

PEER SINGH

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v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal No. 743 of 2012)

APRIL 09, 2019

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[S. A. BOBDE, SANJAY KISHAN KAUL AND
DEEPAK GUPTA, JJ.]

Penal Code, 1860: s.302 r/w s.148 and s.149 – Murder – Fifteen person tried for murder – Prosecution case was that the victim-deceased was returning to his village on his motor cycle and was accompanied by two pillion riders, one of them was PW-8 – When they came near their village, victim-deceased was attacked by large number of persons armed with dharia, swords etc. which resulted in his death – Pillion riders managed to escape and informed the father of the deceased about the incident, who then, along with others, reached the spot – On the way, they met PW5 who informed that he witnessed the incident – Police recorded “Dehati Nalishi” at the spot wherein the appellants were not named – Conviction of 7 persons including appellants – Appeal against conviction – Held: The names of the three appellants were absent in the statement of PW-1 as recorded in court – PW-5 and the three appellants belonged to the same area and appellants were known to PW-5 – Having named the other four of the assailants, there was no reason for not giving names of the other assailants if PW-5 had actually identified them at the place of occurrence – There was no plausible explanation given from the side of prosecution as to why the names of the three accused-appellants were missing both in the “Dehati Nalishi” as well as in the statement of PW-5 recorded under s.161 Cr.P.C. – Further, PW-5 again in court did not say that he had identified the three accused-appellants as the assailants – In view of a grave doubt with regard to the presence of appellants at the place of incidence, appellants are entitled to benefit of doubt and are acquitted.

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Allowing the appeals, the Court

HELD: 1. The “*Dehati Nalishi*” was recorded on the spot itself soon after the occurrence. As per the evidence on record, PW-5 was present at the spot till 4.00 A.M. During this time, the

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- A police was there. It would have been much better if the “*Dehati Nalishi*” had been recorded at the instance of PW-5 who was not only an eye-witness but could even identify some of the accused. Even if this aspect is overlooked, the fact remains that when the statement of PW-5 was recorded under Section 161 Cr.P.C., he did not name the three appellants. When the statement was recorded in court he stated that when the deceased was being attacked, he (deceased) told the pillion riders to go to his house and inform that persons of ‘S’ are beating him. This fact is totally different from what is recorded in the “*Dehati Nalishi*”. [Para 10][553-G-H; 554-A-B]
- B recorded in court he stated that when the deceased was being attacked, he (deceased) told the pillion riders to go to his house and inform that persons of ‘S’ are beating him. This fact is totally different from what is recorded in the “*Dehati Nalishi*”. [Para 10][553-G-H; 554-A-B]
- C 2. There is another discrepancy in the statements of PW-1 and PW-5 made in court. The names of the three appellants were absent even in the statement of PW-1 as recorded in court. PW-5 and the three appellants belong to the same area and PW-5 is known to all the three accused, and when he could name four of
- D the assailants, there is no reason as to why he could not name the other assailants if he had actually identified them at the place of occurrence. There is no plausible explanation given from the side of prosecution as to why the names of these three accused-appellants were missing both in the “*Dehati Nalishi*” as well as in the statement of PW-5 recorded under Section 161 Cr.P.C.
- E Further, PW-5 again in court does not say that he had identified the three accused-appellants as the assailants. Therefore, a grave doubt is raised with regard to the presence of these three accused at the place of incidence. The benefit of doubt obviously has to go to the accused-appellants. They are acquitted.
- F [Para 11, 12][554-B-E]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 743 of 2012.

With

Crl. A. Nos. 746 and 744 of 2012.

- G From the Judgment and Order dated 27.06.2011 of the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal No. 1354 of 2001.

U. R. Lalit, Sushil Kumar Jain, Meenakshi Arora, Sr. Advs. Puneet Jain, Harsh Jain, Abhinav Deshwal, Ms. Ankita Gupta, Shailendra Sharma

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(for Ms. Pratibha Jain), Ehtesham Hashmi, Akbar Siddique, Ms. Pallavi A
Pratap, Advs. for the Appellant.

Vaibhav Srivastava, DAG, Chandan Kumar, Pradyuman Kaistha
(for Mrs. Swarupama Chaturvedi), Advs. for the Respondent.

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

1. All the three appeals are being disposed of by a common judgment since they arise out of one incident and one judgment delivered by the trial court.

2. The facts necessary for deciding this case are that 15 persons were tried for the murder of Babusingh on the night intervening 13/14th September 1992 near Village Kalma, Dewas District, Madhya Pradesh. The trial court acquitted 8 persons and convicted 7 persons. Gajrajsingh, Harisingh, Bhagwansingh @ Bhaggu, Peer Singh, Gulabsingh, Shobharam and Thakursingh were convicted by the trial court for having committed the offence punishable under Section 302 read with Section 149 and 148 of Indian Penal Code (IPC) and all the 7 accused were sentenced to undergo imprisonment for life.

3. Harisingh died when the appeal was pending before the High Court, and Shobharam died during the pendency of the appeal in this Court, therefore, the appeal stands abated against them. We are informed at the Bar that Gulabsingh and Thakursingh did not file any appeal and they have already undergone the sentence imposed upon them. Thus, we are left only with the appeals of Gajrajsingh, Bhagwansingh and Peer Singh.

4. These appeals can be disposed of on a short point and therefore it is not necessary to deal with the entire evidence. The case of the prosecution is that at about 11.30 p.m. on the night intervening 13/14th September, 1992, Babusingh was returning to his Village Kalma from Dewas on a motorcycle. He was accompanied by Gattu (PW-8) and Vasu (not examined) who were pillion riders. When they were nearing Kalma Village they were attacked by a large number of persons who were armed with *dharia*, swords etc.. After the attack took place, the motorcycle fell down and the assailants, which according to the prosecution included all the 15 accused, attacked Babusingh and some of them gave blows to Babusingh with sharp edged weapons and as a result of the injuries Babusingh died. It is not disputed before us that Babusingh was, in fact, murdered. The only issue is whether the three appellants were present at the spot or not?

- A 5. The prosecution case is that the pillion rider Gattu (PW-8) went to the Village, found the house of father of Babusingh i.e. Motisingh (PW-1) and informed him that his son had been attacked by a large number of persons. Thereafter, Motisingh (PW-1), along with his son Antar Singh (PW-6), his nephew Uttamsingh, Gattu (PW-8) and Vasu proceeded towards the place of occurrence. On the way near the Panchayat Bhawan they met Mansingh (PW-5) who also informed them that he had seen the occurrence and he identified four of the assailants viz. Gulabsingh, Thakursingh, Harisingh and Shobharam. Thereafter, all these persons reached the spot. It is not disputed that the police came to the spot and "*Dehati Nalishi*" was recorded at the spot and at the instance of Motisingh, the father (PW-1). This "*Dehati Nalishi*" can be termed to be the first information given to the police.
- B 6. Thereafter, the police lodged a formal First Information Report (FIR), investigated the matter and recorded evidence of the witnesses. The body of the deceased was sent for postmortem and after completion
- C D of the investigation, charge-sheet was filed against 15 persons who were tried and some were convicted as detailed hereinabove.
- D 7. The main argument raised before us is that there is no evidence against the three appellants namely Gajrajsingh, Bhagwansingh @ Bhaggu, and Peer Singh. The first information which is in the nature of
- E E "*Dehati Nalishi*" was recorded at the instance of Motisingh (PW-1), the father of the deceased. This "*Dehati Nalishi*" was recorded on 14th September 1992 and he states that at night two boys came to his house, woke him up and then informed him that they along with his son Babusingh were coming to Kalma on a motorcycle which was driven by Babusingh. Some persons who were armed with *dharia* and sword
- F F attacked Babusingh just before they entered the Village. All the three persons who were riding the motorcycle fell down. All the assailants surrounded Babusingh and started raining blows of *dharia* and swords on him. Babusingh shouted "Oh! Shobha, Oh Thakur, do not beat". The two pillion riders managed to escape and informed Motisingh.
- G G Thereafter, he along with Antar Singh and two informants went on the motorcycle towards the place of occurrence and on the way they met Mansingh who stopped them and he (Mansingh) informed Motisingh that he had seen Sobhagsingh (A-7), Thakursingh (A-15), Harisingh (A-5), Gulabsingh (A-12), all residents of Tonk and other persons assaulting Babusingh with *dharia* and swords. Thereafter, they went to the place
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of occurrence and saw that Babusingh was lying dead. It was also stated by Motisingh that he and his son Babusingh had a longstanding enmity with Sobhagsingh and, therefore, his son had been murdered. It would be pertinent to mention that in this "*Dehati Nalishi*" none of the three appellants have been named.

8. According to us the sequence of events is such that Gattu (PW-8) would be the most crucial witness because he was seated on the motorcycle with the deceased. However, he states that he does not belong to the Village and could not identify any of the persons. In fact, when the statement was recorded in court he did not even say that Babusingh shouted "*Oh! Shobha, Oh Thakur, do not beat*". As such his evidence is of no use to the prosecution.

9. The next important witness is PW-5. To be fair to Mr. U.R. Lalit, learned senior counsel appearing for the appellants, we must record that he had raised a plea that PW-5 was not even present and is a procured witness. We are not going into that question, since according to us even if the presence of Mansingh (PW-5) is accepted, that evidence cannot be used to convict the three appellants before us. In his statement recorded in court he mentions the names of the accused as Gajrajsingh, Harisingh, Bhagwansingh @ Bhaggu, Peer Singh, Gulabsingh, Shobharam and Thakursingh. He also states that he knows these persons since they are distantly related and belong to the same area. He admits that the police had recorded his statement under Section 161 of Code of Criminal Procedure (Cr.P.C.). This statement (Ex.D1) has been proved in the evidence of the investigating officer (PW-20). PW-5 had been confronted with the fact that the names of Peer Singh, Bhaggu and Gajrajsingh are not mentioned in his statement recorded by the police under Section 161 Cr.P.C.. He states, he does not know why their names are not mentioned. We are unable to accept this explanation.

10. The "*Dehati Nalishi*" was recorded on the spot itself soon after the occurrence. As per the evidence on record Mansingh (PW-5) was present at the spot till 4.00 A.M. During this time, the police was there. It would have been much better if the "*Dehati Nalishi*" had been recorded at the instance of PW-5 who was not only an eye-witness but could even identify some of the accused. Even if we overlook this aspect, the fact remains that when the statement of PW-5 was recorded under Section 161 Cr.P.C on the morning of 14th September, he did not name the three appellants. When the statement was recorded in court

- A he stated that when Babusingh was being attacked he (Babusingh) told the pillion riders to go to his house and inform that persons of Sobhagsingh are beating him. This fact is totally different from what is recorded in the "*Dehati Nalishi*" wherein it is stated that Babusingh took the names of Sobhagsingh and Thakursingh. As pointed out earlier Gattu (PW-8) does not say anything in his statement.
- B 11. When we compare the statements of PW-1 and PW-5 there is another discrepancy viz. in court, the father Motisingh reiterates that Mansingh (PW-5) told him that Sobhagsingh, Thakursingh, Harisingh and Gulabsingh were beating Babusingh. The names of the three appellants are absent even in the statement of Motisingh as recorded in court. Mansingh and the three appellants belong to the same area and Mansingh is known to all the three accused, and when he could name four of the assailants, we see no reason as to why he could not name the other assailants if he had actually identified them at the place of occurrence. There is no plausible explanation given from the side of prosecution as to why the names of these three accused-appellants were missing both in the "*Dehati Nalishi*" as well as in the statement of Mansingh recorded under Section 161 Cr.P.C. (Exh.D-1). Further, as pointed above, Motisingh again in court does not say that Mansingh (PW-5) had identified the three accused-appellants as the assailants.
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- E 12. Therefore, a grave doubt is raised with regard to the presence of these three accused at the place of incidence. The benefit of doubt obviously has to go to the accused-appellants. In view of the above discussion, we allow the appeals and set aside the judgment of the trial court dated 19th November, 2001 in Sessions Case No.57 of 1993 and of the High Court dated 27th June, 2011 in Criminal Appeal No.1354 of 2001 so far as the conviction of the appellants; Peer Singh, Bhagwansingh and Gajrajsingh is concerned. They are acquitted and directed to be set free forthwith if not required in any other case. All pending applications are accordingly disposed of.
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