State Of Madhya Pradesh vs Mansingh And Ors. on 13 August, 2003

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Bench: Doraiswamy Raju, Arijit Pasayat

JUDGMENT

Arijit Pasayat, J.

1. Questioning acquittal of the respondents by the impugned judgment of the Madhya Pradesh High Court, Jabalpur Bench at Indore, by which the conviction and sentence imposed by the learned Additional Sessions Judge, Ratlam, were set aside, this appeal has been filed by the State of Madhya Pradesh.

2. Four persons i.e. respondents herein faced trial for allegedly causing homicidal death of Dharamchand (hereinafter referred to as 'the deceased') on 6.8.1984.

3. Background facts as highlighted by the prosecution version sans unnecessary details are as follows:

> On the fateful day at about 9.30 a.m. deceased accompanied by Mansingh (PW 4) and Gulabsingh (PW 7) was going from his village Talod to Alote. The accused persons were hiding behind bushes on the road near village Gharola. They were armed with lathies and farsies. When the deceased and the aforesaid two persons reached near the Khakhra, the respondents surrounded them and started attacking the deceased with weapons with which they were armed. His nose was cut. PWs. 4 and 7 tried to intervene, but they were also attacked by the accused persons as a result of which they also received injuries. The two witnesses rushed to the police station where PW 4 lodged the FIR (Exhibit P-10). The deceased in injured condition was taken to the hospital, and later he succumbed to the injuries. Post-mortem was conducted and large number of injuries were found on his body. During investigation the alleged weapons of the assailants were seized. After investigation charge sheet was placed. Appellants were charged for commission of offences punishable under Section 302 read with Section 34 and Section 324 read with Section 34 of Indian Penal Code, 1860 (for short 'IPC'). During trial accused persons pleaded innocence. They were

> acquitted for offence punishable under Section 324 read with Section 34 IPC, but were convicted for offence under Section 302 read with Section 34 IPC each, to undergo life imprisonment. Accused Bhanwar Singh was convicted for offence punishable under Section 323 IPC, accused Bheru Singh also similar convicted, and each of them were sentenced to undergo six months RI for the offence.

4. At this juncture it is to be noted that ten witnesses were examined to further the prosecution version. Apart from PWs. 4 and 7 who claimed to be eye witnesses, one Jaswant Singh (PW 8) was also examined to substantiate the claim that an oral dying declaration was made by the deceased before the said witness implicating the accused persons to be his assailants. The Trial Court accepted the prosecution version and convicted the accused-appellants and sentenced them as noted supra. The matter was carried in appeal by the accused persons. Several circumstances were highlighted to attach vulnerability to the prosecution version. One of the circumstances was alleged manipulation of the FIR to indicate as if the same was lodged at 10.25 a.m. The evidence of PWs. 4, 7 and 8 were also subjected to criticism on the ground that they did not inspire confidence. It was pointed out that the evidence of PWs 4 and 7 were recorded under Section 164 of the code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') and that was a highly suspicious circumstance. It was also submitted that though during trial, there was mention about use of knife in the FIR, the statements under Sections 161 and 164 of the Code, there was no mention about them. Though knife was stated to have been found at the spot, thee was no investigation directed to find out as to how it came there at the spot of occurrence. A plea was raised by learned counsel for the accused that Section 34 has no application to the fact of this case. With reference to the statement of the witnesses it is pointed out that the accused persons did not come together, and first two persons came followed by two others. The High Court accepted stand of the accused persons and recorded the following findings:-

> (1) There was manipulation about the time of occurrence in Exhibit P-10. (2) Undisputedly knife was recovered from the spot when investigation was conducted. As to how it happened to be at the place of occurrence no mention is there. (3) Though the accused persons were named in the FIR they were not arrested till 24.12.1984. (4) The name of PW 8 did not find place in the FIR. (5) There was no explanation as to the need for recording the statement of injured witnesses PWs 4 and 7. (6) There was no proof of compliance with provisions of Section 157 of the Code. (7) The names of the accused persons did not find place in the requisition for injury reports.

5. In view of the afore-noted alleged discrepancies, the accused persons were held to be not guilty and the order of acquittal was passed by allowing the appeal.

6. In support of the appeal, learned counsel for the appellant-State submitted that the circumstances relied by the High Court to direct acquittal are clearly not supportable in law. The factual scenario has not been considered in the proper perspective and, therefore, the order of the High Court deserves to be set aside and that of the Trial Court restored.

7. In response, learned counsel for the accused persons submitted that the High Court has analysed the legal and factual positions in the proper perspective, and the deficiencies in the prosecution version have been clearly highlighted. It was submitted that there was manipulation in the FIR about the time of recording it, and the same was not recorded at the police station. Genesis of the prosecution case is doubtful. An independent witness Hira Lal who, according to PW 8, was present, has not been examined. Non-mention of the names of the accused in the requisition shows that the names of the assailants were not known. PWs 4 and 7 are not reliable witnesses. Presence of PW 8 is doubtful and there is no explanation as to why the statement made by the deceased before Tashildar, as deposed by some witnesses, has not been brought on record. Alternatively, it was submitted that the case is not one which is covered by Section 302 read with Section 34 IPC and at the most the case cannot travel beyond Section 324/325 or in the worst case under Section 304 Part II IPC.

8. In our considered opinion, the High Court judgment is indefensible for more reasons than one. It has not been indicated as to why and how the High Court came to the conclusion about non-compliance with the requirements of Section 157 Cr.P.C. It was only stated that there was no proof of compliance of Section 157 Cr.P.C. It has not been indicated as to what is the requirement and what proof was required to be adduced. Similarly importance does not appear to have been attached to the evidence of injured witnesses PWs 4 and 7, on the ground that their statements were recorded under Section 164 Cr.P.C. IN a catena of decisions this Court has held that evidence of witnesses cannot be discarded merely because their statements were recorded under Section 164 of the code (See: Balak Ram and Anr. v. State of U.P.). Ram Charan and Ors. v. The State of U.P. (AIR 1968 SC 1270). All that is required as a matter of caution is a careful analysis of the evidence.

9. The evidence of injured witnesses have greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report. That does not wash away the effect of evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode credibility of otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to evidence of the injured witnesses are clearly inconsequential. Though, it is fairly conceded by learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render prosecution version brittle.

10. One of the circumstances highlighted by the High Court to discard the evidence of PW 8 is non-mention of his name in the FIR. As stated by this Court in Chittar Lal v. State of Rajasthan (2003 AIR SCW 3466) evidence of the person whose name did not figure in the FIR as witness does not perforce become suspect. There can be no hard and fast rule that the names of all witnesses more particularly eye-witnesses should be indicated in the FIR. As was observed by this Court in Shri Bhagwan v. State of Rajasthan mere non-mention of the name of an eye-witness does not render prosecution version fragile.

11. It is nobody's case that PW 8 was an eye-witness. The High Court failed to notice that evidence of PWs 4 and 7 was to the effect that they left the deceased in injured condition and rushed to the police station. The arrival of PW 8 near the deceased, according to prosecution, was thereafter. His presence could not have been noted by PW 4 who lodged FIR and, therefore, non-mention of his name in the FIR is the natural consequence. The High Court has completely misread the evidence in this regard.

12. Even if it is accepted that there was deficiencies in investigation as pointed out by the High Court, that cannot be a ground to discard the prosecution version which is authentic, credible and cogent. Non-examination of Hiral Lal is also not a factor to cast doubt on the prosecution version. He was not an eye-witness, and according to the version of PW 8 he arrived after PW 8. When PW8 has been examined, the non-examination of Hir Lal is of no consequence.

13. Coming to the plea regarding non-mention of knife, from a reading of the evidence on record it appears that mention was made about a sharp-edged weapon affixed to a stick being used. That being the position, the plea is clearly unsustainable.

14. Great emphasis was laid on the prosecution's failure to produce the statement purported to have been recorded by the Tehsildar. Though PW 4 has stated that the Tehsildar had come and had noted some statements after inquiries, the investigating officer has not been asked about the recording of any such statement by the Tehsildar. It is not known as to under what circumstance the Tehsildar had come and noted the statement as stated. That cannot be a factor to throw doubt on prosecution version.

15. Merely because there was some change in time of the lodging of the FIR, that does not per se render prosecution version vulnerable. At the most the requirement was a careful analysis of the evidence, which has been done by the Trial Court. One material factor which the High Court missed not notice is that the spot map was prepared at 13.30 p.m. and PW 8 is the witness to the map.

16. Plea that Section 34 has no application because all the four did not come together is one which is to be noted and rejected. Section 34 has no requirement that all the accused must come together. It is their common intention which is material and not how they converge on the place of occurrence. Supposing the accused persons come out from a narrow lane, and only one person can come out at a time and others follow one after the other, in such a case it cannot certainly be said that because did not come together, Section 34 will have no application.

17. Looking at the nature of injuries and the manner of assaults established by evidence, Section 302 IPC has clear application, and not Section 304 Part II as contended.

18. Judging from any angle, the High Court's judgment cannot be maintained and deserves to be set aside which we direct. The judgment of the Trial Court is restored. The appeal of the State is allowed. The accused persons are directed to surrender to custody to serve the remainder of their sentence.