SUPREME COURT OF INDIA

Laltu Ghosh

Vs.

State of West Bengal

Crl.A.No.312 of 2010

(Mohan M.Shantanagoudar and Dinesh Maheshwari,JJ.,)

19.02.2019

JUDGMENT

Mohan M. Shantanagoudar,J.,

1. The judgment dated 15.05.2009 passed by the High Court of Calcutta in Government Appeal No. 30 of 1987 is called into question in this appeal by the convicted accused.

2. The case of the prosecution in brief is that there was a dispute between Ananta Ghosh (accused, since deceased) and the victim Keshab, his neighbour, concerning the boundary of the landed property in which they had their respective houses; about 9.30 am on 30.04.1982, accused Ananta Ghosh called the deceased Keshab by standing in front of the house of the deceased; the deceased accordingly came out of his house and his son PW-1 followed him; at that point of time, Ananta Ghosh picked a quarrel with the deceased and thereafter instigated his sons Laltu Ghosh and Paltu Ghosh as well as his friend Sakti @ Sero Karmakar to assault the deceased; Laltu Ghosh punched the deceased on the face and thereafter stabbed the accused in the abdomen; though the deceased fell down, he got up immediately and thereafter started to run away; but Paltu Ghosh stabbed the deceased on his back, who fell down near the tea stall of one Tabal; he was taken to the Primary Health Centre, Kaliaganj in the rickshaw of one Madan where he was treated by Dr. Roychowdhury, PW-18, who gave him first aid and recorded the statement of the deceased; later, the victim was sent to Krishnanagar Hospital for better treatment.

3. The statement of the victim was recorded by Dr. Roychowdhury (PW-18) and the same was treated as a dying declaration, since soon after such treatment the victim succumbed to his injuries on the way to the hospital. His son PW-1 lodged the First Information Report (FIR) at 10.45 a.m. on the very same day, i.e. 30.04.1982.

4.The police filed the charge-sheet against four accused, viz. Laltu Ghosh, Paltu Ghosh, Ananta Ghosh and Sakti @ Sero Karmakar. The Trial Court upon appreciation of the material on record acquitted all the accused. The State filed an appeal before the High Court, which came to be allowed in part by the impugned judgment. The High Court convicted

Laltu Ghosh, who is the appellant herein. The High Court also declared that Paltu Ghosh was a juvenile on the date of the incident. The accused Ananta Ghosh and Sakti Karmakar expired during the pendency of the appeal before the High Court. Hence, this appeal by the convicted accused Laltu Ghosh.

5. There are four eye-witnesses to the incident in question, viz. PW-1, PW-2, PW-3 and PW-4. Out of them, PW-2 and PW-3 have turned hostile to the case of the prosecution. PW-1 is the son of the deceased and PW-4 is the wife of the deceased. The prosecution, apart from the versions of the eye-witnesses, relied upon the dying declaration, Ext. 4.

6. Learned counsel for the appellant, having taken us through the material on record submits that the High Court was not justified in allowing the appeal of the State and convicting the appellant herein, since the evidence of PW-1 and PW-4 cannot be believed in view of the material contradictions found in their evidence; PW-1 and PW-4 are none other than the son and the wife of the deceased and therefore the Trial Court on meticulous and careful consideration of the evidence of these witnesses concluded that their evidence cannot be believed; the dying declaration was also found to be shaky by the Trial Court; the Trial Court had accorded reasons for rejecting the dying declaration; and that the High Court has failed to analyse the entire evidence and material on record and has failed to meet the reasons given by the Trial Court upon taking the evidence and material into consideration.

7. Per contra, it is argued by the learned counsel appearing on behalf of the State that the High Court has rightly rejected the findings of the Trial Court that the post mortem report was not of the deceased; there is absolutely no doubt about the persons who caused injuries to the deceased; the High Court was justified in applying the principle of common intention; and that the High Court has assigned valid reasons as to why the dying declaration should not have been discarded by the Trial Court. On the basis of these, among other grounds, he prays for confirming the judgment of the High Court.

8. To satisfy our conscience, we have gone through the evidence of PW-1 and PW-4. PW-1 had deposed that about 9-9.30 a.m. on 30.04.1982, he and his father were at home, sitting on a platform; the accused Ananta Ghosh called the deceased from his house but the deceased initially refused to come and told the accused Ananta Ghosh to come to the road in front of his house; after saying so, the deceased went out of his house and PW-1 followed him; thereafter, a verbal quarrel took place between the accused and the deceased, and the accused Ananta Ghosh at that point of time instigated his sons Laltu Ghosh and Paltu Ghosh as well as his friend Sakti @ Sero Karmakar to assault the deceased; Laltu Ghosh dealt a blow to the deceased and thereafter stabbed him on his abdomen; the deceased made an attempt to escape and had proceeded about 10 cubits when Paltu Ghosh assaulted the deceased with a bhojali on his back; despite the same, the deceased made an attempt to escape by running but Laltu Ghosh and Paltu Ghosh chased him and ultimately, he fell near the tea stall of one Tabal from where he was shifted to the hospital at Kaliaganj. The evidence of PW-1 is consistent with the version of the prosecution. His evidence could not be shaken in the cross-examination in respect of the occurrence of the incident in question. Even in the cross-

examination, PW-1 has stated that the appellant had concealed a sharp-cutting weapon, i.e. kirich, in a napkin and had come fully prepared for committing the murder.

9. The evidence of PW-1 is fully supported by the evidence of PW-4. She has also deposed about the exchange of words between the deceased and the accused Ananta Ghosh; about Ananta Ghosh instigating his sons Laltu Ghosh and Paltu Ghosh, and his friend Sakti @ Sero Karmakar to assault the deceased; about the assault by Laltu Ghosh in the first instance and thereafter by Paltu Ghosh at the back of the deceased; about the deceased trying to escape and running towards the tea stall, etc. She has also deposed about the first aid given to the deceased at the Primary Health Centre, Kaliaganj and thereafter about shifting him to Krishnanagar Hospital. She has further deposed about the victim's statement being recorded at the Primary Health Centre, Kaliaganj, which was ultimately treated as his dying declaration. She withstood the lengthy cross-examination.

10. We find that the evidence of PW-1 and PW-4 is consistent, cogent, reliable and trustworthy. Their presence at the scene of the incident is natural inasmuch as the incident took place in front of their house, and that too in the morning, at a time when PW-1 and PW-4 could be expected to be at home. Though the incident started with a verbal quarrel between the deceased and the accused Ananta Ghosh, the appellant along with his brother entered the scene after being instigated by their father Ananta Ghosh; both the brothers, namely, Laltu Ghosh and Paltu Ghosh came to the spot fully armed with a kirich and a bhojali; the victim was not spared by the accused though he tried to escape from the scene of the occurrence; he was chased by the appellant and Paltu Ghosh and ultimately, the victim fell in front of a tea stall; the victim was able to give his statement before the doctor PW-18 who treated him at the first instance at the Primary Health Centre, Kaliaganj.

11. We do not find any major contradiction in the evidence of these witnesses. Minor variations, if any, will not tilt the balance in favour of the defence in the facts and circumstances of the present case. The defence could not elicit any contradiction in the cross-examination of PW-1 and PW-4. In our considered opinion, the High Court has rightly believed the evidence of these witnesses, particularly since minor discrepancies on trivial matters do not in and of themselves affect the core of the prosecution case. Hence, it is not open for the Court to reject the evidence only in light of some minor variations and discrepancies.

12. As regards the contention that the eye-witnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an ‘interested’ witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between ‘interested’ and ‘related’ witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see *State of Rajasthan v. Kalki*[2]*,; Amit v. State of Uttar Pradesh*[1]*, and Gangabhavani v. Rayapati Venka.t Reddy*[3]*,* Recently, this difference was

reiterated in *Ganapathi v. State of Tamil Nadu*[4], in the following terms, by referring to the three-Judge bench decision in State of Rajasthan v. Kalki (supra):

> "14. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be "interested"..."

13. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh v. State of Punjab*[5], wherein this Court observed:

> "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person..."

14. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in *Jayabalan v. Union Territory of Pondicherry*[6],:

> "23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

15. In the instant matter, as already discussed above, we find the testimony of the eye-witnesses to be consistent and reliable, and therefore reject the contention of the appellants that the testimony of the eye-witnesses must be disbelieved because they are close relatives of the deceased and hence interested witnesses.

16. The FIR discloses that the doctor PW-18 examined the victim at the first instance and recorded his statement, in which the victim narrated the occurrence including the names of the assailants. The dying declaration Ext. 4 recorded by the doctor PW-18 shows that the victim was first assailed by the accused Ananta Ghosh, and thereafter by Paltu Ghosh, who stabbed the victim's back, and by Laltu Ghosh, who served a blow on the victim's abdomen

with a kirich. The Trial Court has given more weightage to the minor variations found in the evidence of the prosecution witnesses as compared to the information found in the dying declaration.

17. The courts cannot expect a victim like the deceased herein to state in exact words as to what happened during the course of the crime, inasmuch as it would be very difficult for such a victim, who has suffered multiple grievous injuries, to state all the details of the incident meticulously and that too in a parrot-like manner. The Trial Court assumed that the Investigation Officer in collusion with the doctor wilfully fabricated the dying declaration. It is needless to state that the Investigation Officer and the doctor are independent public servants and are not related either to the accused or the deceased. It is not open for the Trial Court to cast aspersions on the said public officers in relation to the dying declaration, more particularly when there is no supporting evidence to show such fabrication.

18. It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated by other evidence. A dying declaration, if found reliable, and if it is not an attempt by the deceased to cover the truth or to falsely implicate the accused, can be safely relied upon by the courts and can form the basis of conviction. More so, where the version given by the deceased as the dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration. The doctor PW-18, who recorded the statement of the deceased which was ultimately treated as his dying declaration, has fully supported the case of the prosecution by deposing about recording the dying declaration. He also deposed that the victim was in a fit state of mind while making the said declaration. We also do not find any material to show that the victim was tutored or prompted by anybody so as to create suspicion in the mind of the Court. Moreover, in this case the evidence of the eye-witnesses, which is fully reliable, is corroborated by the dying declaration in all material particulars. The High Court, on reappreciation of the entire evidence before it, has come to an independent and just conclusion by setting aside the judgment of acquittal passed by the Trial Court. The High Court has found that there are substantial and compelling reasons to differ from the finding of acquittal recorded by the Trial Court. The High Court having found that the view taken by the Trial Court was not plausible in view of the facts and circumstances of the case, has on independent evaluation and by assigning reasons set aside the judgment of acquittal passed by the Trial Court. We concur with the judgment of the High Court, for the reasons mentioned supra.

19. Thus, we do not find any valid ground to interfere with the impugned judgment of conviction passed by the High Court. Accordingly, the appeal fails and is hereby dismissed.

Judgment Referred.

[1]*(2012) 4 SCC 0107*
[2]*(1981) 2 SCC 0752*
[3]*(2013) 15 SCC 0298*
[4]*(2018) 5 SCC 0549*
[5]*(1954 SCR 0145*

[6] *(2010) 1 SCC 0199*