SUPRENE COURT OF INDIA

Balaji Gunthu Dhule

Vs.

State of Maharashtra

Crl.A.No.784 of 2008

(H.L.Dattu and Chandramauli Kr.Prasad,JJ.)

19.09.2012

ORDER

H.L.Dattu,J.

1. This appeal by special leave is directed against the judgment and order passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No.108 of 2004 dated 19.10.2005.

2. The appellant, before us is convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 ("IPC" for short) and sentenced to imprisonment for life, by the Trial Court, on the allegation that he has caused the death of one Ranga Rao in a quarrel which ensued between Ranga Rao and one Smt. Shantabai (other accused who expired during the trial). The Prosecution, in support of its case, had examined several witnesses, including six eye—witnesses— P.Ws. 4, 5, 6, 7, 8 and 10. The Trial Court, taking into consideration the evidence of P.Ws. 4, 5, 7, 8 and 10, has convicted and sentenced the appellant and two others, as mentioned earlier. Aggrieved by the said judgment and order passed by the Trial Court, the appellant and two others were before the High Court in an appeal filed under Section 374(2) of the Code of Criminal Procedure,1973 ("the Code" for short).

3. The High Court, after re-appreciation of the evidence on record, has acquitted the two other accused, but has convicted the appellant only for an offence under Section 302 of the I.P.C. It is the correctness or otherwise of the said order which is called in question by the appellant before us.

4. We have heard learned counsel for the parties to the lis.

5. Learned counsel appearing for the appellant has taken us through the judgment and order passed by the High Court. We gather on perusal of the judgment that the High Court after detailed consideration of the evidence of P.Ws. 4, 5, 7 and 8 has rejected the same for the

reasons assigned in the judgment. However, it has confirmed the order of the Trial Court primarily based on the evidence of PW-10, that too by drawing a distinction based on the analysis of the question: "whether P.W.10 was present at the time of the incident or at least after the incident." The High Court comes to the conclusion and records that since P.W.10 had taken the deceased to the hospital, he could have been present at least after the incident.

6. To come to a conclusion that P.W.10 was present at the time of the incident, strangely, in our opinion, the High Court has relied upon the statement made by the accused-appellant under Section 313 of the Code. In our opinion, first and foremost, as the law stands today, the statement of the accused recorded under Section 313 of the Code cannot be put against the accused person. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution. The statement made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

7. This *Court in Manu Sao v. State of Bihar*[1] has examined the vital features of Section 313 of the Code and the principles of law as enunciated by judgments, analysing the guiding factors for proper application and consequences that shall flow from the said provision and has observed :

> "14. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence against the accused in any other enquiry or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution; however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Another important caution that courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Code as it cannot be regarded as a substantive piece of evidence. In *Vijendrajit Ayodhya Prasad Goel v. State of Bombay*[2] the Court held as under: (AIR p. 248, para 3) As the appellant admitted that he was in charge of the godown, further evidence was not led on the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under Section 342 as supporting the prosecution case concerning the

possession of the godown. The contention that the Magistrate made use of the inculpatory part of the accused's statement and excluded the exculpatory part does not seem to be correct. The statement under Section 342 did not consist of two portions, part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown. On similar lines reference can be made to a quite recent judgment of this Court in *Ajay Singh v. State of Maharashtra*[3]where the Court held as under: (SCC p. 347, paras 11-13) So far as the prosecution case that kerosene was found on the accused's dress is concerned, it is to be noted that no question in this regard was put to the accused while he was examined under Section 313 of the Code. The purpose of Section 313 of the Code is set out in its opening words - 'for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him'. In Hate Singh Bhagat Singh v. State of Madhya Bharat it has been laid down by Bose, J. (AIR p. 469, para 8) that the statements of the accused persons recorded under Section 313 of the Code 'are among the most important matters to be considered at the trial'. It was pointed out that: (AIR p. 470, para 8) The statements of the accused recorded by the committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box [and that they] have to be received in evidence and treated as evidence and be duly considered at the trial. This position remains unaltered even after the insertion of Section 315 in the Code and any statement under Section 313 has to be considered in the same way as if Section 315 is not there. The object of examination under this section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus." The statement made by the accused is capable of being used in the trial though to a limited extent. But the law also places an obligation upon the court to take into consideration the stand of the accused in his statement and consider the same objectively and in its entirety. This principle of law has been stated by this Court in *Hate Singh Bhagat Singh v. State of Madhya Bharat*[4]."

8. Herein, the appellant in his statement under Section 313 of the Code admits that there was a quarrel between Shantabai (deceased accused) and P.W.1O and while rushing to the spot of quarrel the deceased involuntarily fell on a cement concrete platform - Otta and thereby

suffered the fatal injury. The prosecution story was that a quarrel between the deceased and Shantabai in fact took place, however, the fatal injury was caused by a deliberate blow by the appellant on the deceased. In our opinion, there is absolute contradiction in the statement made by the appellant in his statement under Section 313 of the Code and that statement could not have been put against the accused in concluding that P.W.1O was present at the place of incident at or immediately after the occurrence of the incident. Therefore, the said witness, in our opinion, cannot be considered as eye- witness to the incident as such.

9. The High Court has also relied upon the postmortem report of the Doctor. In our opinion, since the entire evidence of the eye—witnesses has not been accepted by the High Court, it could not have merely relied upon the postmortem report to convict the appellant for an offence under Section 302 of the I.P.C. Further, in our view, the postmortem report should be in corroboration with the evidence of eye— witnesses and cannot be an evidence sufficient to reach the conclusion for convicting the appellant. In view of the above, we have no other alternative but to allow this appeal and set aside the judgment and order passed by the High Court convicting the appellant for an offence punishable under Section 302 of the I.P.C.

10. In the result, the appeal is allowed with a direction that the appellant-accused be released forthwith, if he is not required in any other offence/case.

11. Ordered accordingly.

Judgment Referred

[1](2010) 12 SCC 0310
[2](AIR) 1953 SC 0247
[3](2007) 12 SCC 0341
[4](AIR)1953 SC 0468