Supreme Court of India
State Of Madhya Pradesh vs Pyare Raja And Others on 24 August, 1994
Equivalent citations: AIR 1995 SC 106, 1994 (3) Crimes 191 SC, JT 1994 (5) SC 364, 1994 (3) SCALE 869, 1994 Supp (3) SCC 156, 1994 (2) UJ 651 SC
Bench: G Ray, N Singh
ORDER

1. This appeal is directed against the order of acquittal dated March 23, 1981 passed by the High Court of Madhya Pradesh, Jabalpur Bench in Criminal Appeal No. 287 of 1979 after setting aside the order of conviction of the appellants under Section 302 read with Section 34 Indian Penal Code passed by the learned Second Additional Sessions Judge, Gwalior, dated September 1, 1979, in Sessions Trial No. 51 of 1979 and sentencing the accused persons to life imprisonment.

2. The prosecution case in short is that the accused persons and the deceased, Dhanuwa, were not having good relations for some days prior to the incident of murder. Sometime before the incident of murder when the accused persons had been assaulting a bus-driver, Razaaq, the deceased Dhanuwa had intervened and the said Dhanuwa was also beaten by the accused persons. The accused persons particularly the accused Pyare Raja also wanted to drive out Dhanuwa from the village altogether. On January 24, 1979, shortly before the said incident of murder, the accused Pyare Raja had given a slap to Imaratibai, the widow of the deceased Dhanuwa over some altercation. Thereafter, Imaratibai had returned to her house and was sitting in front of this door;. There was a Maddiya belonging to the accused Pyare Raja which is also close to the house of the deceased Dhanuwa and near a flour-mill of Pran Singh. It is the case of the prosecution that when the deceased Dhanuwa returned from village Kheda at about 2.30 P.M. on January 24, 1979, the accused persons were lying in wait for the said Dhanuwa in the Maddiya and the accused persons assaulted him. The accused Pyare Raja, Veerendra Singh and Sawai Diwan were armed with lathis and Vijay Singh was armed with a pharsa. It is also alleged that Pyare Raja first dealt with a lathi blow at the back of the deceased and as result of such blow, the deceased fell down. Thereafter, all the accused persons started assaulting the deceased with lathis and pbarsa. The son of the deceased Radhey Lal (PW-1) having seen the accused persons assaulting his father rushed to call the village constables and the constable Jagdev'(PW- 3) while coming to rescue the deceased had found that the accused persons were taking the body of Dhanuwa but seeing the constables left the body and disappeared in the nearby jungle. Dhanuwa was found to be dead on the spot due to injuries caused to him.

3. A report of the incident was lodged by Radhey Lai to the Police Station and the crime case under Section 302 read with Section 34 IPC was registered and investigation was taken up. The spot map was prepared and the inquest of the dead body was held and the body of the said Dhanuwa was sent for post mortem examination and blood stained earth and blood stained piece of stone from the spot were seized and seizure of blood stained1 plastic shoes was also made. On January 30, 1979 the Police arrested all the four accused and they were interrogated. On the basis of statements made by the said accused persons, the pharsa, and the lathi (excepting one) were recovered from the place where the same were concealed.

4. Dr. R.S. Dhengula had performed the post mortem examination on the dead body of Dhanuwa on January 25, 1979 and six incised wounds on the right knee, leg and on the left parietal bone were noted by the doctor. There were also swelling and contusions on the right hand, right and left shoulders, on the hip and on left hand and an abrasion on the left knee. It was also found that the tibia bone was cut and the radius and ulna of both the hands were fractured. There was a lacerated wound on the left side of the head of the deceased which was noted as injury No. 12 in the post mortem report. As a result of such injury, the parietal bone was reduced into pieces and the brain was damaged and the brain matter had come out. According to the doctor, Dhanuwa had died as a result of the said injuries particularly due to the aforesaid head injury (injury No. 12).

5. The widow of the deceased, Imaratibai, and the son of the deceased, Radhey Lai, deposed about the commission of the said crime and they stated that the accused persons had murdered the deceased Dhanuwa. The village Constable, Jagdev, also stated in his deposition that on being informed by Radhey Lal, he rushed to the spot where the alleged incident had taken place and he found that all the four accused persons were carrying the dead body of Dhanuwa, the deceased. On seeing the Police, they left the dead body and fled away and thereafter disappeared in the jungle.

6. The learned Additional Sessions Judge on considering the evidences and materials on record held that all the four accused persons were guilty of an offence punishable under Section 302 read with Section 34 IPC. He therefore convicted the accused persons under Section 302 read with Section 34 IPC and sentenced to each of them to suffer imprisonment for life.

7. The accused/appellants thereafter preferred Criminal Appeal No. 287 of 1979 before the Jabalpur Bench of Madhya Pradesh High Court challenging their convicted and sentence passed by the learned Additional Sessions Judge. The High Court accepted the finding of the learned Additional Sessions Judge that it was a case of murder but since the two eyewitnesses were close relations of the deceased, namely, the son and the widow, and no independent eye-witness was examined although according to the prosecution, some of villagers had also witnessed the said incident of murder, the High Court inter alia held that, in the absence of corroboration by independent witnesses, the complicity of the accused could not be established convincingly particularly when there was contradiction in the depositions of the eye-witnesses. The High Court also did not intend to place reliance on the deposition of the eye-witnesses in view of the fact that P.W. 2 widow of the deceased had stated that only two pharsa blows had been inflicted on the deceased but from the medical evidence it transpired that six incised wounds were caused by pharsa. The High Court had also drawn adverse inference against uV prosecution case for not examining the. village Chowkidar when the said Chowkidar was also present when the report was made in the police station. The High Court was of the view that the first information report was not without suspicion and improvements had been made in the prosecution case to suit the prosecution case. The High Court held that the prosecution case could not be established beyond reasonable doubts. Accordingly, the conviction and sentence passed by the learned Additional Sessions Judge was set aside by the High, Court and all the accused persons were acquitted.

8. The State of Madhya Pradesh thereafter made an application for leave before this Court to assail the decision of the High Court and this Court granted leave.

9. The learned Counsel for the appellant has submitted that the two eye-witnesses, namely P.W.I and P.W. 2 had stated specifically about the commission of murder of Dhanuwa by the accused persons. The said two witnesses were natural witnesses and simply because they were close relations of the deceased, there was no occasion to discard their evidences as unreliable. It is in evidence that seeing his father being assaulted by the accused persons. P.W.I, Radhey Lai, went to call the village Constable and when the village Constable Jagdev (PW3) rushed to the spot, the Constable also found the accused persons carrying the dead body of the deceased and seeing the police they left the dead body and fled away. It has been contended by the learned Counsel that the learned Additional Sessions Judge has rightly held that there is no material contradiction in the depositions of the said eye-witnesses and the evidence adduced by them also gets support from the evidence of an independent police constable who had also seen the accused persons carrying the dead body of the deceased immediately after the assault. The learned Counsel for the State has also submitted that it has transpired in evidence that when P.W.I, Radhey Lal, was in the police station, the widow, Imaratibai, had also reached the police station and informed his son that his father had died. It is, therefore, quite reasonable that in the first information report the factum of death of Dhanuwa was noted and there was no reason for the High Court to take any exception as to why in the first information report lodged by Radhey Lai the factum of death was mentioned when Radhey Lai was not sure by that time whether his father had died. The learned Counsel for the appellant has also contended that the deposition of P.W.I, Radhey Lai, as to how Pyare Raja first hit Dhanuwa with lathi and thereafter other accused persons also attacked the deceased with lathis and pharsa tallies with the statement in the first information report and such deposition stands corroborated by the deposition of P.W. 2, Imaratibai. The learned Counsel for the appellant has further submitted that although both the eye-witnesses had specifically stated that the accused Vijay Singh gave pharsa blows on the deceased Dhanuwa, the High Court unjustly emphasised a minor contradiction to the effect that although the said two witnesses stated that two pharsa blows were given but from medical evidence it transpired that six incised wounds were caused on the person of the deceased. It has been submitted by the learned Counsel for the appellant that it was nobody's case that any other accused was armed with pharsa and if in the deposition of P.W.I, number of pharsa blows given by Vijay Singh who alone had phrasal could not be properly been and stated in the deposition, it cannot be held that there is such a material contradiction in the evidence of the eye-witnesses that the case cannot be accepted to be believable. The learned Counsel for the appellant has also submitted that the police constable who came immediately after the occurrence has also deposed and has categorically stated that the accused persons had been carrying the body of the deceased. The said police constable is an independent witness and nothing has been suggested against the veracity of the said witnesses. The deposition of the said witness, therefore, amply supports the case of the prosecution. For non-examination of independent witnesses, the learned Additional Sessions Judge has rightly indicated that Radhey Lal (P.W.I) had deposed that out of fear, nobody was prepared to give evidence about the said incident of murder happening in broad day light in the village. The learned Additional Sessions Judge has also noted that Pyare Raja and other accused persons were in aggressive mood and previously they had assaulted the bus driver and also the deceased. Even on the date of incident, Pyare Raja slapped the widow of the deceased, Imartibai, shortly before the incident and nobody dared to protest. The learned Counsel has submitted that in the aforesaid facts, it was quite likely that the villagers out of fear were not inclined to give evidence in the case. The learned Counsel has also submitted that the village chowkidar was present in the police station

when first information report was lodged. He has submitted that non examination of village chowkidar who was not a witness of the incident of murder cannot be held to be a serious lapse on the part of the prosecution. The learned Counsel has, submitted that the order of acquittal passed by the High Court was completely against the weight of the evidence and the prosecution case was discarded on flimsy grounds. Such decision therefore, should be set aside and the well reasoned order of conviction and sentence passed by the learned Additional Sessions Judge should be upheld by this Court.

10. Mr. Gambhir, the learned Counsel appearing for the respondents has however submitted that admittedly there was bad feeling between the deceased and Pyare Raja and other accused persons and it is the positive case of the prosecution that Pyare Raja had assaulted the deceased Dhanuwa prior to the fateful date of murder. It is also the case of the prosecution that the widow of the deceased Imaratibai was slapped on the face by Pyare Raja shortly before the murder of Dhanuwa. In the aforesaid facts, the evidence of the son and widow of the deceased were to be cutinised with utmost caution. Mr. Gambhir has submitted that the alleged incident had taken place in the broad day light in the heart of the village. If the prosecution case is accepted such incident of murder had been witnessed by a number of persons but strangely none of such persons has been examined. The village chowkidar, even if he had not seen the commission of murder, was required to be examined so as to alley the suspicion about the lodging of F.I.R. immediately after the incident particularly when the chowkidar is stated to have been present in the police station at the time of lodging F.I.R. Mr. Gambhir has submitted that it is not the question as to whether the eye-witnesses had failed to note the number of incised wounds inflicted by Vijay Singh with a pharsa. According to prosecution case only four persons took part in murdering the deceased and three were armed with lathis and only Vijay Singh was armed with pharsa. The incident is alleged to have been seen by the eye-witnesses from a close distance. In such circumstances, both the eye-witnesses could not have missed the number of blows caused by Vijay Singh with pharsa. The case of two pharsa blows is belied by medical evidence and it is in the aforesaid background, the reliability of the said two highly partisan witnesses particularly in the absence of any independent eye-witness is bound to be seriously doubted. Mr. Gambhir has submitted that the High Court being court of appeal was under an obligation to consider the evidence and materials on record carefully to assess their worth. The High Court has indicated various aspects of the case which appeared suspicious and improbable. It is on account of the cumulative effect of all such facts that the High Court has held that the prosecution case had not been established beyond all reasonable doubts. Such view being very reasonable and consistent with well established principle of criminal jurisprudence, no interference against the decision of the High Court is warranted. Mr. Gambhir has also contended that the prosecution has not been able to establish any strong motive for murdering Dhanuwa. On the contrary, it has been alleged that the Pyare Raja wanted that Dhanuwa should be driven out of the village. He has submitted that excepting one lathi blow causing injury No. 12 which proved to be the cause of death, other injuries were not sufficient to cause death in the ordinary course of nature. Hence, in any event, conviction under Section 302 read with Section 34 I.P.C. was wholly unjustified.

11. After giving out anxious consideration to the facts and circumstances of the case and the materials on record and the submissions made by the learned Counsel for the parties, it appears to

as that the High Court has failed to appreciate the evidences in the case. There is no dispute that Dhanuwa was murdered. The place of occurrence, time and date of such occurrence are not in dispute. Apart from the two eye-witnesses, the police constable Jagdev (P.W. 3) has supported the case of murder of Dhanuwa on the day and at the time alleged in F.I.R. Jagdev has seen immediately after the occurrence that the accused had been attempting to take away the dead body of Dhanuwa. There is no explanation as to why the accused persons should try to take away the dead body of Dhanuwa. It has been clearly established that the murder had taken place in the broad day light in the heart of village. Such incident is likely to be noticed by some of the villagers. But none of the villagers came forward to depose in this case of brutal murder. In our view, the learned Additional Sessions Judge has rightly held that the villagers became afraid because of the persistent aggressive mood of the accused and chose to stay out. Even the owner of Mill had left the mill and gone to his house. We, have considered the evidences adduced in the case and we agree with the learned Additional Sessions Judge that the F.I.R. was promptly lodged by Radhey Lai and there was no occasion to doubt the genuineness of the F.I.R. The High Court, in our view, was wholly unjustified in drawing adverse inference against the prosecution case for not examining the village chowkidar. The lodging of F.I.R. immediately after the incident by Radhey Lai has been established by cogent evidences. The village chowkidar was not an eye-witness to the incident of murder. Hence;, non-examination of the chowkidar is wholly immaterial. It also appears to us that the High Court has given importance to the discrepancy about incised wounds caused by pharsa to the deceased, out of proportion. The eye-witnesses have stated about two injuries caused by pharsa but from medical evidence it transpires that there were six incised wounds on the person of the deceased. It is nobody's case that besides Vijay Singh, other assailants had also used pharsa. The son Radhey Lai after seeing his father critically injured by the accused rushed to call the police constable. It is therefore quite likely that he had not seen all the injuries caused by a pharsa. The widow was also pushed out by the accused when she tried to save her husband. It is quite likely that some pharsa blows had not been seen by her. Both the eye-witnesses have given depositions in a straight forward manner and we do not find any ambiguity in the depositions. The learned Additional Sessions Judge has noted that both the eye-witnesses could not be shaken in cross examination. We are therefore inclined to accept the findings of the learned Additional Sessions Judge.

12. We are also not impressed by the submissions of Mr. Gambhir that in the facts and circumstances of the case conviction under Section 302 read with Section 34 I.P.C, was unjustified. The deceased died on the spot and had suffered multiple injuries numbering thirteen. His tibia was cut and both the ulnas and radius were broken. Even when he was lying helplessly on the ground, assaults continued. The wife of the deceased, when in attempt to save his life, fell on his body, she was pushed back and further assaults were made. It is often very difficult to precisely gauge the motive of a man. Some times, heat and passion generate on the spot impelling a man to act in a very brutal manner. From the nature of the injuries and in the manner in which such injuries were caused with vengeance we do not think that conviction of the accused under Section 302 read with Section I.P.C. is at all unjustified.

13. In our view, the High Court has failed to appreciate the evidence in the case properly and the discrepancies noted by the High Court are not at all material so as to discard the prosecution case as unbelievable. We, therefore, set aside the impugned judgment of the High Court and affirm the

order of conviction and sentence passed by the learned Additional Sessions Judge by allowing this appeal. The accused are on bail. They should be taken to custody to serve out the sentence.