

CASE NO.:
Appeal (crl.) 1131 of 2000

PETITIONER:
Prem Narain and Anr.

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 29/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
JUDGMENT

S.B. SINHA, J.

Accused No.1-Premnarain and accused No. 3-Jagdish before the trial Court are before us against the judgment of conviction and sentence passed under Section 304 (II) of the I.P.C whereby they were sentenced to undergo five years' rigorous imprisonment.

Accused No.1, the appellant herein together with accused No.2 - Ramcharan, accused No.4- Parmeshwar and Accused No.6-Chunnilal was prosecuted for committing the murder of Gopal Singh. Accused Nos. 5 and 6 were acquitted by the learned trial Judge. Accused No.2 and accused No.4 have been acquitted by the High Court.

The first informant-Ganeshi Bai is the wife of the deceased Gopal Singh. As per the First Information Report, the incident occurred at about 11 a.m. on 6.7.1985. From a perusal of the First Information Report, it appears that allegations were made that at 9 a.m. Prem Narain and Parmeshwar came to her house and asked her husband as to where he had been in the previous night. According to the deceased he was in Bareilly. Parmeshwar asked her husband to come to Bareilly to which he replied that he could come a little later. At about 11 a.m. her husband left for Bareilly and in the lane (Gali) Ram Charan, Prem Narain, Jagdish and Parmeshwar intercepted him and then started assaulting her husband. He raised alarm and upon hearing the same the first informant came running there and saw the deceased lying in the lane and all the four accused persons assaulting him. The dead body was found in the field of Shankar.

It was disclosed in the First Information Report that Prem Narain and Ram Charan assaulted him with Ballam(spear) and Jagdish and Parmeshwar assaulted him with lathis.

Ganeshi Bai allegedly informed Chunni Lal immediately thereafter, who came to the place of occurrence and having found the deceased to have breathed his last, accompanied her to the Police Station. The Police Station was at a distance of 5 k.m. from the place of occurrence. The First Information Report was recorded on 6.7.1985 at about 11 a.m.

Indisputably the eye witness on whose testimony the judgments of conviction and sentence were passed both by learned trial judge as also the High Court are Ganeshi Bai- P.W.1 and Kallu-P.W.3. Than Singh-P.W.2 who was named as an eye witness in the FIR was declared hostile. Bhagwati Singh-P.W.4 another so called eye-witness also was declared hostile. No part of their evidence was believed by the learned trial Judge as also by the High Court.

The first informant-Ganeshi Bai in her evidence before the Court gave a completely different picture than disclosed in the First Information

Report. The time and place of incident was also changed. According to her before the Court, at about 10 a.m. Peeta. (not Prem Narain and Parmeshwar) came to her house and called her husband saying that they want to go to Brailey. Conversations which purported to have taken place with regard to whereabouts of the deceased in the previous night had not been disclosed. Whereas according to the First Information Report, the deceased started for going to Bareilly after taking his breakfast, he was accosted in the lane by the persons named as accused in the First Information Report; in her statement before the Court she stated Peeta Ram asked her husband to come immediately whereupon Chunni Lal caught hold hand of her husband and dragged him to his house and bolted the outer door. The scene of occurrence thus has changed from lane to the house of Chunni Lal.

In her First Information Report, as noticed hereinbefore, she came out of the lane and found the accused persons assaulting the deceased. In her statement before the Court she stated that she had tried to open the door and having not been able to do so, she purported to see the incident from Bada. In her statement before the Court she disclosed that the incident took place inside the house of Chunni Lal where all the six accused persons were present and they had been assaulting her husband but it was for the first time in her evidence she stated that her son was on her lap and despite the same she was assaulted on her stomach but no injury was found.

The defence has been able to bring on records vital omissions and contradictions in her statement made before the Police and her statement before the Court but we need not go into the details thereof. Suffice, it to say that accordingly to the defence the deceased had committed many thefts. He was accused of stealing buffalos of somebody in the previous night and only on such suspicion he had been assaulted. In view of the contradictions and inconsistencies in the depositions of the Ganeshi Bai- PW.1, we are of the opinion that the learned trial Court as also the High Court committed a manifest error in relying upon her testimony as an eye witness.

So far as Kallu- P.W.3 is concerned, he was not named as a witness in the First Information Report, but the same in itself may not be of much significance. But what is important is that in his evidence he categorically stated that the investigating officer had called him to the Police Station once five days after the incident and the second time 10-11 days after the incident. He was called for the third time 1+ month after the incident. Girish Bohre-the Investigating Officer P.W.9 in his deposition denied that P.W.-3 was called for the first two times. According to the said witness the evidence of P.W.-3 was recorded for the first time after 1+ months.

It is expected that in a case involving death of a person, the investigating officer would have visited the place of occurrence immediately. If that be so, it is also expected that the statements of witnesses who were present would be recorded.

We fail to see any reason whatsoever as to why the statement of P.W.-3 was no recorded on the date of occurrence and in any event within a reasonable time. If Kallu-P.W.-3 is to be believed he was in constant touch with the investigating officer. If that be so, it betrays all reasons as to why he was examined after only six weeks.

It is not possible for us to arrive at a definite finding by taking aid of Section 34 of the Indian Penal Code that appellants herein could be convicted for commission of an offence under Section 304(II) but having regard to the fact that both P.W 1 and P.W.3 had made common allegations against all the accused persons, and as despite the same, accused Nos. 5 and 6 were acquitted by the learned trial Court and accused Nos. 2 and 4 were acquitted by the High Court, we are not in a position to do so. Accused Nos. 5 and 6 were not named in the First Information report at all. Accused Nos. 2 and 4 were not named by P.W.3. If P.W.3 watched the

entire incident from a close distance, as he claims to be; we fail to reason as to why no overt act was attributed by him so far as accused nos. 2 and 4 are concerned.

We for the reasons stated aforementioned feel that benefit of doubt should be given to the appellants. The appeal is allowed accordingly. The appellants are on bail. Their bail bonds shall stand discharged.

JUDIS