Balwan Singh vs The State Of Chhattisgarh on 6 August, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3714, 2019 (7) SCC 781, AIRONLINE 2019 SC 789, (2019) 10 SCALE 415, (2019) 128 CUT LT 905, (2019) 3 ALLCRILR 908, (2019) 3 CRIMES 217, 2019 (3) SCC (CRI) 392, (2019) 3 UC 1503, (2019) 4 MAD LJ(CRI) 421, (2019) 76 OCR 305, 2019 CALCRILR 4 69, AIR 2019 SC(CRI) 1305, ILR 2019 SC 1900

Author: Mohan M. Shantanagoudar

Bench: Ajay Rastogi, Mohan M. Shantanagoudar, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 727 of 2015

Balwan Singh …Appellant

Versus

The State of Chhattisgarh and Anr. …Respondent

WITH

CRIMINAL APPEAL NO. 1197 of 2016

Latel Ram & Anr. …Appellants

Versus

State of Chhattisgarh …Respondent

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

These appeals arise out of the judgment dated 10.02.2015 of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 178 of 2011 and Criminal Appeal No. 179 of 2011 confirming the

judgment and order of conviction dated 20.01.2011 passed by the Additional Sessions Judge, Fast Track Court, Pendra Road, District Bilaspur in S.T. No. 57 of 2010 convicting the appellants and other accused for offences punishable under Sections 148 and 302/149 of the Indian Penal Code (for short, 'IPC') and sentencing them accordingly.

2. The case of the prosecution is that on account of previous enmity with Pitambar Singh (since deceased), the Accused No. 1 – Balwan Singh (appellant in Criminal Appeal No. 727 of 2015), on 22nd January, 2007, at evening time, was talking with the other accused regarding preparation to kill Pitambar Singh. Their conversation was heard by Sunderlal Rathore @ Sunder Singh Rathore (PW-11) and Shatrughan Singh (PW-12), who were passing through the same place. Further, it was the case of the prosecution that all the accused, armed with deadly weapons, went towards the field of one Bhagwat Seth and committed the murder of Pitambar Singh. PW-9 and PW-16, who were near the scene of the occurrence, rushed to the spot after hearing the cries of the injured, and saw all the accused assaulting the deceased with lathis and tabbal (an agriculture implement made up of iron). It is stated by PW-9 and PW-16 that the tabbal was held by the Accused No. 4, namely, Ashok Singh. The injured died instantaneously and the accused fled away.

The dead body was seen by one Drupad Singh (PW-1) at 7 o'clock the next morning, who in turn informed Nar Singh Rajput (PW-17), the informant. Thereafter, Drupad Singh and Nar Singh Rajput together went to the place where the dead body was lying, and saw that Pitambar Singh was murdered. The deceased was the uncle of the informant.

3. The Trial Court as well as the First Appellate Court, believing the testimonies of PW-9 and PW-16 who were the eye witnesses of the incident, and the testimonies of PW-11 and PW-12 who deposed about the conspiracy to commit the murder of the deceased, convicted the accused for the offences punishable under Sections 148 and 302/149 IPC. It is pertinent to state that although charge was also framed under Section 120-B IPC, the accused were acquitted in respect of the said offence.

4. Shri Sanjay Hegde, learned senior counsel appearing for the appellant Balwan Singh, and Shri Rajeev Kumar Bansal, learned counsel appearing for appellants Latel Ram and Santu @ Santram, drew the attention of the Court to the relevant portions of the depositions of the important witnesses, and submitted that the prosecution had planted the eye witnesses, namely, PW-9 and PW-16 for the purpose of prosecuting the accused, though these witnesses were not present near the scene of occurrence. They contended that the statements of these alleged eye witnesses were recorded about eight days after the incident in question, though they were very much present in the village or though the police knew that these witnesses were the alleged eye witnesses of the incident. According to the learned counsel for the appellants, the evidence of PW-11 and PW-12 is also vague, cryptic, and unreliable inasmuch as the courts below have acquitted the accused for the offence under Section 120-B IPC.

5. Per contra, the learned counsel appearing for the State argued in support of the judgments of the courts below.

6. We find from the records that though the incident took place on 22nd January, 2007, the statements of the alleged eye witnesses, namely, PW□9 and PW□16, were recorded after eight days of the incident. The prosecution has tried to explain the delay in recording the statement of the eye witnesses by contending that they were scared of the accused, particularly Balwan Singh who was the village Sarpanch (Panchayat Chairman); the accused Balwan Singh was stated to be powerful and influential; only after some of the accused were arrested, these witnesses came to the village and gave their statements to the police during the course of investigation; till such time, the eye witnesses PW□9 and PW□16 did not come to the village at all and were staying in different villages in their relatives' houses.

We are conscious of the fact that mere delay in recording of the statement of the eye witness by the investigating officer cannot ipso facto raise suspicion in the mind of the Court about the veracity of the prosecution case, more particularly, about the veracity of the eye witnesses. In the normal course, this Court would have accepted the explanation offered by the witnesses or the prosecution for not recording the statements at an earlier point in time, but the facts in this case are different inasmuch as it is admitted by the prosecution witnesses, more particularly by the investigating officer, that PW□9 was very much present in the village. PW□2 and the investigating officer, during the course of the investigation, had seen PW□9, being the Patel (Patwari) of the village. PW□2 had admitted in the cross□examination that he had seen PW□9 at the place of the incident when the police had come to the village after the registration of the First Information Report. PW□2 is none else but the younger brother of PW□9, and they were residing separately in one house. Thus, the evidence of PW□2 cannot be disbelieved insofar as it relates to the presence of PW□9 in the village, and on the spot when the police had started investigation. Furthermore, the investigating officer also testified that immediately after reaching the village Semaria, where the incident took place, he had called the Patel (PW□9). He categorically admitted that he called PW□9 to the place of the occurrence and that he (PW□9) was present during the course of the investigation. PW□9, being the Patel of the village, could not have kept the fact about the incident or about the complicity of the accused from the investigating officer at the first instance, had he really been an eye witness to the incident. The investigating officer had proceeded to depose that, on his own, he had recorded the statement of PW□9 on 30.01.2007, which means that PW□9 had not informed the investigating officer that he was an eye witness to the incident. The investigating officer, on his own accord, had recorded the statement of PW□9. It is thus clear that the investigating officer knew very well, on the first day itself, that PW□9 was an eye witness. There was no reason as to why the investigating officer did not record the statement of the so□called eye witness at the earliest point of time, more particularly when, at that point in time, the investigating officer did not have any clue about the murderers.

PW□9 and PW□16 are close friends, and on the date of the incident, had gone together to see Panthi dance in the village during night, and at that point in time, both of them heard the cries of the deceased and rushed to the spot and saw the accused committing the murder of the deceased. It is also the evidence of PW□9 and PW□16 that the accused saw these witnesses at the time of the occurrence of the murder inasmuch as these witnesses told all the accused not to beat/assault the deceased. On hearing such utterance of these witnesses, the accused allegedly tried to chase them, but they fled away from the scene. If this were true, then PW□9, who was present at the spot during

the course of the investigation on the first day itself, would not have left the police uninformed about the presence of PW-16 also. It is also relevant to note that PW-16 is from a different village, namely, Kusumkonda, which is stated to be 75 K.M. away from the place of incident, and on the date of the incident he had come to the village Semaria where the incident had taken place. The place of work of PW-16 is Takatpur, which is stated to be 70 K.M. away from Semaria village. It is curious to note that PW-9 and PW-16 met on the date of incident after a gap of about 15 years, and thereafter went to watch the dance performance. In our considered opinion, the story, as put forth by the prosecution, that PW-9 did not tell the investigating officer about the presence of PW-16, is not believable. According to PW-16, he came to the village Semaria after eight days, i.e. after the arrest of a few accused, and gave the statement to the police.

7. As per the case of the prosecution, Balwan Singh is a powerful and influential person and the eye witnesses were scared of him. It is relevant to note that even at the time of the recording of the statements of PW-9 and PW-16 after eight days of the incident, Balwan Singh was not arrested. He was arrested after about two months from the recording of the statements of these witnesses. It is relevant to note that these witnesses were not scared of other accused who were arrested. Be that as it may, we find that the whole story of the prosecution about the presence of PW-9 and PW-16 on the spot at the time of incident appears to be artificial and concocted.

8. The prosecution also relies upon the evidence relating to recovery of sticks and tabbal which were bloodstained. Such evidence may not be helpful to the prosecution in this case inasmuch as there is no evidence to show that these articles were stained with human blood, and more particularly with blood of the same blood group as that of the deceased. As per the Forensic Science Laboratory Report, the blood stains were disintegrated, and their origin could not be determined.

In Sattatiya v. State of Maharashtra, (2008) 3 SCC 210, one of the crucial factors that had led this Court to reverse the conviction was that the bloodstains on the items seized in the recovery could not be linked with the blood of the deceased. This factor was treated as a serious lacuna in the case of the prosecution.

Similarly, in Shantabai and Ors. v. State of Maharashtra, (2008) 16 SCC 354, the bloodstains on some of the clothes seized from the accused in recovery belonged to a different blood group from that of the blood group of bloodstains found on the clothes of the deceased and on the sample of soil, axe, stones etc. which were taken from the spot by the investigating officer. As a result of this mismatch, it was held that this circumstance was not proved against the accused.

It is also important to note the following observations made by a Constitution Bench of this Court in Raghav Prapanna Tripathi & Ors. v. State of U.P., AIR (1963) SC 74:

> "21. In this connection, reference may also be made to circumstances 9 and 10, relating to the recovery of the bloodstained earth from the house. The bloodstained earth has not been proved to be stained with human blood. Again, we are of opinion that it would be far-fetched to conclude from the mere presence of bloodstained earth that earth was stained with human blood and that the human blood was of

> Kamla and Madhusudhan. These circumstances have, therefore, no evidentiary value." (Emphasis supplied) Therefore, the five-judge bench had ruled that in that case the prosecution needed to prove that the bloodstains found on the earth or the weapons were of a human origin and were of the same blood group as that of the deceased.

9. We are also conscious of the fact that, at times, it may be very difficult for the serologist to detect the origin of the blood due to the disintegration of the serum, or insufficiency of blood-stains, or haematological changes etc. In such situations, the Court, using its judicious mind, may deny the benefit of doubt to the accused, depending on the facts and circumstances of each case, if other evidence of the prosecution is credible and if reasonable doubt does not arise in the mind of the Court about the investigation.

Thus, in the case of R. Shaji v. State of Kerala, (2013) 14 SCC 266, this Court had observed:

> "31. A failure by the serologist to detect the origin of the blood due to disintegration of the serum does not mean that the blood stuck on the axe could not have been human blood at all. Sometimes it is possible, either because the stain is insufficient in itself, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question. However, in such a case, unless the doubt is of a reasonable dimension which a judicially conscientious mind may entertain with some objectivity, no benefit can be claimed by the accused in this regard. Once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood group(s) loses significance." Similar observations were made by this Court in the case of Gura Singh v. State of Rajasthan, (2001) 2 SCC 205, wherein it was observed that it was not possible to accept the submission made on behalf of the accused that in the absence of the report regarding the origin of the blood, the accused could not have been convicted, inasmuch as it was only because of the lapse of time that blood could not be classified successfully.
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> In the case of Jagroop Singh v. State of Punjab, (2012) 11 SCC 768, this Court had ruled that as the recovery was made pursuant to a disclosure statement made by the accused, and the serological report had found that the blood was of human origin, the non-determination of the blood group had lost its significance.

In the case of State of Rajasthan v. Teja Ram and Others, (1999) 3 SCC 507, the Court had observed that the failure of the serologist to detect the origin of the blood, due to disintegration of the serum, did not mean that the blood stuck on the weapon could not have been human blood at all. In this context, it was noted that it could not be said that in all cases where there was a failure in detecting the origin of blood, the circumstance arising from recovery of the weapon would stand relegated to disutility. It was thus observed that unless the doubt was of a reasonable dimension which a judicially conscientious mind entertained with some objectivity, no benefit could be claimed by the accused.

10. However, we cannot lose sight of the fact that the accused would be in a disadvantageous position in case if the aforementioned dictum laid down by this Court in the cases of R. Shaji (supra), Gura Singh (supra), Jagroop Singh (supra) and Teja Ram (supra) relating to the blood-stains is applied in each and every case. Non-confirmation of blood-group or origin of the blood may assume importance in cases where the accused pleads a defence or alleges mala fides on the part of the prosecution, or accuses the prosecution of fabricating the evidence to wrongly implicate him in the commission of the crime.

11. In the case of John Pandian v. State Represented by Inspector of Police, Tamil Nadu, (2010) 14 SCC 129, this Court, on facts, observed that the evidence of recovery of weapons was credible. The Forensic Science Report (FSL) report had disclosed that the blood was of human origin. The Court proceeded to conclude that since the evidence of recovery of weapon was proved to the satisfaction of the Court, it was sufficient that the prosecution had proved that the bloodstains were of human origin, even though the blood group could not be ascertained.

12. The cases discussed above highlight the burden that the prosecution would ordinarily have to discharge, depending on the other facts and circumstances of the case, for the evidence relating to recovery to be considered against the accused. At the same time, as mentioned above, we are conscious of the fact that it may not always be possible to inextricably link the bloodstains on the items seized in recovery to the blood of the deceased, due to the possibility of disintegration of bloodstains on account of the time-lapse in carrying out the recovery. For this reason, in Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127, where one of us (Mohan M. Shantanagoudar J.) had the occasion to author the judgment, this Court, relying on Teja Ram (supra), had held that the failure to determine the blood group of the bloodstains collected from the scene of offence would not prove fatal to the case of the prosecution. In Prabhu Dayal case (supra), although the FSL report could not determine the blood group of the bloodstains on account of disintegration, the report clearly disclosed that the bloodstains were of human origin, and the chain of circumstantial evidence was completed by the testimonies of the other witnesses as well as the reports submitted by the Ballistic Expert and the Forensic Science Laboratory regarding the weapon used to commit murder.

13. From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The Court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match.

14. In the instant case, then, we could have placed some reliance on the recovery, had the prosecution at least proved that the blood was of human origin. As observed supra, while discussing the evidence of PWs 9 and 16, the prosecution has tried to concoct the case from stage to stage. Hence, in the absence of positive material indicating that the stained blood was of human origin and of the same blood group as that of the accused, it would be difficult for the Court to rely upon the aspect of recovery of the weapons and tabbal, and such recovery does not help the case of the

prosecution.

15. What remains is the evidence of PW□1 and PW□2, who have deposed about the preparation of conspiracy of the accused to commit the murder of the deceased. As mentioned earlier, all the accused were acquitted for the offence of conspiracy, which means that there are concurrent findings of both the courts below that the prosecution has failed to prove the aspect of conspiracy of the accused to commit the murder of the deceased. Once the conspiracy to commit the murder of the deceased is absent, there is no material on record to show as to why the accused had gathered in the house of Balwan Singh.

16. In view of the above material which is shaky, suspicion arises in the mind of the Court about the genesis of the case of the prosecution. In our considered opinion, the Trial Court and the High Court were not justified in relying upon the evidence of the eye witnesses as well as of PW□1 and PW□2. Similarly, their reliance on the aspect of recovery was also not justified, for the reasons mentioned earlier.

Accordingly, the appeals are allowed. The impugned judgments of the Trial Court and the High Court are set aside. The appellants are directed to be released forthwith, if not required in any other case.

We find that the appellants in these appeals are Accused 1, Accused 2 and Accused 7. Other accused in S.T. No. 57 of 2010 have not preferred an appeal. Since in respect of the appellants herein we find that the prosecution has not proved the charges beyond reasonable doubt, the benefit of this judgment should also enure to the other accused who were convicted in S.T. No. 57 of 2010. Accordingly, the other accused in S.T. No. 57 of 2010, who have not preferred appeals before this Court, shall also be released forthwith, if not required in any other case.

.....J. (N.V. RAMANA) .....J. (MOHAN M. SHANTANAGOUDAR) .....J. (AJAY RASTOGI) NEW DELHI AUGUST 06, 2019