

CASE DETAILS

HARILAL ETC.

v.

STATE OF MADHYA PRADESH (NOW CHHATTISGARH)

(Criminal Appeal Nos. 2216-2217 of 2011)

SEPTEMBER 05, 2023

[J. B. PARDIWALA AND MANOJ MISRA, JJ.]

HEADNOTES

Issue for consideration: Whether the High Court was justified in upholding the order of the Sessions Judge convicting and sentencing the appellants to imprisonment for life u/s 302 IPC.

Penal Code, 1860 – s. 302 – Murder – Conviction of the accused u/s. 302 and sentenced to imprisonment for life by the courts below – Ocular account of two prosecution witness that the assault on the deceased took place at night, however, neither of them lodged the FIR, rather, a named FIR lodged next day by the village chowkidar of neighbouring village, even though she was not an eye witness – Correctness:

Held: Trial court as well as the High Court while appreciating the evidence did not properly address various aspects – Neither the trial court nor the High Court carefully considered the deposition of the village chowkidar who lodged a named FIR – Two eye witness were chance witness – Testimony of one inconsistent with his previous statement – His statement inconclusive as regards the assault being cause of death, thus cannot be relied upon to convict the accused for offence of murder – Testimony of the other one not such that it may on its own form the basis of conviction of the accused for the offence of murder – More so, it leaves many gaps in the prosecution story – Furthermore, the seizure of lathi and clothes from the accused cannot be considered as a clinching circumstance warranting conviction – In view thereof, prosecution not able to convincingly prove the genesis of the crime as also the manner in which the murder took place and by whom, inasmuch as the evidence led by the prosecution gives rise to a strong probability of the killing being a consequence of mob action on

the deceased for his alleged involvement with a lady of the village – Thus, taking into account the various circumstances, the accused entitled to benefit of doubt – Judgment and order of the courts below set aside. [Paras 14, 16, 18 and 19-26]

Delay/laches – FIR – Delay in lodging FIR – Absence of proper explanation – Duty of the court:

Held: Courts must be on guard and test the evidence meticulously to rule out possibility of embellishments in the prosecution story – Delay gives opportunity for deliberation and guess work especially when there is high probability of no one witnessed the incident at night in an open place or a public street. [Para 19]

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 2216-2217 of 2011.

From the Judgment and Order dated 17.02.2010 of the High Court of Chhattisgarh at Bilaspur in CRLA Nos.864 and 865 of 1991

Appearances:

D. N. Goburdhun, Sr. Adv., Aakarsh Kamra, Ms. Gauri Goburdhun, Advs. for the Appellants.

Mrs. Prachi Mishra, AAG, Mahesh Kumar, Amanpreet Singh Rahi, Nikhilesh Kumar, Ms. Devika Khanna, Mrs. V D Khanna, M/s. Vmz Chambers, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

MANOJ MISRA, J.

1. These two appeals are directed against a common judgment and order of the High Court of Chhattisgarh at Bilaspur (in short, “the High Court”), dated 17.02.2010, passed in Criminal Appeal Nos. 864 and 865 of 1991, whereby the appeals of Harilal and Parasram @ Rangnath (the appellants herein) were dismissed and the order of the third Additional

Sessions Judge, Bilaspur, dated 13.07.1991, passed in S.T. No.153 of 1990, convicting and sentencing the appellants to imprisonment for life under Section 302 of the Indian Penal Code, 1860 (in short, "I.P.C.") was affirmed.

Introductory Facts

2. Three accused, namely, Anshram, Parasram alias Rangnath and Harilal, were tried for committing murder of Ellahabadiya alias Vijay (the deceased) on 25.08.1989 at about 8.00 pm. Based on information received, a first information report (Ex.P-7) (in short, "the FIR") naming the aforesaid three accused was lodged by Smt. Jugmatibai (PW-9) at P.S. Hirri, District Bilaspur (M.P.) on the next day of the incident i.e. on 26.08.1989 at about 10 am. On 26.08.1989 itself, the inquest was conducted and the police collected blood-stained earth/plain earth from the spot and also seized a lathi, which was lying near the body of deceased. On the same day, the police showed discovery of lathi, *Baniyan, Lungi* (loin-cloth) at the instance Anshram from his house. Similarly, discovery of lathi and clothes at the instance of Parasram was disclosed from his house. The third accused, namely, Harilal, was arrested on 27.08.1989 and on the same day, a lathi and clothes were allegedly discovered at his instance from his house. The dead body of the deceased was sent for autopsy, which was conducted by Dr. S. K. Dutta (PW-8) on 27.08.1989 at 12.30 pm. PW-8 noticed that rigor mortis was present in lower limbs; decomposition had started; the eyes were forced out of the sockets; tongue was protruding between the teeth; lips were swollen and everted; abdomen was distended; penis and scrotum were swollen; multiple skin blisters containing reddish fluid on the face and front of the trunk were seen and faecal matter had escaped. PW-8 observations in respect of the cadaver were as follows: -

Ante-mortem External Injuries: -

- (i) Lacerated wound 3.5cm x 2.5cm x 0.5cm on left temporal region;
- (ii) Lacerated wound 2.5cm x 1 cm dividing the centre of the pinna of the left ear. Both the injuries were black and were surrounded by black clotted blood.
- (iii) Three contusions on one third upper portion of the left thigh in the side portion:

25cm x 1 cm;

12 cm x 1 cm; and

7cm x 1cm.

Colour of which had blackened

Internal Examination: -

Brain - Extradural haemorrhage on the left temporal region in the form of localised clot which had compressed and flattened the underlying brain.

Chest - Fractures on 4th, 5th, 6th, 7th and 8th ribs on both sides.

Lungs - Contusion of both lungs on the anterior surface. Pleural cavity contained black clotted blood.

Heart - Both the chambers of heart were empty.

Cause of death - Shock due to injuries in the brain and lungs.

Duration: Time since death is 24 to 48 hours.

3. The prosecution examined as many as 15 witnesses. They were broadly categorized by the trial court into three categories: - (i) eye-witnesses of the incident; (ii) witnesses who reached the spot on getting information about the incident; and (iii) witnesses who proved proceedings relating to investigation, medical examination, inquest, seizure memos, preparation of site plan, etc.

4. The first category of witnesses were: PW-1 (Kanhaiya Lal); PW-2 (Sitaram); PW-3 (Mohanlal); and PW-6 (Ganesh). Another witness, namely, PW-4 (Ramanand), who was set up as a person who arrived at the spot on receipt of information of the incident, during his deposition, portrayed himself as an eye-witness of the incident.

5. Amongst the aforesaid category of witnesses, PW-1 was declared hostile. When he was confronted with his previous statement recorded under section 161 of the Code of Criminal Procedure, 1973 (in short, "the Code") he stated that the police had forcibly taken his statement though he had not witnessed the incident. Consequently, the trial court found his testimony of no benefit to the prosecution. PW-3 was discarded by the trial court as unreliable because he was found inconsistent with his statement made during

the course of investigation. PW-4, who for the first time during examination in Court professed himself to be an eye-witness, was also found not reliable as he too was inconsistent with his previous statement recorded during the course of investigation. Thus, only two eyewitnesses of the incident, namely, PW-2 and PW-6, were discussed in some detail by the trial court.

6. The trial court noticed that though PW-2 (Sitaram) supported the prosecution case as against accused Harilal but he did not name the other two accused, namely, Anshram and Parasram. However, PW-6 who inculpated all the three accused was found wholly reliable by the trial court. Therefore, by placing reliance on his testimony, the trial court convicted all the three accused. While doing so, the trial court found the testimony of PW-6 duly corroborated by medical evidence as also by the circumstance of discovery of blood-stained lathi and clothes at the instance of the accused.

7. Aggrieved by their conviction, three separate appeals were filed by each of the three accused. Criminal Appeal No. 866 of 1991, which was preferred by Anshram, stood abated consequent to his death during pendency of the appeal. Whereas, the other two appeals, namely, Criminal Appeal Nos. 864 of 1991 and 865 of 1991, filed by the present set of appellants were dismissed by the High Court by the impugned judgment and order.

8. We have heard Shri D.N. Goburdhun, learned senior counsel, for the appellants; and Ms. Prachi Mishra, Additional Advocate General, for the State of Chhattisgarh.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

9. The learned counsel for the appellants submitted that the incident is of late evening/night whereas the FIR was lodged next day at 10 am, which is suggestive of the fact that no one witnessed the incident and FIR was lodged after deliberation and the prosecution story developed thereafter; otherwise also, testimony of PW-2 and PW-6 is unreliable for the following reasons:

- (i) PW-2 is a resident of village Khapri, whereas the incident occurred in village Kohroda. According to PW-2, he had visited Kohroda in the evening to watch television. There he witnessed the incident. After which, he left the village and in the evening itself he informed Smt. Jugmatibai (PW-9), a Kotwarin (village

chowkidar) of village about the incident. However, PW-9 stated that she was not informed by any person who might have witnessed the incident. This, according to the appellants' counsel, seriously dents the credibility of PW-2. That apart, PW-2 only disclosed the name of Harilal. Further, PW-2 does not state that the deceased was assaulted to such an extent that he would have expired, or had expired, on account of injuries sustained by him.

- (ii) PW-6 is not consistent with his previous statement made during the course of investigation, inasmuch as during investigation he disclosed that the accused assaulted the deceased with sticks (*danda*) but in his deposition in Court he stated that the accused had assaulted the deceased with lathi. A lathi is much thicker and heavier than a *danda*. That apart, PW-6 was not consistent in respect of the reason as to why he came out of his house to witness the incident. In his deposition in Court he had stated that,- he was in his house at the time of the incident; he came out on alarm raised by mother of accused Parasram that Ellahabadiya alias Vijay (i.e., the deceased) was beating her son Parasram, which was inconsistent with his previous statement made during investigation wherein he had stated that he came out on hearing loud noises of a fight in the *Gali* (alley). Moreover, PW-6 disclosed that the incident occurred in front of the house of Anshram whereas the body of the deceased was found near a temple which was at a considerable distance from the house of Anshram. Otherwise also, PW-6 made no effort to lodge a report, or inform persons of the village. This conduct of his does not inspire confidence in his testimony.

10. In the alternative, it was submitted that from the testimony of prosecution witnesses it appears to be a case where there was a street fight. The cause and motive for such street fight is not clear except that there existed some dispute with regard to a lady. Therefore, considering the nature of the weapons used, it would be a case falling under one of the Exceptions of Section 300 I.P.C. Hence conviction under Section 304 Part-I I.P.C. would serve the ends of justice and their sentences might be reduced to the period of sentence already undergone as both the surviving accused

(appellants herein) have served over 10 years of sentence during the course of the trial / appeal.

SUBMISSIONS ON BEHALF OF THE STATE

11. Per contra, the learned counsel for the State submitted that PW-9 (i.e. the informant) had deposed that the villagers guarded the body entire night and next day morning FIR was lodged. In these circumstances, it cannot be said that the FIR is delayed and, therefore, contrived. PW-2 is a natural witness who, on his way return, witnessed the incident and informed the informant. Even if PW-2 did not name all the three accused in his deposition, his deposition corroborates the testimony of PW-6 with regard to the manner in which the deceased was assaulted by the accused. The testimony of PW-6 inculpates all the three accused and is consistent with medical evidence. Further, nothing has come out from their cross-examination to attribute any improper motive on them to falsely implicate the accused persons. Thus, there is no good reason to disbelieve the said witnesses particularly when the trial court and the appellate court has placed reliance on their testimony after testing the same on the strength of other materials/evidence(s) on record. She also argued that the ocular account rendered by PW-2 and PW-6 is corroborated by the circumstance of discovery of lathi and clothes at the instance of the accused and serologist report confirms presence of blood on it.

12. In response to the contention that the conviction of the accused could be altered from one punishable under section 302 IPC to one under section 304 Part-I, the learned counsel for the State submitted that the injuries found on the body of the deceased reflects that he was mercilessly beaten. Medical evidence indicates that there were not only head injuries but fracture of ribs as well; that too, on both sides. That apart, no plea was taken by the accused persons to bring their case under any of the Exceptions of Section 300 of the I.P.C. Hence, the accused have been rightly convicted for the offence punishable under section 302 I.P.C. and the appeals lack merit.

DISCUSSION AND ANALYSIS

13. We have considered the rival submissions and have perused the record.

14. In this case, we notice from the record that the trial court as well as the High Court while appreciating the evidence have not properly addressed

various aspects, namely, (a) there is no clear cut motive proved against the accused except that there was some incident concerning a lady of the village; (b) PW-2 and PW-6 both state that the deceased was assaulted in front of the house of one of the accused persons, namely, Anshram, but, the site plan (Ex. P-21/P-22) does not disclose the house of Anshram and from the site plan as well as the testimonies of PW-6, PW-9 (the informant) and police witnesses it is clear that dead body of the deceased was found near a temple about 300 feet away from the place where the deceased was allegedly assaulted; as to how the dead body reached there, the ocular account has no explanation though some drag marks were noticed by the investigating officer; (c) as per seizure memorandum (Ex. P-13), amongst other articles, a lathi was seized by the police from the place where the dead body was lying - whose lathi it was, the prosecution evidence is silent; (d) the articles i.e. lathi and clothes seized at the instance of the accused though were stained with blood, the serologist report could not confirm its origin; and (e) PW-2 sets up a story that he narrated the incident to PW-9 but PW-9, who is *Kotwarin* (village Chowkidar) of a neighbouring village, states that she was not informed by any eye witness, rather she arrived at the spot as a reaction to the commotion. All these aspects were material as they were indicative of a mob violence on the deceased due to some incident concerning a lady of the village.

15. Bearing the above aspects in mind, we shall now carefully examine the prosecution evidence to test whether it inspires confidence and succeeds in proving the charge against the accused beyond reasonable doubt.

16. Before we proceed to analyse the testimony of the two material eye-witnesses of the incident (i.e., PW-2 and PW-6), what is important to note is that as per the ocular account of PW-2 and PW-6, the assault on the deceased took place between 7 pm and 8 pm of 25.08.1989. However, neither PW-2 nor PW-6 lodged the FIR. Rather, a named FIR was lodged on 26.08.1989 at 10 am by PW-9 i.e., *Kotwarin* (village Chowkidar) of neighbouring village Khapri, even though she was not an eye witness. In these circumstances, the statement of PW-9 assumes importance to ascertain the source of her information. Unfortunately, neither the trial court nor the High Court have carefully considered the deposition of PW-9.

17. PW-9, in her deposition, stated that she is *Kotwarin* of village Kharpi and *Kotwar* of village Kohroda (i.e., the place where incident

occurred) is some other person. Ellahabadiya @ Vijay (the deceased) was a resident of her village. On the night of the incident, at about 9 pm, while she was taking a round of her own village, she heard loud noises coming from village Kohroda. Fellow villagers Lulwa and Sudhwa asked PW-9 to go to village Kohroda. When she went to village Kohroda, she noticed the dead body of Ellahabadiya lying near Rupau temple. Upon finding the dead body there, she went to inform the village Chowkidar of Kohroda, woke him up and brought him to the place where the dead body was lying. Thereafter, the body was guarded through the night with the help of villagers and next day morning, FIR was lodged at P.S. Hirri.

During **cross-examination**, PW-9 specifically stated that she was not informed by any person that he had witnessed the deceased being beaten. She also specifically stated that neither Parasram nor Sitaram came to inform her about the incident.

18. The statement of PW-9 is of significance for multiple reasons. First, that PW-2 did not inform her about the night incident as is alleged by PW-2 in his deposition; second, the body of the deceased was found near the temple and was kept there overnight; and third, if no one had told PW-9 about the incident, why a named FIR was lodged.

19. Although there might not have been a specific question put to PW-9 as regards the delay in lodging the FIR but the fact that it was a delayed FIR cannot be ignored. When an FIR is delayed, in absence of proper explanation, the courts must be on guard and test the evidence meticulously to rule out possibility of embellishments in the prosecution story, inasmuch as delay gives opportunity for deliberation and guess work. More so, in a case where probability of no one witnessing the incident is high, such as in a case of night occurrence in an open place or a public street.

20. Bearing the above principles in mind, when we test the deposition of PW-2 against the weight of PW-9's testimony, the statement of PW-2 to the effect that after witnessing the incident, he left the spot and informed PW-9 appears unworthy of acceptance. That apart, PW-2 does not inculpate all the three accused. He only inculpates Harilal. In this regard, PW-2 is inconsistent with his previous statement inasmuch as in his previous statement, with which he was confronted, he had inculpated all the three accused whereas in his deposition in Court he stated that he had not stated

before the investigating officer that both Anshram and Harilal were assaulting the deceased. Moreover, PW-2 does not disclose the seriousness of the assault on the deceased. He does not state that the deceased was seriously injured by the blows inflicted on him. Therefore, his statement is inconclusive as regards the assault being the cause of death. Rather, it leaves room for a possibility that the assault which he witnessed was just the beginning of a mob assault on the deceased concerning his involvement with a lady of the village. More so, when the dead body of the deceased was found 300 feet away from the place where the deceased was allegedly assaulted. Further, PW-2's statement in respect of number of persons assaulting the deceased appears inconclusive. Taking the above into account and having regard to the fact that PW-2 is a chance witness, not a resident of the village where the incident occurred, and his statement was inconsistent with his previous statement, in our view, it would be unsafe to rely on PW-2 to convict the accused for the offence of murder.

21. Insofar as PW-6 is concerned, he too is a chance witness, inasmuch as he was not present at the spot when the assault on the deceased started. According to him, he came out to witness the incident when an alarm was raised by mother of Parasram, one of the accused, that Ellahabadiya (the deceased) was beating her son. According to PW-6, when he came out, he saw all the three accused assaulting the deceased with lathi in front of the house of Anshram. He does not state that the deceased was armed and had attacked the accused. The deposition of PW-6 that he came out to witness the incident on alarm raised by accused Parasram's mother that his son is being beaten by Ellahabadiya (the deceased) is inconsistent with his previous statement made during the course of investigation, with which he was confronted, wherein he stated that he came out on hearing loud noises coming from the street in front of the house of Anshram. His previous statement is reflective of a mob attack on the deceased which is corroborated by PW-6's conduct, inasmuch as, according to PW-6, after witnessing the incident, PW-6 went away without informing any one about the incident and returned back only when all the villagers congregated at Rupau temple near the dead body of the deceased. No doubt, different people react differently to a given situation. But if it had truly been an issue between few individuals fighting in the street, natural course of human conduct would be to collect people to solve out issues. However, where villagers in general, and none

in specific, assault a person accused of his involvement with a lady, it is quite natural for by-standers not to intervene.

22. In addition to the above, what is of significance is that if PW-6 had arrived at the spot later, when other villagers had collected near the body of the deceased, he could have informed PW-9 about the culpability of the accused but, PW-9 categorically states in her deposition that no one informed her about the perpetrator of the crime.

23. Further, PW-6 gives no indication as to how the body of the deceased was brought near the temple from the place where he was allegedly assaulted i.e. in front of the house of Anshram. It be noted that in paragraph 4 of his deposition, PW-6 categorically states that the distance between the temple where the body was found and the place where the deceased was assaulted is 300 feet. For all the reasons above, we do not find the testimony of PW-6 to be of such a stellar quality that it may on its own form the basis of conviction of the accused for the offence of murder. More so, because it leaves many gaps in the prosecution story, namely, as to how the body came near the temple and why a lathi was left near the dead body of the deceased when, as per the police story, all the three assailants had walked away with their respective lathis, which were later discovered at their instance.

24. In light of the discussion above, we are of the considered view that the prosecution has not been able to convincingly prove the genesis of the crime as also the manner in which the murder took place and by whom, inasmuch as the evidence led by the prosecution gives rise to a strong probability of the killing being a consequence of mob action on the deceased for his alleged involvement with a lady of the village. Thus, taking into account that it was a case of night occurrence, the body of the deceased was found at an open place near a temple; a named FIR was lodged not by any villager of the place where the deceased was assaulted, but by PW-9 i.e., the village Chowkidar of the neighbouring village, who admits that no eye witness had informed her; and the body was found at a distance of 300 feet from the place where the deceased was allegedly assaulted, we are of the view that this is a fit case where the accused are entitled to the benefit of doubt.

25. At this stage, we may observe that though the prosecution relied on seizure of lathis and clothes at the instance of the accused but these

incriminating circumstances have been denied and the serologist report could not confirm the origin of blood stains found thereon. That apart, next to the dead body of the deceased, a lathi was found. This lathi alone could have caused the injuries found on deceased's body. Unexplained presence of the lathi is of significance when it is not the case of the prosecution that the deceased had used the lathi in self-defence. For all the reasons above, we do not consider seizure of lathi and clothes from the accused as a clinching circumstance warranting conviction.

26. The appeals are accordingly allowed. The judgment and order of the High Court as well as of the Trial Court are set-aside. The appellants are acquitted of the charge for which they have been tried. The appellants are reported to have been released on bail during the pendency of this appeal. Their bail bonds are discharged. They need not surrender. In case they are not on bail, they shall be released forthwith unless wanted in any other case.

Headnotes prepared by:
Nidhi Jain

Appeals allowed.