

Jagdish & Anr. vs State Of M.P. on 5 May, 2000

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Bench: S. Rajendra Babu

ORDER

S. Rajendra Babu, J.

1. These two appeals arise out of common judgment of the Madhya Pradesh High Court in two criminal appeals. The prosecution case in this appeal as unfolded flounders on the bedrock of family feuds, bloodshed and murder. Angooribai, daughter-in-law of Saligram [PW-1] is stated to be living with Vidyaram [appellant No. 2] as his mistress. Therefore, it is alleged that PW-1 Saligram's family had enmity against all the accused. One Ramcharan, brother of accused Vidyaram is stated to have been murdered in which the complainant Saligram, his deceased son Bachchoo Lal, his nephew, Sultan Singh and his brother Adi Ram who are other witnesses in this case were accused and Vidyaram deposed to, that case against them. Except for Bachchoo Lal, who was sentenced to life imprisonment, all the other accused were acquitted by the trial court. On appeal the High Court acquitted him also. It is stated that it is in this background that murder of Bachchoo Lal took place to avenge the death of Ramcharan.

2. On 12.5.1981 at about 11 A.M. P.W. 1 Saligram along with his son Bachchoo Lal was proceeding on bicycle to Village Hingawali to attend a feast in connection with marriage ceremony at Gangaram's residence. Bachchoo Lal was riding the cycle with his father Saligram also Perching thereon. When they reached road connecting village Navali and Laljit Ka Pura, they got down, as there sand on the road. Bachchoo Lal was pushing the cycle while Saligram was coming behind him about 30-40 paces away, accused Jagdish armed with 12 bore Katta (country made pistol) and axe and Vidyaram with a Mouser gun and Uttam nephew of. Vidyaram's sister son was armed with Farsa'. Jagdish fired at Bachchoo Lal with .12 bore Katta which hit him on the left thigh then Uttam gave him 'Farsa' blow on his head. Jagdish fired second time with Katta and Vidyaram also fired with his Mouser gun.

Bachchoo Lal became injured and fell down on the ground. P.W. 1 Saligram raised a loud cry in panic that his son has been murdered. Then Vidyaram ran towards him with the gun but he somehow escaped and ran back 10 paces behind. From there he saw that all the three accused attacked Bachchoo Lal with 'Farsa' and axe and when Bachchoo Lal died, they ran away towards Geetapura. P.W. 1 went near Bachchoo Lal and found that he had succumbed to his injuries. Thereafter, he went to the Police Station Ambah and lodged a complaint which was registered at 1.30 P.M. by P.W. 10 Jaikaran Singh who proceeded to the place of occurrence, prepared a Panchnama, recovered blood stained earth, a six inch long handle of the axe (Article 7) from the spot and an empty cartridge of .12 bore gun and an empty round of 315 bore (Article 14) and prepared appropriate memo. The dead body was sent for post-mortem examination on 13.5.1981. The Doctor conducted autopsy on the body and found as many as 15 ant-mortem injuries on the body of the deceased. On 9.6.1981 accused Jagdish and Vidyaram were arrested by P.W. 9 Ram Sunder Tiwari and at his instance blood stained axe (Article 9) was recovered from his house and it was sent for chemical examination which, however, proved that it did not contain any blood stains. Vidyaram made a disclosure about a licence of Mouser gun (Article 12) and missed cartridge and licence of the Mouser gun and produced it before the Policeman Babu Singh, who was not examined before trial court and Ram Gopal denied having seen anything produced by Vidyaram in the Police Station. All the three accused were charge sheeted under Section 302 read with 34 of Indian Penal Code. They were tried by the IIIrd Additional Sessions Judge, Morena. Accused pleaded not guilty and claimed to be tried. Their defence was that the witnesses have given false evidence because of their enmity with Vidyaram and further pleaded that they were away to attend the marriage of their relative at village Mahawakepura in U.P., were not present at the time of the occurrence and are falsely implicated. The trial court after recording the evidence and the statement under Section 313 Cr.P.C., came to the conclusion that the prosecution has failed to prove its case against Vidyaram and Jagdish and hence acquitted them while convicting Uttam under Section 302 IPC and sentenced for life imprisonment.

3. The trial court on a critical analysis of the evidence of eye witness P.W.I found that there were discrepancies, contradictions and omissions of material parts of evidence. The trial court noticed (1) that the statement of P.W. 1 that no one other than Adi Ram was present at the scene of occurrence is an improvement made over what is stated in the F.I.R. that many people have gathered at the scene of occurrence after his son's death; (2) that he and his son Bachchoo Lal at Laljit pura when took water to quench their thirst did not mention the presence of Adi Ram or his taking water in FIR or in statement to police. This aspect was disbelieved by the trial court because in its view the same was not either natural or probable because what has been stated by him before the court was for the first time which was not revealed in the statement made before the police; (3) that the accused Jagdish had hit his son Bachchoo Lal with axe 4-5 times on the; head and as a result of which the blade of the axe had entered into his head and Vidyaram had taken out the blade and hit the deceased on his neck cannot be relied upon because the complainant had made no mention of it either in the F.I.R. or in his statement to the Police. (4) that the recovery of the blade of the axe said to have been used in the incident at the instance of the accused Jagdish is doubtful as on chemical examination it was found that this blade of axe did not have any blood stains. The length of the blade of the axe said to have been recovered from deceased is 9 cms and the length of the injuries caused by the said blade could not have been caused by the same was admitted by the Doctor while

deposing before the Court. No independent witness has been examined for the said recovery of the axe. The trial court also did not believe the recovery of .12 bore Katta from Jagdish as it was not sent for ballastic examination. The High Court, however, took a contrary view as in its view the discrepancies, contradictions and omissions noticed by the trial court are not material and, therefore, convicted the two accused who are in appeal before us in Criminal Appeal No. 631 of 1998. The other accused Uttam in in appeal which is against affirmation of his conviction and sentence by the trial court.

4. P.W. 5 Dr. J.N. Sharma who conducted post mortem examination of the. dead body of Bachchoo Lal disclosed that there were as many as 15 injuries on the body of the deceased; that except for injuries rest of the injuries had been caused sharp edged weapon, while 2 injuries were caused by a gun bullet and the last of the injuries was probably by some blunt and hard weapon; that the external injury No. 4 incised wound of 5 cm x 1 cm x 1.7 cm which was towards the back of right part of the head and injury No. 7 one cut wound of 4 cm x 1 cm x 1 cm which was towards the back side of the left part of the head. Skull was found to be broken at the point of wound are fatal in nature being sufficient to cause death of the deceased Bachchoo Lal in the ordinary course of nature. He opined that Immediately cause of death of the deceased was the injury inflicted on his head. Therefore, there was enough material to come to the conclusion that Bachchoo Lal met with a homicidal death.

5. The fact that P.W. 1 is the sole eye witness in the case who is none other then the father of the deceased Bachchoo Lal, whose family is inimically disposed towards the family of accused and so his evidence needed a cautious approach is noticed both by the trial court and the High Court. Broadly speaking there are three features in the case which require attention: (i) trustworthiness of P.W. 1 Saligram, (ii) contradiction between medical evidence/ballistic report and oral evidence and (iii) reliability of recoveries made in the case.

6. P.W. 1 Saligram in his evidence before the court stated that he left for age Hingawali along with his son Bachchoo Lal on the morning of the date of the incident where they had been invited joint in a feast in connection with the marriage of the daughter of their relative Gangaram; that in order to drink some water they stopped over at Laljit Pura where the other witness Adiram P.W. 7 is stated to have met them. But this aspect that the deceased Bachchoo Lal along with P.W. 1 Saligram had halted at Laljit Pura to drink water is not included in the report and that they had met P.W. 7 Adiram at Laljit Pura nor did he mention in the statement made before the police that he had met Adiram at Laljit Pura where they drank water. This aspect has been borne in mind by the trial court in finding to whether Adiram at all met PW -1 and his deceased son and his presence near the dead body after Bachchoo Lal was killed is highly doubtful and, therefore, the version set forth by Adiram is also not given any value by the trial court.

7. Jagdish was armed with a country made pistol and an axe, accused Uttam was armed with a "Farsa" and accused Vidyaram was armed with a Mouser-Rifle. Accused Jagdish is stated to have fired with the country made pistol which struck in the leg of Bachchoo Lal, accused Uttam inflicted an injury in the head of Bachchoo Lal with the help up of a "Farsa", accused Vidyaram fired at Bachchoo Lal with a Mouse-Rifle which missed him. In that condition, the accused Jagdish with the axe and accused Uttam with "Farsa" caused more injuries. If accused Jagdish had both the axe and a

country made pistol it is difficult to understand why he did not use the pistol rather than the axe. Now the allegation is made that the accused Vidyaram extracted the head of the axe from the head and paused more injuries to deceased Bachchoo Lal. The moment the injured Bachchoo Lal died the accused are stated to have fled towards the village Geetapura. Therefore, the trial court in analysing evidence of P.W. 5 Dr. J.N. Sharma stated that blackening, charring of hair, tattooing and scorching was present around the wound injuries stated at serial 1 and 2 and therefore these bullets were fired from a distance of 3 feet location of the exit point of barrel of the gun. The witness, however, accepted that the injury at serial No. 1 could not have been caused by Mouser-Rifle because its diameter is lesser than a 12 bore gun. The bullet that was found could be of a 12 bore cartridge but it is definitely not that of a 315 bore cartridge which is for the rifle. Thus the statement of the complainant P.W. 1 Saligram in the connection of the use of a rifle at the time of incident was not believed particularly in the light of the opinion of the Forensic Expert that the bullet that was taken out of the body of the deceased was a 12 bore cartridge. The witness also stated that the injuries caused by the incident were caused by an axe edge and the witness in his cross- examination accepted that the injuries sustained by the deceased at serial No. 3 is possibly with a weapon like "Farsa" urged by Uttam, appellant in connected matter and not with the axe edge and no blood was also found on the seized axe.

8. As far as accused Jagdish and Vidyaram are concerned, the medical evidence was contrary to what has been stated before the court and the injuries could not have been caused either by Kulhari or the Mouser-Rifle by them during the incident. Similarly, the evidence of P.W. 1 on the point of causing injury to deceased Bachchoo Lal by a country made pistol is not reliable and natural and, therefore, the trial court was cautious enough not to rely upon his sole testimony keeping in view the deep enmity existing between the families and the possibility of false implication in the matter by the complainant P.W. 1 Saligram.

9. The High Court, however, took the view that any inconsistency as to the presence of Adiram or has meeting at Laljit Pura may not be of much materiality because if at all Adiram appeared on the scene it is much later after the incident but in analysing the evidence of Adiram the High Court ignored the aspect on which Adiram had tendered the evidence that he had seen the accused after murdering Bachchoo Lal and talking amongst themselves that they are able to avenge the death of Vidyaram the family of the appellants. Therefore, the presence of Adiram at Laljit Pura meeting the deceased and P.W. 1 Saligram and not accompanying them but going separately to attend the feast at Geetapura or even the fact of his having seen the accused going thereafter in the manner taking amongst themselves all become doubtful: This version given by P.W. 1 of having met PW-7 Adiram at Laljit Pura assumes importance and, therefore, if the trial court has taken a different view on this aspect the same could not be ignored as not materiality. There is one version give by him that P.W. 7 Adiram alone was present after the incident near the dead body, while in another version he stated that several villagers had gathered near the dead body. If the sequence of events in the manner suggested by P.W. 1 is examined he is altogether giving different versions before the court from the one set out in the F.I.R. or before police and casts doubt on his evidence. Therefore, again the High Court committed error in this aspect of the matter.

10. The High Court also ignored due importance to be attributed to the evidence given by Doctor as to the nature of the injuries that were inflicted. While in the concluding para the Examination-in-Chief he stated that injuries 3 to 13 and 15 could be caused by the axe and 'Farsa' however, in the cross-examination he gave a different version and admitted that injuries Nos. 3 to 13 could not be caused by blunt weapon or an axe. The High Court while commenting on this part of the material before the court observed that the trial court ought to have got the position clarified whether there was any inconsistency in the two statements. If any contradictions is elicited in the course of the cross-examination it cannot be stated that it is the duty of the court to get the Same clarified. Of course, the powers of the court in this regard are wide but there is duty cast on the prosecution also to elicit appropriate answers on any aspect of the matter. Therefore, we are of the view that again the High Court erred in analysing the medical evidence vis-a-vis oral evidence in reaching appropriate conclusions.

11. So far as the recoveries were concerned, the star witnesses are again the Same witness who were stated to have been at the scene of occurrence a little later and who are related to the deceased. In the absence of independent witnesses being present at the time when panchanamas were written or recoveries were made, the trial court rightly did not rely on the same.

12. The High Court brushed aside the reasoning of the trial court that no injury could have been caused by mouser rifle in view of the report given by the Forensic Expert on the basis that there is a categorical statement of the complainant that accused Vidyaram fired with his mouser rifle. But the High Court could not have accepted that the evidence of P.W. 1 Saligram without testing the same on the touchstone of corroboration as otherwise it would not be safe to rely upon his testimony. Having struck this note of caution the High Court fell into error in accepting his version without proper corroboration and the insistence of the trial court on the same in this regard cannot be stated to be perverse so as to call for interference at the hands of the High Court. The circumstantial evidence sought to be tendered through P.W. 3 Ram Karan also is doubtful because his case is that the death of Bachchoo Lal took place on a Tuesday and he would not go to do Parikrama in the temple. We do not think whether this kind of evidence could be relied upon at all if he was going alone towards village Langadiya just as evidence of Adiram did not also find appropriate support on the totality of the facts. The High Court was not justified in rejecting the conclusion of the trial court. We do not find that there is any justification for the High Court to have interfered with the decision taken by the trial court.

13. The trial court came to the conclusion that P.W. 1 Saligram's statement to the extent of "Farsa" being used which was attributed to accused Uttam causing fatal injuries on the vital parts had been established fully and the trial court came to the conclusion that these injuries had been inflicted only with the intention of causing the murder of the deceased Bachchoo Lal. The deep enmity existing between the families was sufficient for Vidyaram to have a motive to murder the deceased Bachchoo Lal. On that basis the trial court came to the conclusion that Uttam was guilty of murder. This view is affirmed by the High Court and we find no reason to disagree with the same.

14. In the circumstances, we agree with the view taken by the trial and set aside the order made by the High Court in so far as appellants in Criminal Appeal No. 631 of 1998 are concerned and affirm

the order made by the trial court as affirmed by the High Court in regard to Uttam, appellant, in Crl.A. No. 80 of 1999. We allow the Criminal Appeal No. 631 of 1998 and dismiss Crl.A. No. 80 of 1999 and restore the order passed by the trial court.