Mangilal And Ors. vs State Of Madhya Pradesh on 26 April, 1990

Equivalent citations: 1990(3)CRIMES395(SC), JT1990(2)SC198, 1990SUPP(1)SCC529, AIRONLINE 1990 SC 234

Author: S.R. Pandian

Bench: S.R. Pandian

JUDGMENT

K. Jayachandra Reddy, J.

1. This appeal pursuant to the special leave granted by this Court, has been filed by nine accused against their conviction under Section 302 read with Section 149 I.P.C. by the Sessions Court and confirmed by the High Court of Madhya Pradesh. All of them are convicted under Section 302 read with Section 149 I.P.C. and Section 148 I.P.C. and sentenced to imprisonment for life and rigorous imprisonment for two years respectively. Among them, the first appellant Mangilal has also been convicted under Sections 25 and 27 of the Arms Act and sentenced to rigorous imprisonment for six months and one year respectively. The sentences are directed to run concurrently.

2. The case which rests mainly on the testimony of sole eye- witness is as follows. On 12.5.79 the two deceased Maththu, Raisigh and Miththu's wife Anubai, P.W.I were going to Village Junajhira. They got down from the bus at Balkua and were going to Junajhira on foot. When they were passing in front of the tapri of the appellant Mangilal, all the appellants armed with weapons came outside the tapri of Mangilal and the appellants formed an unlawful assembly. Mangilal was armed with a pistol and others were armed with sharp-edged weapons like bow, arrows, axe and Denga etc. The appellants surrounded the two deceased. Accused No. 9 instigated accused No. 1 to fire a shot. Thereupon accused No.l fired his pistol and the other appellants assaulted deceased No.2 Raisingh. Raisingh and Miththu, the two deceased, died on the spot. P.W. 1 managed to escape and went to the house of Raisingh at Village Balkua. She told her sister-in-law and mother-in-law about the incident. When she was returning to the place of occurrence P.W.4 Narsingh told her that Maththu and Raisingh were dead and it was futile to go there. P.W. 1 instead of going to the dead bodies, returned and went to the police station and gave a report Ex. P.1 The case was registered, FIR was issued, the investigation was taken up, post-mortem was conducted on the two dead bodies and the accused were arrested and after completion of the investigation, the charge-sheet was laid. The trial court relying on the sole testimony of the eye witness convicted the appellants. The appellate Court confirmed the same but acquitted accused No. 4 Lal Singh who is aged about 15 years and convicted all the others. In this appeal the learned Counsel submits that the case rests entirely on the sole testimony of P.W. 1, whose conduct is highly unnatural and her evidence is in conflict with the medical evidence. We do see considerable, force in this submission.P.W.l deposed that she, her

husband Miththu and Raisingh were going and when they reached the tapri of appellant No. 1 and were passing in front of it all the appellant emerged. She identified all the ten and that among them accused No.9 exhorted accused No.l to kill. Whereupon when surrounded she tried to run away but she was not stopped. At any rate she stopped and witnessed the occurrence. On being exhorted by accused No.9, accused No.l fired the gun and according to her one bullet hit deceased Raisingh and the other deceased Miththu, her husband. Thereafter some of the appellants were pushing the deceased and some of them were assaulting.She went to village Balkua and when she was returning to the place of occurrence, she met P.W.4 Narsingh who told her that the deceased are already dead. On hearing this, instead of going to the scene of occurrence, she went to the police station and lodged a report. This is all the version given by her. She is cross-examined at length and she admitted that there was enmity between the appellants and her family and litigations were going on.

3. It is well-settled that the testimony of the sole witness should be wholly reliable. If we test her evidence in the light of the medical evidence, we find it to be highly inconsistent. The Doctor, P.W.2, who conducted the post-mortem on the dead body of Raisingh, found one gun-shot wound oval in shape with charred margin and there is no other injury. On Miththu, the same Doctor conducted the post-mortem and he found four clean incised wounds. There is no fire-arm injury at all on him. Yet P.W.I deposed that both of them had received gun-shots injuries and fell down and she gave an omnibus version that all the other accused surrounded both the deceased and inflicted injuries. We do not find any other injuries on the dead body of Raisingh and even on the other deceased Miththu we find only four incised wounds and no other injury. The sole eye-witness P.W. 1 deposed that the ten accused were armed with various types of weapons but the four clean incised injuries found on deceased Miththu could have been caused only by one kind of weapon. She has implicated as many as 10 accused whose presence is highly doubtful. Apart from that her conduct also is highly unnatural. She deposed that she was allowed to run away but she did not run away. Let us assume that being the kith and kin of the deceased persons she waited but later after the two deceased fell down, according to her, she went to the village and again came back but on the way itself she stopped away on being informed by P.W.4 that there is no use of going to the place where the two deceased persons are lying because they are already dead , On this information she did not even bother to verify but she went back and gave a report. This conduct.in our view, appears to be highly unnatural apart from the other major infirmities. In Vadivelu Thevar v. The State of Madras it is held that where the case rests on the testimony of the sole eye-witness, the same must be wholly reliable. In this case except the evidence of P.W.I, an interested witness, we do not find any other evidence which atleast gives some assurance. On this kind of evidence, we think, it is highly dangerous to convict as many as nine persons when there are strong circumstances to show that so may of them would not have participated. In this case there is no way of separating the grain from the chaff inasmuch as even the overt act attributed to appellant No. 1 Mangilal also becomes doubtful in the light of the medical evidence.In the result the conviction and sentence passed against all the appellants are set aside and the appeal is allowed.