

Devraj vs State Of Chhattisgarh on 25 July, 2016

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Bench: Ashok Bhushan, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.423 OF 2015

DEVRAJ

... APPELLANT

VERSUS

STATE OF CHHATTISGARH

... RESPONDNET

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed against the judgment and order dated 7th January, 2013 of the High Court of Chhattisgarh in Criminal Appeal No. 780 of 2008. The First Additional Sessions Judge in Sessions Trial No.396 of 2006 had convicted the appellant-Devraj and Dinda @ Deenanath under Section 302 and 201 IPC and awarded imprisonment for life and to pay fine of Rs.1,000/- each for the charge levelled under Section 302 IPC and RI for three years and to pay fine of Rs.1,000/- each for the charge under Section 201 IPC. Four other accused were acquitted by the First Additional Sessions Judge. The High Court in Criminal Appeal No.780 of 2008 although acquitted the accused Dinda @ Deenanath, it confirmed the conviction of the appellant under Section 302 IPC. The High Court has set aside the conviction and sentence of Devraj under Section 201 IPC.

2. Aggrieved by the judgment and order of the High Court, Devraj has come up in this appeal.

3. The prosecution case in brief is:

There existed a land dispute between the deceased Devi Prasad @ Prachar and Devraj, Dinda @ Deenanath. Devraj and Dinda @ Deenanath are real brothers whereas deceased Devi Prasad was their cousin brother. On 26th June, 2006, after 8 p.m. when deceased Devi Prasad was going along with one Ratan Singh Guruji in a motorcycle he was intercepted by five persons near pakkar tree. The deceased was beaten by gada and lathi by Devraj, Dinda and others and after killing him his body along with motorcycle was thrown below Rakheta Pulia. The body was seen on next day morning by a boy of village who informed the wife of the deceased. Thereafter, First Information Report was lodged by Anita Bai at 10.15 a.m. on 27th June, 2006. Police official came on the spot prepared death panchnama and site plan. The statements from various persons were recorded. The charges were framed against six accused under Section 147, 148, 149, 302 and 201 IPC. The accused Sheonath, Thema @ Vishwanath, Devraj, Dinda @ Deenanath, Khoru and Dayalal were sent for trial.

4. The prosecution examined 20 witnesses and placed reliance on various exhibits. Learned Additional Sessions Judge after examining the statements of witnesses held charges under Section 302 and 201 IPC proved against accused Devraj and Dinda @ Deenanath, other four accused were acquitted by the Trial Court.

5. The Trial Court placed heavy reliance on witnesses PW.8-Ratan Singh, PW.13-Shivlochan and PW.16-Ajar Das who were found to be eye-witnesses. The statements of witnesses were found corroborated from other evidence. Although witnesses PW.13-Shivlochan and PW.16-Ajar Das were declared hostile witnesses and they were cross-examined but the Trial Court relied on their statements having found to be truthful and worth reliance.

6. Both Devraj and Dinda @ Deenanath filed an appeal before the High Court. The High Court vide its judgment and order dated 7th January, 2013 acquitted Dinda @ Deenanath from all the charges. However, it confirmed the conviction of the appellant-Devraj under Section 302 IPC while setting aside the conviction under Section 201 IPC.

7. Devraj is before us in this appeal. Only Devraj being in this appeal, we need to confine our discussion with regard to the evidence against Devraj only and as to whether the courts below on valid materials and evidence were justified in convicting Devraj.

8. We have heard Shri Akshat Shrivastava, learned counsel appearing for the appellant and Shri C.D. Singh, learned Additional Advocate General for the State.

9. Learned counsel for the appellant in support of the appeal contended that the courts below have relied on three eye-witnesses namely PW.8-Ratan Singh, PW.13-Shivlochan and PW.16-Ajar Das. PW.13-Shivlochan and PW.16-Ajar Das having been declared hostile witnesses, their evidence could

not have been relied and PW.8-Ratan Singh, another eye-witness having not stated that Devraj had assaulted the deceased hence there was no evidence worth name to convict the accused-Devraj. It is further contended that even the eye-witnesses, PW.13 and PW.16 had only stated that they have heard the voice of Devraj, the prosecution ought to have proved that witnesses had recognised the voice of Devraj and Devi Prasad. The witnesses have only stated that Devraj had assaulted Devi Prasad @ Prachar by Danda. It has not been proved that injury by Danda, if any, was sufficient to kill Devi Prasad. The Doctor in his evidence has stated that injuries which were sustained by Devi Prasad could be possible by an accident. Thus, the prosecution failed to prove beyond reasonable doubt that it was Devraj who killed Devi Prasad @ Prachar. There was contradiction between the statements of eye-witnesses, which has not been adverted to by the courts below.

10. Learned Additional Advocate General appearing for the State supporting the judgment of courts below contended that incriminating evidence on the record are sufficient to convict the accused-Devraj. All the eye-witnesses have proved the presence of accused-Devraj. The evidence of PW.13 and PW.16 was wholly reliable and even if they were declared hostile witnesses their examination-in-chief and the cross-examination does not in any manner weaken the evidentiary value of their evidence that Devraj assaulted Devi Prasad on the late evening of 26th June, 2006. Several witnesses have testified that there was land dispute between deceased-Devi Prasad and Devraj and there being animosity between Devi Prasad and Devraj there was a motive to kill the deceased. The judgment of the Trial Court is based on correct appreciation of evidence. The High Court also having examined the statements of witnesses and having come to the conclusion that there was sufficient material on record to convict Devraj there is no ground for interference by this Court in exercise of jurisdiction under Article 136 of the Constitution of India. It is well settled that this Court shall not reappraise the evidence and interfere with concurrent findings of facts recorded by the courts below which are sufficient for upholding the conviction of the accused.

11. We have considered the arguments made by the learned counsel appearing for the parties and perused the records. The original records of the Trial Court produced before us including the statements of witnesses have also been perused by us.

12. In the present case the deceased-Devi Prasad was going along with Ratan Guruji from his house on a motorcycle on Panchayat Road at about 8 p.m. Deceased left his house on a motorcycle with Ratan Singh Guruji as pillion rider for dropping Ratan Singh at village Chendra. On the Panchayat Road near pakkar tree, the deceased was intercepted and was asked to stop the motorcycle by five persons. The quarrel took place between the deceased and his interceptors. The witnesses have specially mentioned that Devraj and Dinda @ Deenanath were present on the spot and Devraj hit and gave lathi blows on deceased. The witnesses who saw the deceased being assaulted are Ratan Guruji, Shivlochan and Ajar Das. It is useful to re-capitulate the statements of the above eye-witnesses. Ratan Singh-PW.8 has stated that he had gone to Devi Prasad's house and after 8 p.m. he along with Devi Prasad left his house on a motorcycle and as soon as they reached at some distance from his house five persons were standing near the pakkar tree. Those persons got the vehicle stopped. Dinda came towards him (Ratan Guruji), he was having a torch and switched on the torch. In the meanwhile, a person ran from back side with a stick and spoke "kill him, what are you looking' and he gave stick blow to Devi Prasad. On receiving injury Devi Prasad ran towards back

side crying “save save”. Ratan Singh further stated that Shivlochan came on the spot and told him to come with him as there was risk there. PW.8-Ratan Singh further stated that there was a land dispute between Devi Prasad and Dev Raj.

13. Shivlochan-PW.13 is a witness whose house is situated near the place where Devi Prasad was stopped. The Exhibit No.P.7 which is a site plan prepared at the spot clearly indicates the house of Shivlochan is at indication mark No.5. Shivlochan in his statement has stated that he knew both the accused-Devraj and deceased-Devi Prasad. Shivlochan belongs to the same village Sayar Rai of which accused and deceased belonged. In examination-in-chief, Shivlochan stated that he was returning to his house from his sister's house when he saw the deceased-Devi Prasad near pakkar tree. Devraj came from the front and some dialogues entered between them. Thereafter, Devraj assaulted Devi Prasad by wood or stone. Thereafter, Devi Prasad started running. The witness was cross-examined on behalf of the accused and in his cross-examination he stated that he heard the voice of Devraj who was saying “Maro Sale Ko” and it was Devraj who hit the Devi Prasad @ Prachar and Prachar shouted “Bachao Bachao” which he heard.

14. Another eye-witness PW.16-Ajar Das has been examined by the prosecution. The house of Ajar Das is also near to the scene of occurrence which is shown in Exhibit No.P-7 as indication mark 8. Ajar Das stated that he knew the deceased and the accused. Deceased Devi Prasad was cousin brother of Devraj and Dinda @ Deenanath. The quarrel had earlier taken place between Devi Prasad and Devraj. He was returning to his house from village Gangapur and when he was going through Panchayat Road adjoining pakkar tree near Jam tree accused Devi Prasad had given three lathi blows to Devi Prasad. Accused Devraj told Shivlochan that he should run away otherwise he will also be assaulted on which he ran away. The prosecution took permission of the Court for asking question after declaring the witness as hostile. On which the witness again stated that he has forbidden Devraj from beating Devi Prasad. He further stated that he had also seen that while beating Devi Prasad, Devraj was saying that he has been tortured throughout life. Devraj and Dinda had beaten the deceased in the night and the dead body of Devi Parasad was found below the Rakhet Pulia in the morning. He further stated that due to land dispute between Devi Prasad and Devraj and Dinda, they entered into “marpeet”. In the cross-examination he stated that he has seen accused-Devraj giving three lathi blows. However, he does not know to whom the blows were given since it was dark. There is overwhelming evidence on the record to prove the land dispute between Devraj, Dinda with Devi Prasad-deceased.

15. Anita Bai-PW.7 wife of the deceased, Ratan Singh-PW.8, Shivlochan- PW.13, Shivram-PW.18,Ram Kewal-PW.3 and Narayan Prasad-PW.10 all had stated that there was a land dispute between the parties. Witness PW.10-Narayan Prasad had also stated that with regard to the land dispute the leg of Devraj was broken and there was animosity between Devi Prasad and accused- Devraj and Dinda. The arguments which have been raised by the learned counsel for the appellant that PW.13 and PW.16 having been declared as hostile witnesses their evidence ought not to have been relied by the courts below more so when Ratan Singh another eye-witness does not say that deceased Devi Prasad was assaulted by Devraj. At this juncture it is relevant to examine the question as to what extent evidence of hostile witnesses can be relied by the Court while recording conviction.

16. In a three-Judge bench judgment of this Court in *Bhagwan Singh v. State of Haryana*, (1976) 1 SCC 389, the witness Jagat Singh was declared hostile. The appellant was convicted under Section 165A IPC. It was contended that the whole case is destroyed since the witness was declared as hostile. In the aforesaid decision the Court held that there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. Following was stated in paragraph 8:

“8. We have carefully perused the evidence of Jagat Singh, who was examined in the trial after more than a year of detection of the case. The prosecution could have even avoided requesting for permission to cross-examine the witness under Section 154 of the Evidence Act. But the fact that the court gave permission to the prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. We are satisfied in this case that the evidence of Jagat Singh, but for whose prompt assistance the case would not have seen the light of day and whose statement had immediately been recorded by the D.S.P., is amply corroborated by other evidence mentioned above to inspire confidence in his testimony. Apart from that the fact of recovery of the gold coins in the pocket of the appellant gave a seal of finality to the truth of the charge against the appellant. If Jagat Singh had accepted the bribe he would have been guilty under Section 161 IPC. There is, therefore, clear abetment by the appellant of the offence under Section 161 IPC and the ingredients of Section 165-A IPC are established against him.”

17. Another judgment which needs to be noted is *Khujji v. State of M.P.*, (1991) 3 SCC 627. This Court in the above case held that merely because a witness was declared hostile, his entire evidence cannot be treated as effaced from the record, his testimony, to the extent found reliable, can be acted upon. In paragraph 6 following was observed:

“6.....The evidence of PW 3 Kishan Lal and PW 4 Ramesh came to be rejected by the trial court because they were declared hostile to the prosecution by the learned Public Prosecutor as they refused to identify the appellant and his companions in the dock as the assailants of the deceased. But counsel for the State is right when he submits that the evidence of a witness, declared hostile, is not wholly effaced from the record and that part of the evidence which is otherwise acceptable can be acted upon. It seems to be well settled by the decisions of this Court — *Bhagwan Singh v. State of Haryana*, (1976) 1 SCC 389, *Rabindra Kumar Dey v. State of Orissa*, (1976) 4 SCC 233 and *Syad Akbar v. State of Karnataka*, (1980) 1 SCC 30, — that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof....”

18. The above propositions have again been reiterated by this Court in Vinod Kumar vs. State of Punjab, (2015) 3 SCC 220, where in paragraph 31 following has been stated:

“31. The next aspect which requires to be adverted to is whether testimony of a hostile evidence that has come on record should be relied upon or not. Mr. Jain, learned senior counsel for the appellant would contend that as PW- 7 has totally resiled in his cross-examination, his evidence is to be discarded in toto. On a perusal of the testimony of the said witness, it is evincible that in examination-in-chief, he has supported the prosecution story in entirety and in the cross-examination he has taken the path of prevarication. In Bhagwan Singh V. State of Haryana, (1976) 1 SCC 389, it has been laid down that even if a witness is characterized has a hostile witness, his evidence is not completely effaced. The said evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony, if corroborated by other reliable evidence. In Khuji @ Surendra Tiwari V. State of Madhya Pradesh, (1991) 3 SCC 627, the Court after referring to the authorities in Bhagwan Singh (supra), Rabindra Kumar Dey V. State of Orissa, (1976) 4 SCC 233 and Syad Akbar V. State of Karnataka, (1980) 1 SCC 30, opined that the evidence of such a witness cannot be effaced or washed off the record altogether, but the same can be accepted to the extent it is found to be dependable on a careful scrutiny thereof.”

19. The evidence of a witness who has been declared hostile can be relied if there are some other material on the basis of which said evidence can be corroborated. More so, that part of evidence of a witness as contained in examination-in-chief, which remains unshaken even after cross-examination, is fully reliable even though the witness has been declared hostile.

20. It is relevant to note that the trial began against six accused persons. Shivlochan-PW.13 in his examination-in-chief took the name of Devraj alone who was stated to have assaulted Devi Prasad. Shivlochan did not mention in his examination-in-chief about the presence of other accused which may be a reason for the prosecution to get the witness declared as hostile. It is, however, relevant to note that even in the cross-examination the witness repeated that he heard Devraj saying “Maro Sale Ko” who had assaulted Devi Prasad and Devi Prasad @ Prachar cried “Bachao Bachao”. The factum of assault by Devraj was throughout maintained by the witness. Thus, even though witness was declared as hostile witness his evidence so far as the role of Devraj is unshaken. Similarly, evidence of Ajar Das-PW.16, where in his examination-in-chief he stated that accused Devraj gave three lathi blows to Devi Prasad which was seen by him. The witness further stated that Devraj threatened him to run away otherwise he shall also be assaulted. Even after the witness was declared hostile he maintained his stand that he forbidden Devraj from assaulting Devi Prasad. He further stated that he saw Devraj and Dinda assaulting Devi Prasad in the night and on the next day the dead body was found below Rakhet Pulia. The witness further stated that due to land dispute Devraj and Dinda had assaulted Devi Prasad. In cross-examination he voluntarily stated that he had seen the accused giving three lathi blows. Further, he stated that he did not see that whom he has beaten because it was dark. The statement in cross-examination in no manner dilute the value of the evidence. It was Devi Prasad who received injury whose dead body was found next day morning. The statement that it was Devraj who gave three lathi blows obviously referred to lathi blow to Devi Prasad-deceased.

Thus, we conclude that in spite of witnesses PW.13 and PW.16 having been declared as hostile witnesses their evidence that Devraj assaulted Devi Prasad is unshaken and has rightly been relied by the courts below in recording conviction.

21. As noted above Ratan Guruji was pillion rider along with deceased- Devi Prasad and after they proceeded from the house of Devi Prasad on the motorcycle after some distance near pakkar tree they were stopped by five persons. The vehicle was got stopped by those persons they asked as to who is sitting behind, upon this Devi Prasad said that Ratan Guruji of Chandra was sitting. Then Dinda came towards them having a torch with him. Ratan Guruji stated that one person came from behind with geda and shouted “maro, kya dekh rahe ho” and he assaulted Devi Prasad with geda. Devi Prasad on being assaulted ran towards back side and shouted “bachao bachao”. Thus, statement of Ratan Guruji of assault on Devi Prasad when read with the evidence of PW.13 and PW.16 clearly indicates that it was Devraj who had assaulted Devi Prasad which caused death of the deceased.

22. Learned counsel for the appellant has further contended that injury given by danda cannot be said to be sufficient for death of a person and there is no evidence to indicate that the injury caused by Devraj was sufficient for death. He further submitted that Dr. K.P. Vishwakarma-PW.20, in his statement stated that injuries which were found in the person of Devi Prasad-deceased could have been received in an accident. We have gone through the statement of Dr. K.P. Vishwakarma-PW.20 and the postmortem report. The Doctor-PW.20 in his statement after referring to the injuries received by the deceased has clearly stated that only some of the injuries could have been caused by accident.

23. Dr. K.P. Vishwakarma in his statement has stated that the cause of death is head injury caused to the deceased. Thus, there is Doctor's evidence that all the injuries which were found on the person of the deceased could not have been caused due to the accident that is falling below Rakhet Pulia.

24. There being clear evidence of stopping of the motorcycle near pakkar tree and ensuing quarrel and assault on Devraj the theory of accident as sought to be suggested by the learned counsel for the appellant is wholly unreliable. The details in the Panchnama of the dead body and position of the dead body as stated by Anup Shai Rajwade, Inspector of Police-PW.11, in his statement completely bely the theory of accident. In the examination-in- chief he stated about the injuries, further stated that in between both the legs, between the thigh one white bottle of one litre having half bottle of liquor was kept and at a distance of 4 ft. the motorcycle was there key of which was put on a stone. He further stated that motorcycle was not damaged since only back light was damaged which indicates that motorcycle was brought and thrown in the water. The manner in which liquor bottle was kept between the thigh of dead body and glass of back light of the motorcycle alone being damaged does not support the theory of accident. Thus, there are more than one reasons for rejecting the theory of accident and there was evidence to prove that the deceased was assaulted and murdered and thereafter body and the motorcycle was brought and put below the Pulia. Both Trial Court and the High Court have referred to and relied on sufficient evidence for convicting the accused. We, ourselves after going through the evidence relied on by the courts below for convicting the accused, are of the opinion that the prosecution has successfully proved beyond reasonable

doubt that it was accused who had caused homicidal death of the deceased.

25. We are also conscious that the jurisdiction which this Court exercises under Article 136 has its own self-imposed restrictions. It is sufficient to refer to this Court's decision reported in *Ganga Kumar Srivastava v. State of Bihar*, (2005) 6 SCC 211, where this Court after referring to various decisions has laid down certain principles for exercising the power of this Court under Article 136. It is useful to refer to paragraph 10 of the judgment, which is :

“10. From the aforesaid series of decisions of this Court on the exercise of power of the Supreme Court under Article 136 of the Constitution following principles emerge:

(i) The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances.

(ii) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has acted perversely or otherwise improperly.

(iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.

(iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.

(v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.”

26. To the similar effect, another judgment of this Court reported in *Alamelu v. State*, (2011) 2 SCC 385, where this Court held that even though the powers of this Court under Article 136 are very wide, but in criminal appeals, this Court would not interfere with the concurrent findings of facts, save in very exceptional cases. Following was laid down in paragraph 19:

“19. We have considered the submissions made by the learned counsel for the parties. Before we embark upon an examination of the evidence, we may point out that even though the powers of this Court under Article 136 of the Constitution are very wide, but in criminal appeals, this Court would not interfere with the concurrent findings of facts, save in very exceptional cases. In an appeal under Article 136 of the Constitution, this Court does not normally appreciate the evidence by itself and go into the question of credibility of witnesses. The assessment of the evidence by the High Court is accepted as final except where the conclusions recorded by the High Court are manifestly perverse and unsupportable by the evidence on record. Keeping

in view the aforesaid principles, we have examined the findings recorded by the courts below.”

27. On the principles as laid down by this Court for exercise of jurisdiction under Article 136, we are satisfied that the findings recorded by the courts below from the evidence on record fully justify the conviction of accused. The findings recorded by the courts below can neither be said to be perverse nor contain any such illegality which may render the findings not reliable.

28. We thus do not find any merit in this appeal. The appeal is dismissed.

.....J. (S.A. BOBDE)J. (ASHOK BHUSHAN) NEW DELHI, JULY 25, 2016.