

MAHENDRA SINGH AND ORS.

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v.

STATE OF M.P.

(Criminal Appeal No.764 of 2021)

JUNE 03, 2022

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[B. R. GAVAI AND HIMA KOHLI, JJ.]

Penal Code, 1860 – ss. 302 r/w s.149, and s.148 – Murder – Conviction of accused-appellants on basis of sole testimony of PW6 – High Court found PW6 to be in the category of a witness who was “neither wholly reliable nor wholly unreliable”, and upheld conviction seeking corroboration from post-mortem report – Conviction of appellants – Challenged, on ground that PW6 fell in the category of a “wholly unreliable” witness – Held: From evidence of PW3 and PW4 which was fully corroborated by evidence of DW3 and DW4, it was clear that PW6 could not have witnessed the incident – Evidence of PW6 would fall in the category of “wholly unreliable” witness – As such, no conviction could be based solely on his testimony – Corroboration sought by High Court from the medical evidence was not justified – Medical evidence could only establish that the death was homicidal – However, it could not have been used to corroborate the version of PW6 that he had witnessed the incident – Prosecution failed to prove the case beyond reasonable doubt and as such, accused-appellants entitled to be given the benefit of doubt – Appellants accordingly acquitted.

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Criminal Trial – Witnesses – Categories of witnesses – Held: Witnesses are of three types, viz., (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable – When the witness is “wholly reliable”, the Court should not have any difficulty inasmuch as conviction or acquittal can be based on the testimony of such single witness – Equally, if the Court finds that the witness is “wholly unreliable”, there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness – It is only in the third category of witnesses that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

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A *Criminal Trial – Motive – Only because motive is established, the conviction cannot be sustained.*

Criminal Trial – Witness – Defence witness vis-a-vis prosecution witness – Held: Same treatment is required to be given to the defence witness(es) as is to be given to the prosecution witness(es).

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Allowing the appeals, the Court

HELD:1.1. In its celebrated judgment in the case of *Vadivelu Thevar*, the Supreme Court has found that witnesses are of three types, viz., (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is “wholly reliable”, the Court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the Court finds that the witness is “wholly unreliable”, there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. [Para 13][744-B-C]

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E **2.1.** The High Court found the testimony of PW6 to be in the third category and upheld the conviction seeking corroboration from the Post-Mortem Report conducted by PW2. [Para 14][744-D]

F **2.2.** However, it could clearly be seen from the testimony of PW3 and PW4, without even referring to the testimony of DW3 and DW4, that it was DW3 who had informed PW6 about the dead-body of the deceased lying on route. The evidence of PW3 and PW4 is fully corroborated by the evidence of DW3 and DW4. It is a settled law that same treatment is required to be given to the defence witness(es) as is to be given to the prosecution witness(es). From the evidence of these witnesses, it is amply clear that PW6 could not have witnessed the incident. [Paras 17, 18, 20 and 21][745-D-E, G-H]

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2.3. The evidence of PW6 would fall in the category of “wholly unreliable” witness. As such, no conviction could be based solely on his testimony. The corroboration sought by the High Court from the medical evidence was not justified. The medical evidence could only establish that the death was homicidal. However, it could not have been used to corroborate the version of PW6 that he has witnessed the incident. [Para 22][746-A-B]

2.4. Insofar as the contention of respondent-State that the prosecution has proved the motive is concerned, it is well settled that only because motive is established, the conviction cannot be sustained. [Para 23][746-C]

3. The prosecution has failed to prove the case beyond reasonable doubt and as such, the accused are entitled to be given the benefit of doubt. The appellants are acquitted of the charges charged with. [Paras 24, 25][746-C-D]

Vadivelu Thevar v. The State of Madras [1957] SCR 981 – relied on.

Shakila Abdul Gafar Khan (Smt) v. Vasant Raghunath Dhoble and Another (2003) 7 SCC 749 : [2003] 3 Suppl. SCR 426; *State of Andhra Pradesh v. Pullagummi Kasi Reddy Krishna Reddy Alias Rama Krishna Reddy and Others* (2018) 7 SCC 623; and *Rupinder Singh Sandhu v. State of Punjab and Others* (2018) 16 SCC 475 : [2018] 6 SCR 479 – referred to.

Case Law Reference

[1957] SCR 981	relied on	Para 8	
[2003] 3 Suppl. SCR 426	referred to	Para 10	
(2018) 7 SCC 623	referred to	Para 10	G
[2018] 6 SCR 479	referred to	Para 10	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.764 of 2021.

H

A From the Judgment and Order dated 06.08.2019 of the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No.317 of 2000.

With

B Criminal Appeal No.765 of 2021

S. Nagamuthu, Sr. Adv., Raj Kishor Choudhary, Shakeel Ahmed, Rizwan Ahmad, Shivam Yadav, Jatin Anand Dwivedi, Advs. for the Appellants.

C Ms. Ankita Chaudhary, DAG, Gopal Jha, Amit Sharma, Ms. Himanshi Shakya, Advs. for the Respondent.

The Judgment of the Court was delivered by

B. R. GAVAI, J.

D 1. Both these appeals, i.e., Criminal Appeal No.764 of 2021, filed by Mahendra Singh (accused No.3), Pritam Singh (accused No.4) and Shambhu Singh (accused No.9); and Criminal Appeal No.765 of 2021, filed by Lakhan Singh (accused No.11), challenge the judgment dated 6th August, 2019, delivered by the Division Bench of the High Court of Madhya Pradesh, Bench at Gwalior, in Criminal Appeal No.317 of 2000, E thereby dismissing the appeal filed by the present appellants and upholding their conviction under Sections 148 and 302 read with Section 149 IPC and imposing the sentence of one year rigorous imprisonment under Section 148 IPC; and life imprisonment and a fine of Rs.5,000/- each under Section 302 read with Section 149 IPC and, in default of payment F of fine, sentence of rigorous imprisonment for a period of two years.

2. The facts, in brief, giving rise to the present appeals are as under:

G 3. The investigation in the present case was set in motion on the basis of the oral report of Amol Singh (P.W.6), on the basis of which a First Information Report (“FIR” for short), Exhibit P-7, came to be registered. It is stated by Amol Singh (P.W.6) in the FIR that on 12th June, 1994, when he was returning from Basoda, he had met his brother Bhagat Singh (deceased) at about 6:00 pm and had also met Akhe Singh (PW-4). He further stated that they boarded a bus from H Nayi Sarak till Chak Ranapur. After reaching Chak Ranapur, they walked

towards their village Budhor. At about 7.00 p.m., when they reached village Ratanpur, he was walking ahead, followed by Akhe Singh (PW-4), who in turn, was followed by Bhagat Singh, he heard the cries of his brother Bhagat Singh and when he turned, he saw Shambhu Rajput hitting Bhagat Singh with a ballam; accused Santosh, Lakhan, Mahendra and Pritam had also assaulted Bhagat Singh with ballam, causing injury on front side of the body; accused-Padam Singh had hit Bhagat Singh with a rod; accused-Dashrath Singh had assaulted Bhagat Singh with a lathi on his head and three others hit Bhagat Singh with sticks. He further stated that when the accused charged to assault the complainant-Amol Singh (P.W.6) and Akhe Singh (P.W.4), they started running for their life and reached village Budhor and narrated the incident to Deewan Singh, Pooran Singh, Mokam Singh, etc. He has further stated that all of them had come back to the spot of incident and found Bhagat Singh dead. They hired a tractor of Veer Singh and took the dead-body to the Police Station. It is his case that the accused persons had assaulted the deceased on account of previous enmity.

4. After the conclusion of the investigation, a charge-sheet came to be filed against 11 accused in the Court of Judicial Magistrate First Class, Ganj Basoda, who committed the case to the learned Sessions Court, Ganj Basoda District Vidisha, Madhya Pradesh (hereinafter referred to as “the Trial Court”). Charges were framed against all the 11 accused for the offences punishable under Sections 148 and 302 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”).

5. At the conclusion of the trial, the Trial Court acquitted Bharat Singh (accused No.1), Vishwanath Singh (accused No.2), Dashrath Singh (accused No.5), Padam Singh (accused No.6), Bana Lal alias Bana Singh (accused No.8) and Pappu alias Kuber Singh (accused No.10) vide judgment dated 18th April, 2000. However, by the same judgment dated 18th April, 2000, the Trial Court convicted Mahendra Singh (accused No.3), Pritam Singh (accused No.4), Santosh (accused No.7), Shambhu Singh (accused No.9) and Lakhan Singh (accused No.11) for the offences punishable under Section 148, 302 read with Section 149 of the IPC and sentenced them to one year rigorous imprisonment for the offence punishable under Section 148 IPC; and life imprisonment and a fine of Rs.5,000/- each for the offence punishable under Section 302 read with

A Section 149 IPC. They were also sentenced to suffer rigorous imprisonment for a period of two years in default of payment of fine.

B 6. Being aggrieved by the judgment dated 18th April, 2000, passed by the Trial Court, all the convicted and sentenced accused preferred an appeal before the High Court of Madhya Pradesh. By the impugned judgment dated 6th August, 2019, the High Court of Madhya Pradesh, Bench at Gwalior, has dismissed the appeal. Hence the present appeals.

C 7. We have heard Mr. S. Nagamuthu, learned Senior Counsel appearing on behalf of the appellants and Ms. Ankita Chaudhary, learned Deputy Advocate General (“DAG” for short) appearing on behalf of the respondent-State of Madhya Pradesh.

D 8. Mr. S. Nagamuthu submits that the entire conviction of the appellants is based on the sole testimony of Amol Singh (P.W.6). The learned Senior Counsel submits that the evidence of Mahendra Singh (P.W.3) and Akhe Singh (P.W.4) along with the evidence of Mobat Singh (D.W.3) and Kok Singh Raghuvanshi (D.W.4) would reveal that Amol Singh (P.W.6) could not have witnessed the incident. He submits that Amol Singh (P.W.6) is the real brother of the deceased Bhagat Singh and therefore his testimony has to be scrutinized with greater care, caution and circumspection. The learned Senior Counsel relied on the judgment of this Court in the case of *Vadivelu Thevar vs. The State of Madras*¹. It is submitted that the testimony of the said witness falls in the category of “wholly unreliable” witness and as such, the conviction on the basis of the testimony of such a witness could not be sustainable. Mr. Nagamuthu further submits that on the basis of the same evidence/
F testimony, the learned Trial Court had acquitted six accused while convicting and sentencing the other five.

G 9. Mr. Nagamuthu further submits that there is also a doubt as to whether the FIR in the present case is a real FIR or not. It is further submitted that delayed FIR would create a doubt about the trustworthiness of the prosecution case.

10. Ms. Ankita Chaudhary, learned DAG, on the contrary, submitted that the learned Trial Court as well as the High Court have rightly relied on the testimony of Amol Singh (P.W.6). It is submitted that merely

H ¹(1957) SCR 981

because a minor contradiction/ inconsistency cropped up in the evidence of the witness, it cannot be a ground to disbelieve the truthfulness of the testimony of such a witness. It is submitted that the maxim “*falsus in uno falsus in omnibus*” is not accepted in India. She therefore submits that grain has to be separated from the chaff to find out the truth from the testimony of the witness. She relied on the judgments of this Court in the cases of *Shakila Abdul Gafar Khan (Smt) vs. Vasant Raghunath Dhoble and another*², *State of Andhra Pradesh vs. Pullagummi Kasi Reddy Krishna Reddy alias Rama Krishna Reddy and others*³; and *Rupinder Singh Sandhu vs. State of Punjab and others*⁴ to fortify her submissions.

11. From the material placed on record, it would reveal that the conviction of the present appellants is based basically on the testimony of Amol Singh (P.W.6). A corroboration is sought from the medical evidence in the nature of Post-Mortem Report.

12. It will be apposite to refer to the following observations of this Court in its celebrated judgment in the case of *Vadivelu Thevar* (supra):

“.....Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of

² (2003) 7 SCC 749

³ (2018) 7 SCC 623

⁴ (2018) 16 SCC 475

A cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

13. It could thus be seen that this Court has found that witnesses are of three types, viz., (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is “wholly reliable”, the Court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the Court finds that the witness is “wholly unreliable”, there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

14. The High Court has found the testimony of Amol Singh (P.W.6) to be in the third category and has upheld the conviction seeking corroboration from the Post-Mortem Report conducted by Dr. S.S. Bhargava (P.W.2). We will therefore have to consider as to in which category the evidence/testimony of Amol Singh (P.W.6) would fall.

15. Amol Singh (P.W.6) has elaborately given the details of the incident. He states that on the day of the incident Bhagat Singh and Santosh Khawas had gone to Nateran and he had gone to Basoda. At around 4.45 p.m., he departed to his village. Bhagat Singh sat in his bus to go to village. They got down at Ratan Pur Chak bus stop and thereafter were going to village Budhor. While walking towards their village, at around 6.00 p.m., he heard the cries of Bhagat Singh loudly that killed me (Mar Dala). Thereafter he saw all the accused assaulting the deceased. He states that when the accused persons ran behind him, he ran away from there and reached his house at Budhor. Thereafter, he narrated the incident to his brothers, namely, Prag Singh, Pooran Singh and Mokam Singh. All of them went to the spot, where they found Bhagat Singh dead. Thereafter Pooran Singh got tractor trolley and carried Bhagat Singh at the Nateran Police Station. Thereafter he lodged the FIR. He has also stated that previous enmity was the motive for committing the crime.

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16. It will be relevant to refer to the testimony of Mahendra Singh (P.W.3). He has stated in his evidence that he was sitting at his Chabutara (Chowk) in his house. Mobat Singh (D.W.3) told Amol Singh (P.W.6) that Bhagat Singh is lying dead at Nagar Chak. Then, Mokam Singh, Amol Singh (P.W.6), Areg Singh, Parwat Singh, Himmat Singh, Ratan, Fullu, Gullu, Lallu went to see Bhagat Singh at the Chak and along with them he had also gone to see Bhagat Singh. At the Nagar Chak in front of the house of Genda, they found Bhagat Singh in a dead condition. Thereafter, Amol Singh (P.W.6) and Mokam Singh carried Bhagat Singh to Nateran. In his cross-examination, he has admitted that Mobat Singh (D.W.3) in his presence had told Amol Singh (P.W.6) that Bhagat Singh is lying dead on the route. Thereafter Amol Singh (P.W.6) became nervous and started weeping. Akhe Singh (P.W.4) has given his testimony on similar lines.

17. It could thus clearly be seen from the testimony of Mahendra Singh (P.W.3) and Akhe Singh (P.W.4), without even referring to the testimony of Mobat Singh (D.W.3) and Kok Singh Raghuvanshi (D.W.4), that it was Mobat Singh (D.W.3) who had informed Amol Singh (P.W.6) about the dead-body of Bhagat Singh lying on route.

18. The evidence of Mahendra Singh (P.W.3) and Akhe Singh (P.W.4) is fully corroborated by the evidence of Mobat Singh (D.W.3) and Kok Singh Raghuvanshi (D.W.4). Kok Singh Raghuvanshi (D.W.4) in his evidence states that when he was going from Basoda to Budhor on his motorcycle, one person by the name of Pran Singh stopped him and told him that Bhagat Singh was lying dead on the route. He thereafter went to village Budhor and gave this information to Mobat Singh (D.W.3).

19. Mobat Singh (D.W.3) in his evidence states that he was informed about Bhagat Singh lying dead on the route by Kok Singh Raghuvanshi (D.W.4). He thereafter went to the house of Bhagat Singh and informed about the same to Prag Singh, Amol Singh (P.W.6), Mokam Singh, Pooran Singh and Akhe Singh.

20. It is a settled law that same treatment is required to be given to the defence witness(es) as is to be given to the prosecution witness(es).

21. From the evidence of these witnesses, it is amply clear that Amol Singh (P.W.6) could not have witnessed the incident.

A 22. We therefore find that the evidence of Amol Singh (P.W.6)
would fall in the category of “wholly unreliable” witness. As such, no
conviction could be based solely on his testimony. We find that the
corroboration sought by the High Court from the medical evidence was
not justified. The medical evidence could only establish that the death
B was homicidal. However, it could not have been used to corroborate the
version of Amol Singh (P.W.6) that he has witnessed the incident.

23. Insofar as the contention of learned DAG for the respondent-
State that the prosecution has proved the motive is concerned, it is well
settled that only because motive is established, the conviction cannot be
C sustained.

24. In that view of the matter, we find that the prosecution has
failed to prove the case beyond reasonable doubt and as such, the accused
are entitled to be given the benefit of doubt.

D 25. In the result, we pass the following order:

- (i) The appeals are allowed.
- (ii) The impugned judgment dated 6th August, 2019, delivered by
the Division Bench of the High Court of Madhya Pradesh in
Criminal Appeal No.317 of 2000 as well as the judgment
and order dated 18th April, 2000, passed by the learned
E Additional Sessions Judge, Ganj Basoda, District Vidisha,
Madhya Pradesh in Sessions Trial No.248 of 1996 are
quashed and set aside.
- (iii) The appellants are acquitted of the charges charged with.
F They are directed to be set at liberty forthwith, if not required
in any other case.

26. Pending applications, including application for bail, shall stand
disposed of in the above terms.