

A SATYA RAJ SINGH
v.
STATE OF MADHYA PRADESH
(Criminal Appeal No. 1314 of 2013)
B JANUARY 28, 2019
[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

- C *Penal Code, 1860 – s.302, 34 – Three accused persons including the appellant were prosecuted for committing murder of one ‘B’ – Appellant convicted u/s.302/34, IPC while the other two accused were acquitted – High Court dismissed the appeal filed by appellant – Held: Evidence of prosecution witnesses proved the prosecution case beyond reasonable doubt – Evidence of eye-witnesses PW-1 and PW-3 proved that the appellant assaulted the deceased on his neck and its nearby with Gupti – PW-5, the doctor, also confirmed the injuries, its nature and the area where*
- D *the injuries were sustained by the deceased – There is no inconsistency or contradiction between the witnesses to disbelieve their evidence on any material issue – Their testimony being natural and consistent and without any contradiction as against the version stated in FIR, deserves to be believed – It is not the function of Supreme Court to re-assess evidence and an argument on a point of fact which did not prevail with the Courts below – Same argument, which was unsuccessfully urged before the High Court, was again pressed in service before Supreme Court by the appellant to question the legality and correctness of the order of conviction and sentence but having appreciated the submissions, no merit is found in any of*
- E *them – High Court was right in repelling these submissions and upholding the appellant’s conviction – Constitution of India – Art.136 .*

Dismissing the appeal, the Court

- G **HELD:** 1.1 **It is not the function of this Court to re-assess evidence and an argument on a point of fact which did not prevail with the Courts below cannot avail the appellants in this Court.**
[Para 20][545-D]

1.2 **The same argument, which was unsuccessfully urged before the High Court, was again pressed in service before this**

Court by the appellant to question the legality and correctness of the order of conviction and sentence but having appreciated the submissions, no merit is found in any of them. The High Court was right in repelling these submissions and upholding the appellant's conviction. [Para 24][546-A-B]

1.3 The evidence of PW-1-, PW-3, PW-2, PW-6 and PW-4 proved the prosecution case beyond reasonable doubt. So far as the evidence of PW-1 and PW-3 are concerned, they actually saw the incident and stated that the appellant assaulted the deceased on his neck and its nearby with Gupti. They also deposed that both of them chased the appellant and Santosh on seeing the assault made by the appellant. PW-4 (in whose house the deceased was brought in injured condition soon after the incident and where he died) also saw the condition of the deceased and the nature of injuries sustained by the deceased. [Paras 25, 26 and 27][246-B-D]

1.4 PW-6, being the sister of deceased, rushed to the house of PW-4 on being informed of the incident where 'B' was lying in an injured condition. She deposed that on seeing her 'B' hugged her and told that the appellant had assaulted him. After some time, 'B' succumbed to his injuries. The evidence of the witnesses has proved beyond reasonable doubt that assault on the deceased was made by the appellant on his neck and nearby area. PW-5, Dr. 'RS' also confirmed the injuries, its nature and the area where the injuries were sustained by the deceased in his post-mortem report. No inconsistency or contradictory version between these witnesses has been noticed which may persuade one to disbelieve their evidence on any material issue. Their testimony being natural and consistent and without any contradiction as against the version stated in FIR, the same deserves to be believed. As rightly held by the High Court, some minor contradictions here and there without affecting the substance of their statements could not be made basis to reject their entire testimony. The incident in question occurred around 7.30 p.m. on 19.09.1999, whereas the FIR was lodged by PW-1 on the next day, i.e., 20.09.1999 at around 9 a.m. The Police Station was around 25 KM away from the place of occurrence. Since 'B' died after few hours of the incident and by that time it was dark night, it was, therefore, not

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- A possible for the complainant to go to the Police Station which was around 25 KM away from the place of occurrence immediately in the night to lodge the report/FIR. In these circumstances, if PW-1 left for lodging report/FIR on the next day morning and lodged the report/FIR around 9.30 a.m. it cannot be said that there was delay in lodging the report/FIR. There is no good ground to interfere with the reasoning and the conclusion arrived at by the two Courts below which rightly held the appellant guilty for commission of the offence in question. [Paras 28-31, 33-35][546-E-H; 547-A, C-E]
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C *Lachhman Singh and others v. State AIR 1952 SC 167:*
 [1952] SCR 839 – referred to

Case Law Reference

[1952] SCR 839	referred to	Para 20
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- CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
 D No. 1314 of 2013.

From the Judgment and Order dated 03.09.2009 by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 2464 of 2000.

E Mrs. Laxmi Arvind (SCLSC), Rajesh Kumar Singh, Advs. for the Appellant.

F Ms. Shashi Juneja, Ms. Swarupama Chaturvedi, Advs. for the Respondent.

The Judgment of the Court was delivered by

- G **ABHAY MANOHAR SAPRE, J.** 1. This appeal is directed against the final judgment and order dated 03.09.2009 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 2464 of 2000 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein and upheld the judgment dated 30.08.2000 passed by the Additional Sessions Judge, Katni in Sessions Trial No.690/1999 by which the appellant was found guilty of the offence punishable under Section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and sentenced to undergo life imprisonment and a fine of Rs.1000/-, in default of payment of fine, to undergo further rigorous imprisonment for three months.

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2. In order to appreciate the issues involved in this appeal, relevant A facts need mention in brief *infra*.

3. Three accused persons, namely, Satya Raj Singh (appellant herein), Santosh and Argent *alias* Prabhu Dayal were prosecuted for committing murder of one person called - Bhaiya *alias* Narendra under Section 302/34 IPC. B

4. The Additional Sessions Judge, Katna by his judgment/order dated 30.08.2000 found the appellant-Satya Raj Singh guilty for commission of murder of Bhaiya *alias* Narendra and accordingly convicted him under Section 302/34 IPC and sentenced him to undergo life imprisonment. So far as other two accused namely, Santosh and Urgent *alias* Prabhu Dayal are concerned, both were acquitted of the charge. C

5. The appellant – Satya Raj Singh felt aggrieved and filed criminal appeal in the High Court of Madhya Pradesh at Jabalpur. So far as the State is concerned, no appeal was filed against that part of the order of the Additional Sessions Judge by which two other accused, namely, Santosh and Urgent *alias* Prabhu Dayal were acquitted. In this way, the order of acquittal of Santosh and Argent *alias* Prabhu Dayal became final. D

6. By impugned order, the High Court dismissed the appeal filed by Satya Raj Singh, which has given rise to filing of the present appeal by way of special leave in this Court only by the appellant-Satya Raj Singh. E

7. The case set up by the prosecution against the accused persons and which was proved against the appellant is as follows. F

8. The incident occurred on 19.09.1999 around 7 p.m. in village Imaliya. Four persons namely, Bhaiya *alias* Narendra - (deceased), Ravindra Singh (PW-1), Jhallu *alias* Mahendra (PW-3) and Argent *alias* Prabhu Dayal were sitting on the platform (small place in front of house) of one - Uli Singh. They were chatting with each other. G

9. At that time, the appellant along with Santosh came there and expressed his wish to talk to Argent *alias* Prabhu Dayal. The trio then went near to the house of one Abhay Raj Singh *alias* Dadlu.

10. Argent *alias* Prabhu Dayal then came back and called Bhaiya *alias* Narendra (deceased) for two minutes to have some talk. Bhaiya, H

A however, replied that he has to go to his house to serve cow. Argent *alias* Prabhu Dayal then said to Bhaiya that there is some important urgent matter, which he has to talk with him and, therefore, he should come with him.

11. Bhaiya accordingly went to participate in the talk with Argent B *alias* Prabhu Dayal. At that time, Jhallu, who was still sitting on the platform, told Ravindra Singh that they had to go to the market to purchase some items. Ravindra Singh and Jhallu accordingly left for the market. When they were proceeding towards the market and reached near the house of Abhay Raj Singh, they saw Satya Raj Singh (appellant herein) assaulting Bhaiya *alias* Narendra with Gupti (a kind of knife) on his neck and its nearby whereas Argent *alias* Prabhu Dayal and Santosh were standing near to him.

12. On seeing them, Satya Raj Singh (appellant herein) and Santosh both ran away from the spot. Jhallu seeing the incident ran towards Bhaiya *alias* Narendra (deceased) whereas Ravindra ran behind Satya D Raj Singh. After covering some distance, both Satya Raj Singh and Santosh turned back and threatened Jhallu and Ravindra not to chase them else they would assault them also.

13. Out of fear both gave up their chase and returned back. Injured E Bhaiya was then taken to the house of Abhay Raj Singh because the incident had occurred near to his house.

14. Thereafter on next day morning, i.e., 20.09.1999, Ravindra F (PW-1) lodged an FIR at Police Station Badwara, District Katni on the basis of which crime case No.108/1999 for commission of offence punishable under Section 302/34 IPC was registered. The appellant herein-Satya Raj Singh, Santosh and Argent *alias* Prabhu Dayal were apprehended and put to trial for commission of the aforesaid offence. Investigation was carried out. Statements of several persons were recorded. Seizure of items was also made. Post-mortem report was obtained and then charge-sheet was filed. The case was committed to G the Sessions Court for trial.

15. The prosecution, in support of its case, examined as many as 16 witnesses. The statements of accused were also recorded under Section 313 of the Criminal Procedure Code, 1973 (for short “ the Cr.P.C.”) proceedings.

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16. As mentioned above, the Additional Sessions Judge by his judgment/order dated 30.08.2000 convicted the appellant – Satya Raj Singh for commission of the offence punishable under Section 302/34 IPC and awarded him life imprisonment but acquitted Santosh and Argent *alias* Prabhu Dayal of the charges.

17. The appellant felt aggrieved and filed appeal in the High Court of Madhya Pradesh against his conviction and sentence. By impugned order, the High Court dismissed the appeal and upheld the conviction and sentence awarded to the appellant giving rise to filing of the present appeal by the accused - Satya Raj Singh in this Court.

18. The question, which arises for consideration in this appeal, is whether both the Courts below (Sessions Court and the High Court) were justified in convicting the appellant for commission of the offence of murder of deceased - Bhaiya *alias* Narendra.

19. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal.

20. At the outset, we may take note of one legal principle which consistently reiterated by this Court since inception that it is not the function of this Court to re-assess evidence and an argument on a point of fact which did not prevail with the Courts below cannot avail the appellants in this Court (*see* observation of the learned Judge Saiyid Fazl Ali, J. while speaking for the Bench in **Lachhman Singh and others vs. State**, AIR 1952 SC 167).

21. Yet, we perused the evidence adduced by the prosecution and also the judgments of the two Courts below with a view to find out as to whether both the Courts were justified in convicting the appellant for commission of the offence in question.

22. Before the High Court, the appellant (accused Satya Raj Singh) had assailed the judgment/order of the Additional Sessions Judge on two grounds.

23. One was that the Additional Sessions Judge erred in believing the testimony of those witnesses who were cited by the prosecution as eye-witnesses to the incident and second since the FIR was lodged by the complainant (PW-1) very late, therefore, the entire case of the prosecution becomes doubtful and weak *qua* the appellant and lastly, on appreciation of the evidence of the so-called eye-witnesses, no case is made out by the prosecution against the appellant.

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- A 24. The same argument, which was unsuccessfully urged before the High Court, was again pressed in service before this Court by the appellant to question the legality and correctness of the order of conviction and sentence but having appreciated the submissions, we find no merit in any of them. In our view, the High Court was right in repelling these submissions and upholding the appellant's conviction.
- B 25. The evidence of PW-1-Ravindra Singh, Jhallu *alias* Mahendra (PW-3), Ram Shankar (PW-2), Gitabai (PW-6) and Abhay Raj (PW-4) proved the prosecution case beyond reasonable doubt.
- C 26. So far as the evidence of PW-1 and PW-3 are concerned, they actually saw the incident and stated that the appellant assaulted the deceased on his neck and its nearby with Gupti. They also deposed that both of them chased the appellant and Santosh on seeing the assault made by the appellant.
- D 27. So far as the evidence of PW-4 (Abhay Raj) is concerned, he was the person in whose house the deceased was brought in injured condition soon after the incident and where he died. PW-4 also saw the condition of the deceased and the nature of injuries sustained by the deceased.
- E 28. So far as the evidence of PW-6 is concerned, she being the sister of deceased rushed to the house of Abhay Raj on being informed of the incident where Bhaiya *alias* Narendra was lying in an injured condition. She deposed that on seeing her Bhaiya hugged her and told that the appellant had assaulted him. After some time, Bhaiya succumbed to his injuries.
- F 29. Reading the evidence of the abovementioned witnesses has proved beyond reasonable doubt that assault on Bhaiya *alias* Narendra - the deceased was made by the appellant on his neck and nearby area. PW-5, Dr. R. Sidha, also confirmed the injuries, its nature and the area where the injuries were sustained by the deceased in his post-mortem report.
- G 30. We have not been able to notice any inconsistent or contradictory version between these witnesses, which may persuade us to disbelieve their evidence on any material issue. In our view, their testimony being natural and consistent and without any contradiction as against the version stated in FIR, the same deserves to be believed.
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31. As rightly held by the High Court, some minor contradictions here and there without affecting the substance of their statements could not be made basis to reject their entire testimony. We, therefore, agree with the reasoning of the High Court. A

32. So far as the next argument of the learned counsel for the appellant, that since there was delay in filing of FIR, the prosecution case should not be believed, is concerned, it was also rightly repelled by the High Court. B

33. It is not in dispute that the incident in question occurred around 7.30 p.m. on 19.09.1999, whereas the FIR was lodged by PW-1 on the next day, i.e., 20.09.1999 at around 9 a.m. It is also not in dispute that the Police Station was around 25 KM away from the place of occurrence. C

34. In our opinion, since Bhaiya died after few hours of the incident and by that time it was dark night, it was, therefore, not possible for the complainant to go to the Police Station which was around 25 KM away from the place of occurrence immediately in the night to lodge the report/FIR. In these circumstances, if PW-1 left for lodging report/FIR on the next day morning and lodged the report/FIR around 9.30 a.m. it cannot be said that there was delay in lodging the report/FIR. D

35. We, therefore, find no good ground to interfere with the reasoning and the conclusion arrived at by the two Courts below which, in our view, rightly held the appellant guilty for commission of the offence in question. E

36. In view of the foregoing discussion, the appeal is found to be devoid of any merit and is accordingly dismissed. F

Divya Pandey

Appeal dismissed.