence is contradictory to the medical evidence as the incident had occurred at 11.30 a.m., FIR had been lodged at 12.30 p.m. The post-mortem examination was conducted at 1.00 p.m. on the same day i.e. 5.3.1996 The Doctor opined that Kailash @ Killu had died

within 3 to 6 hours before the post-mortem examination. Anil (PW.11) relied upon by the High Court, is closely related to the deceased Kailash @ Killu and none of the independent witnesses examined by the prosecution supported its case to the extent that Anil (PW.11) could be present on the place of occurrence at the relevant time. Thus, the appeal deserves to be allowed.

5. Per contra, Ms. Vibha Dutta Makhija, learned counsel appearing for the State, has vehemently opposed the appeal contending that there is no rule of law prohibiting reliance upon the evidence of the close relatives of the victims, however, such evidence has to be carefully scrutinised. The medical evidence may not be conclusive regarding the time of death as the physical condition of a body after death depends upon various factors i.e. age, geographical and climatic conditions of the place of occurrence etc. The facts and circumstances of the case do not warrant interference with the concurrent findings of the facts recorded by the courts below. The appeal lacks merit and is liable to be dismissed.

6. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

7. According to the prosecution case, Rakesh hit on the right side of the neck with knife, Rajesh on the right portion of the chest by gupti and Dinesh hit by 'Katarna' (Axe having long wooden handle of 42 inches) on the right portion of the stomach of Kailash @ Killu, deceased. This evidence stands duly supported by the medical evidence as Dr. R.K. Singhvi (PW.8), on conducting the post-mortem examination found the following injuries on his person:

“i) Incised wound on the right portion of right clerical bone of 1.5x2x5 cms with regular edges. Faciea muscle, blood vessel lungs was torn, blood was deposited in the chest.

ii) Incised wound on the right chest on third inter-coster space of 5 cm x 1.5 cm x 5 cm. Faciea muscle and blood vessels had been cut.

iii) Incised wound in the right chest on ninth intercoaster space of 4 cms x 2 cm x 4 cms. In the opinion of Doctor Singhvi, all the injuries appeared to have been caused within 3 to 6 hours by sharp edged weapons prior to the post-mortem examination.”

8. All the weapons used in the crime had been recovered in the disclosure statements made by the appellants and other accused. In the opinion of Dr. R.K. Singhvi (PW.8), injuries nos.1, 2 and 3 could be caused by the weapons used in the offence. The question does arise as to whether there is inconsistency/contradiction in the medical and ocular evidence. The evidence on record clearly reveal that injuries had been caused to Kailash @ Killu, deceased, on his neck, chest and right portion of the stomach.

9. It is a settled legal proposition that the ocular evidence would have primacy unless it is established that oral evidence is totally irreconcilable with the medical evidence. More so, the ocular testimony of a witness has a greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence if proved, the ocular evidence may be disbelieved. (Vide: *State of U.P. v. Hari Chand*¹, *Abdul Sayeed v. State of Madhya Pradesh*², and *Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana*³,

10. So far as the opinion of the doctor that death had occurred within 3 to 6 hours prior to post-mortem examination, does not mean that Dr. R.K. Singhvi (PW.8) was able to fix any exact time of death. The issue raised by the learned counsel for the appellants is no more res integra. In *Mangu Khan & Ors. v. State of Rajasthan*⁴, this Court examined a similar issue wherein the post-mortem report mentioned that the death had occurred within 24 hours prior to post-mortem examination. In that case, such an opinion did not match with the prosecution case. This Court examined the issue elaborately and held that physical condition of the body after death would depend on a large number of circumstances/factors and nothing can be said with certainty. In determining the issue, various factors such as age and health condition of the deceased, climatic and atmospheric conditions of the place of occurrence and the conditions under which the body is preserved, are required to be considered. There has been no cross-examination of the doctor on the issue as to elicit any of the material fact on which a possible argument could be based in this regard. The acceptable ocular evidence cannot be dislodged on such hypothetical basis for which no proper grounds were made.

11. In *Baso Prasad & Ors. v. State of Bihar*⁵, while considering a similar issue, this Court held that exact time of death cannot be established scientifically and precisely. Halle (DW.1), examined by the appellants in their defence, deposed that incident occurred at 11.00 a.m. which is consistent with the prosecution case. Thus, in view of the above, the submission so advanced by the learned counsel for the appellants, is not tenable and thus, does not tilt the balance in favour of the appellants. The argument does not require any further consideration.

12. This Court in *Kartik Malhar v. State of Bihar*,(1996) 1 SCC 614, defined 'interested witness' as:

"A close relative who is a natural witness cannot be regarded as an interested witness. The term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason."

13. Evidence of related witness can be relied upon provided it is trustworthy. Mere relationship does not disqualify a witness. Witnesses who are related to the victim are as competent to depose the facts as any other witness. Such evidence is required to be carefully scrutinised and appreciated before reaching to a conclusion on the conviction of the accused

in a given case. (See: Himanshu @ Chintu v. State (NCT of Delhi), (2011) 2 SCC 36; and Bhajan Singh @ Harbhajan Singh & Ors. (supra).

14. Anil (PW.11), undoubtedly, has been closely related to the victim being his nephew. His evidence requires a very careful and close scrutiny in the light of the aforesaid settled legal propositions.

15. The main thrust of the argument of the learned counsel for the appellants has been that the statements of Khemchand (PW.10) and Anil (PW.11) have been mutually destructive, thus both are liable to be discarded altogether. The High Court has disbelieved Khemchand (PW.10) to the extent that he was present at the time of incident and thus, could not be an eye-witness. Deposition of Anil (PW.11) clearly reveals that incident occurred at 10.30 a.m. in front of the house of Rama Tailor and the appellants alongwith Dinesh caused injuries to Kailash (deceased) with weapons such as knife, gupti and `katarna' on the neck, chest and stomach. At the time of incident, Anil (PW.11) had been at a short distance from the victim. Ishwar Nayak (PW.6), Dharmendra (PW.12) and other persons had also gathered there. He also deposed about the motive that Rakesh, accused, wanted utensils from Kailash (deceased), who refused to oblige the accused. Rakesh, accused had threatened Kailash to face dire consequences. In cross- examination, he has admitted that at the time of the incident, Ishwar Nayak (PW.6), Dharmendra (PW.12) and Pradeep Pathak (PW.15) etc., were with him. He denied that he reached the place of occurrence on being informed by Halle (DW.1) and further denied the suggestion that he had not seen the quarrel between the accused persons and the deceased. He gave a full account of the overt acts of the accused while causing injuries to Kailash. His evidence has to be examined taking into consideration that the site plan prepared by the Patwari make it clear that the incident occurred on a main road and the victim as well as Anil (PW.11) were on the same road. There was no obstruction in between, thus Anil (PW.11) could clearly view the incident. Though, there has been some dispute regarding the distance between the two, but taking into consideration the fact that the accused had been very well known to the witness being resident of the same village, the distance becomes immaterial for the reason that the witness could recognize him even from that distance. The other eye-witnesses, particularly, Ishwar Nayak (PW.6), Dharmendra (PW.12) and Pradeep Pathak (PW.15) did not support the case of the prosecution appropriately. Dharmendra (PW.12) stood declared hostile. Deposition of Ishwar Nayak (PW.6) has corroborated the case of the prosecution to the extent that Anil (PW.11) was at the place of occurrence earlier to him. In cross-examination, he deposed as under:

"Half the boys ran towards the spot of incident immediately. Amongst them was Anil also. I did not go with Anil."

16. In view of the above, it is evident that incident occurred at 11.30 a.m. Kailash, injured was taken to the hospital where he was examined by the doctor and declared dead. Anil (PW.11) went from hospital to police station and lodged the FIR at 12.30 p.m. wherein all the three accused were specifically named. The distance of the police station from the place of occurrence had been only 1 k.m. The overt acts of

the accused had been mentioned. The motive was also disclosed. It is improbable that the appellants had been enroped falsely as promptness in lodging the FIR shows that there was no time for manipulation. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. Allegations may not be an after-thought or having a colourable version of the incidents. (See: Kishan Singh (dead) thr. Lrs. v. Gurpal Singh & Ors., AIR 2010 SC 3624). It does not appeal to reasons as to why the witness would falsely enrope the appellants and other accused in such a heinous crime and spare the real culprits to go scot-free. In the FIR, Anil (PW.11) has disclosed that his father Khemchand (PW.10), Ishwar Nayak (PW.6) and Dharmendra (PW.12) reached the place of occurrence at a later stage. As the parties were known to each other being the residents of the same village, the identity etc. was not in dispute.

17. The Trial Court had appreciated the evidence on record, and reached the conclusion to the effect that Anil (PW.11) was a trustworthy witness and had been an eye-witness of the incident. He had faced grilling cross-examination. However, no discrepancy or error could be shown in spite of the fact that he was nephew of Kailash (deceased). On careful scrutiny of his deposition, his statement was found trustworthy. The court further held that even if the other witnesses on the spot had not supported the prosecution case, Anil (PW.11) was a natural witness and had seen the incident. The other circumstances particularly, the statements of B.M. Dubey, Investigating Officer (PW.21) and Balam (PW.9), the arrest of accused, recovery of weapons on their disclosure statements proved the prosecution case. The depositions of B.M. Dubey (PW.21) had been natural. There was no proof that the I.O. (PW.21) had any animosity or any kind of interest and closeness to the deceased. Therefore, the question of not believing the statement of B.M. Dubey, I.O. (PW.21) does not arise.

The High Court in spite of the fact of dis-believing Khemchand (PW.10), found the prosecution case wholly proved on the sole testimony of Anil (PW.11).

18. There are concurrent findings of fact by the two courts below. Unless the findings so recorded are found to be perverse, this Court should not generally interfere. This "Court cannot embark upon fruitless task of determining the issues by re-appreciating the evidence." (See : Manju Ram Kalita v. State of Assam, (2009) 13 SCC 330).

19. Even if there are minor discrepancies between the narrations of witnesses when they speak on details, unless such contradictions are of material dimensions, the same should not be used to discard the evidence in its entirety. The trivial discrepancy ought not to obliterate the otherwise acceptable evidence.

20. In Leela Ram (Dead) thr. Duli Chand v. State of Haryana & Anr., (1999) 9 SCC 525, this Court observed as under:

"The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or

uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise."

21. In view of the above, we reach the inescapable conclusion that the courts below reached the correct conclusion in accepting the prosecution case. Anil (PW.11) is a natural witness and his testimony inspired confidence and is, thus, worth acceptance. The facts and circumstances of the instant case do not warrant any interference by this Court. Appeal lacks merit and is, accordingly, dismissed.

Judgment Referred.

¹(2009) 13 SCC 542

²(2010) 10 SCC 259

³(2011) 7 SCC 421

⁴AIR 2005 SC 1912

⁵AIR 2007 SC 1019