

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
P.A. MADHU

DATE OF JUDGMENT 17/07/1984

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1984 AIR 1523 1984 SCR (3) 1
1984 SCC (4) 83 1984 SCALE (2) 6

ACT:

Constitution of India-Art. 136-Supreme Court-When would interfere with the appreciation of evidence by the High Court.

Code of Criminal Procedure-S. 154-FIR-Cryptic information on phone to police-Cannot be treated as FIR-Being first in point of time make no difference-Name of assistant not mentioned in telephonic message-Whether discredits prosecution case.

HEADNOTE:

The respondent, Secretary of the workers union of a construction company, D.W. 1, Vice-President of the Union, the deceased and P.Ws. 5 and 7, officers of the company and P.W. 6, standing counsel of the company were all coming out of the office of an industrial tribunal after filing their written statements in a dispute raised by the workers. The prosecution case was that at the main gate of the tribunal's building the respondent suddenly started firing from a pistol and shot dead the deceased. As firing was going on, a telephonic message conveying the fact that gunshots were being fired was sent to the nearby police station on receipt of the telephonic message the police arrived at the spot, seized the pistol and took the respondent and some of the witnesses to the police station where a formal FIR was registered. The Session Judge convicted the accused under s. 302 IPC and s. 25 (1) (a) of Indian Arms Act and sentenced him to life imprisonment and one years' rigorous imprisonment respectively. On appeal the High Court reversed the judgment of the Sessions Judge. The High Court observed that if P.W. 7 had given the telephonic message, as stated by D.W. 1. he would have mentioned the name of the assailant because he was a full-fledged eye-witness but since his name had not been mentioned it was the strongest Possible circumstance to discredit the prosecution case. Hence this appeal.

Allowing the appeal,

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HELD: Normally this Court does not interfere against the judgment of

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the High Court purely on appreciation of evidence. But this Court would interfere with the decision of the High Court if there appear to be very special circumstances which have been either overlooked or not considered by the High Court or the High Court does not appear to have examined the intrinsic merits of the evidence of the witnesses but has proceeded to acquit the accused on general grounds which are wholly untenable. [5B-C]

A cryptic information on telephone has been held by this Court to be of no value at all. The mere fact that the information was the first in point of time does not by itself clothe it with the character of first information report.

Tapinder Singh v. State of Punjab, [1971] 1 SCR 599, referred to

In the instant case the telephonic message was an extremely cryptic one and could not be regarded as a FIR in any sense of the term.

The High Court has applied two different standards to assess the evidence of the prosecution and that of the defence. While the High Court accepts the uncorroborated evidence of D.W. 1, who is as much interested in the dispute as the deceased, if not more, being Vice-President of the Union and also in possession of the brief case of the respondent, yet it disbelieves the evidence of P.Ws. 5 and 7 mainly on the ground that they were highly interested. [7H, 8A-B]

The High Court completely lost sight of two important facts-(1) that P.Ws. 5 and 7 were high officers of the company and were not likely to depose falsely on a matter like this, and (2) that r.W. 6, who was the standing counsel of the company and other labour cases for more than 3 decades, fully corroborates the evidence of P.Ws. 5 and 7. We have examined the evidence of P.Ws. 5 and 7 with very great care and caution but we are unable to find any discrepancy or defect in their evidence so as to lead any court to reject the same. [8E-F]

The finding of the High Court that it is difficult to believe that after the respondent threw the pistol he continued to remain at the spot and did not make any attempt to escape is also most unrealistic. There is clear evidence of P.Ws. 5, 6 and 7 that after the respondent threw down the pistol he was surrounded by the three witnesses so that he could not escape. The High Court has failed to consider this important aspect of the matter. Moreover, if a person commits a cold-blooded murder in the premises of a court which is bound to be full of other litigants also, he cannot think of escaping and is bound to be caught by some one or the other. [9A-C]

Relying on the evidence of D.W. 1, the conclusion reached by the High Court that it is extremely doubtful that the witnesses could see the incident from inside the court room as there was no door or window through which

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the incident could be seen is purely speculative and against the weight of evidence on record. The evidence of D.W. 1, who was a highly interested witness, should not have been acted upon in the peculiar facts and circumstances of this case unless corroborated by independent evidence. [9D; F-G]

The High Court seems to have completely overlooked the fact that there was no reason for the three eye-witnesses, one of whom was a standing counsel for about 30 years, to have falsely implicated the respondent merely because he was Secretary of the Union. The consistent course of conduct of the respondent speaks volumes against his innocence. He was

caught red-handed at the spot and was surrounded by the witnesses so that he could not escape, and the police arrived within fifteen minutes of the occurrence and took him to the police station. [9H; 10A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 611 of 1981.

Appeal by Special leave from the Judgment and Order dated the 6th February, 1981 of the Allahabad High Court in Crl. Appeal No. 11478 of 1980.

Dalveer Bhandari, H.M. Singh and Ranbir Singh Yadav for the Appellant.

R.L. Kohli and Girish Chandra for the Respondent.

Ram Jethmalani, Ms. Rani Jethmalani and S.B. Jethmalani for the Intervener.

The judgment of the Court was delivered by

FAZAL ALI, J. Our hard-won freedom from British yoke ushered in a new era of progress and prosperity resulting in setting up of a large number of industries of all sorts and kinds in various spheres, some of them being Government controlled and some of them in the private sector. Labour and industrial laws of the country passed after independence created a sense of new awakening in the labour force which became more and more conscious of the rights and privileges conferred on them by the laws. Although disputes between the labour and management is now a common feature of the industrial life of the country yet seldom in the history of industrial disputes has it ever happened that a dispute assumed such large proportions as to take the toll of a human life resulting in a cold-blooded murder in broad day light and that too in a court premises.

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Such an extraordinary event is the subject-matter of this appeal by special leave against the judgment of the Allahabad High Court where a Secretary of the labour Union seems to have run amuck and fired several shots by a country-made pistol shots on an officer of the management and killed him at the spot

The facts of the case have been detailed in the judgment of the learned Sessions Judge and the High Court and need not be repeated. The matter, therefore, lies within a narrow compass and we purpose only to examine the reasons and the inferences drawn by the High Court for acquitting the respondent, Madhu.

M/s. Hindustan Construction Company (hereinafter referred to as the 'company'), had undertaken the construction of Jamuna Hydel Project in Khadar, District Dehradun.

To begin with, it appears that there was some dispute about the dearness allowance claim of the labour from the management which was referred to the Industrial Tribunal. The respondent, who was the Secretary of the Union, was looking after the case on behalf of the workers, while PWs 5 and 7 were the officers appearing on behalf of the management before the Tribunal. The deceased, S.J. Sirgaonkar, was Deputy Personnel Manager of the Bombay Branch of M/s. Hindustan Construction Company. He was shot dead by the respondent after he (deceased), alongwith the other officers of the management, had come out of the Tribunal's office at Meerut after filing their written statements. Thereafter one of the eye-witnesses, S.K. Gui (PW 7) asked someone to give a telephone call to the police

station, which was nearby, on receipt of which the police arrived at the spot, seized the pistol and took the accused and some of the witnesses to the police station where a form FIR was registered. The Panchanama was prepared and other formalities were, however, done at the spot.

The learned Sessions Judge, after a careful consideration of the evidence of the three main eye-witnesses (PWs 5, 6 and 7) as also the evidence of Durga Das (DW 1), came to a clear conclusion that the prosecution case against the respondent was fully proved and accordingly he convicted the respondent under

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s. 302, I.P.C. and sentenced him to imprisonment for life. He also convicted the respondent under s. 25(1)(a) of the Indian Arms Act and sentenced him to one year's R.I. The respondent went up in appeal to the High Court against the decision of the Sessions Judge which was reversed by the High Court and the respondent was acquitted of the charges framed against him.

Normally, this Court does not interfere against the judgment of a High Court purely on appreciation of evidence. But, in this case, there appears to be very special circumstances which have been either overlooked or not considered by the High Court. Besides this, the High Court does not appear to have examined the intrinsic merits of the evidence of the witnesses but has proceeded to acquit the respondent on general grounds which, we shall show hereafter, are wholly untenable.

It appears that July 5, 1977 was the date fixed in the Industrial Tribunal, Meerut for the parties to file their written statements and in this connection the deceased alongwith the other eye-witnesses (PWs 5, and 7) attended the Tribunal and PWs 5 and 7 filed their written statements. P.W. 6 was, the standing counsel of the Company and had been representing the same in all labour disputes concerning the Company. The respondent was holding the post of hydel lineman of the Project and was the Secretary of the labour Union. DW 1, Durga Das, who was also at the spot was the Vice-President of the said Union.

It appears that after filing the written statements at about 11.30 a.m. the witnesses and the respondent came out of the court premises and were talking between themselves. As soon as the respondent and Sirgaonkar (the deceased) reached the main gate of the Tribunal building, the respondent is alleged to have taken out a country-made pistol and fired five shots one after the other in quick succession, with the result that Sirgaonkar fell down and died at the spot. Thereafter, the respondent threw away the pistol but he was surrounded by the witnesses and later handed over to the police on their arrival. It is also alleged by the prosecution that while the firing was going on a telephonic message was sent to the police station Civil Lines, Meerut about the firing and it was received by Masroor Ali, PW 9, who made an entry to that effect in the general diary at 11.39 a.m. The telephonic information merely conveyed the fact that gunshots

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were being fired on receipt of the information, PW-10. Ram Datt Gautam, the Sub-Inspector of Police, proceeded to the place of occurrence and found the body of Sirgaonkar lying outside the main gate of the Tribunal building and the respondent being apprehended by the witnesses. The police officer took the accused into custody and proceeded to the police station alongwith PW 7, S.K. Gui, where a regular FIR was registered. The usual proceedings about the postmortem

and inquest the followed and after a thorough investigation the police submitted a charge-sheet against the respondent which resulted in his conviction by the Sessions Judge. This, in short, is the prosecution case.

The main grounds on which the High Court has reversed the judgment of the Sessions Judge may be summarised as follows:

Durga Das, DW 1 who was admittedly at the scene of the occurrence has stated that as the shooting started, PW 7 had given a telephonic message to the police station. The High Court by an implied process of reasoning has observed that if PW 7 had given the telephonic message he would have mentioned the name of the assailant because he was a full-fledged eye witness but since his name had not been mentioned it is the strongest possible circumstance to discredit the prosecution case. We are, however, unable to agree with this somewhat involved reasoning of the High Court. In fact, DW, 1, merely says that Gui telephoned to the police station about the firing and said something in English. The High Court seems to have presumed that from this the irresistible inference to be drawn is that Gui did not mention the name of the assailant of the deceased and on this ground alone the prosecution must fail. This argument is based on a serious error. In the first place, the telephonic message was an extremely cryptic one and could not be regarded as a FIR in any sense of the term. Secondly, assuming that Gui had given the telephonic message in utter chaos and confusion when shots after shots were being fired at the deceased, there was no occasion for Gui to have narrated the entire story of the occurrence. In fact, in his evidence Gui has denied that he personally telephoned the police but he stated that he asked somebody to telephone the police which appears to be both logical and natural. Moreover such a cryptic information on telephone has been held by this

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Court to be of no value at all. In *Tapindar Singh v. State of Punjab* this Court in identical circumstances observed thus:

"The telephone message was received by Hari Singh, A.S.I., Police Station, City Kotwali at 5.35 p.m. On September 8, 1969. The person conveying the information did not disclose his identity, nor did he give any other particulars and all that is said to have been conveyed was that firing had taken place at the taxi stand, Ludhiana. This was, of course, recorded in the daily diary of the police station by the police officer responding to the telephone call. But prime facie this cryptic and anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as first information report. The mere fact that this information was the first in point of time does not by itself clothe it with the character of first information report."

In view of this decision, therefore, the fundamental reasoning of the High Court falls to the ground. Moreover, Durga Das himself does not appear to be an independent witness but he was highly interested because being the Vice-President of the labour Union he was looking after the case in the Industrial Tribunal on behalf of the workers. There is clear evidence of prosecution witnesses that even the brief case of the respondent was handled by DW 1 at the time of the occurrence. Although DW 1 denied this fact, it is amply proved by the evidence of PW-5. The only comment made against this witness was that he did not state this fact

before the investigating officer. But, as this was a matter of detail it may not have been necessary for him to have stated all possible details in his statement to the police. This witness is corroborated by PW 6, an independent witness, who says that the brief case of the respondent was being carried by Durga Das. It, therefore, appears that DW 1 being the Vice-President of the Union and a pairvikar of the workers was highly interested and in the face of the evidence of independent witness like PW-6, there is no reason to disbelieve the evidence of PW 5 that the brief case of the respondent was being handled by DW 1.

We might state here that the High Court has applied two different standards to assess the evidence of the prosecution and that of the defence. While the High Court accepts the uncorroborated evidence of DW 1, who is as much interested in the dispute as the deceased, if not more, being Vice-President of the Union and also in possession of the brief case of the respondent, yet it disbelieves the evidence of PWs 5 and 7 mainly on the ground that they were highly interested. The relevant finding of the High Court on this point may be extracted thus:

"In the first place, it shows that Subrat Kumar Gui and M.R. Bhaumik were mainly responsible for the prosecution of the case, although the deceased had been in general supervision of all labour disputes of the company at all the places. In the second place, it also points out that these two witnesses were not happy with the appellant who had been representing the cause of the labourers before the Industrial Tribunal and that they were sore about his conduct. In these circumstances these two witnesses could not be said to be independent "

Here, the High Court completely lost sight of two important facts-(1) that PWs 5 and 7 were high officers of the Company and were not likely to depose falsely on a matter like this, and (2) that PW-6, who was the standing counsel of the Company and other labour cases for more than 3 decades, fully corroborates the evidence of PWs 5 and 7. We have examined the evidence of PWs 5 and 7 with very great care and caution but we are unable to find any discrepancy or defect in their evidence so as to lead any court to reject the same. On the other hand, on a consideration of their evidence, we are satisfied that it is throughout consistent and congruous and that their evidence bears a ring of truth; We are indeed surprised how the High Court could disbelieve the evidence of the eye-witnesses in the case of a cold-blooded murder committed in broad day light where the respondent was caught red-handed at the spot. The High Court also over looked the crying conduct of the respondent who went on firing one shot after the other so as to make sure that Sirgaonkar does not survive at any cost.

Another ground on which the High Court has reversed the judgment of the Sessions Judge is that it is difficult to believe that after the respondent threw the pistol he continued to remain at the spot and did not make any attempt to escape. With due respect, this finding of the High Court is also most unrealistic. There is clear evidence of PWs. 5, 6 and 7 that after the respondent threw down the pistol he was surrounded by the three witnesses so that he could not escape. The High Court has failed to consider this important aspect of the matter. Moreover, if a person commits a cold-blooded murder in the premises of a court which is bound to be full of other litigants also, he cannot think of escaping

and is bound to be caught by someone or the other.

The High Court was further of the view that it is extremely doubtful that the witnesses could see the incident from inside the court room as there was no door or window through which the incident could be seen. To buttress this observation, the High Court seems to have relied on the evidence of DW 1 that the four persons, including DW 1, entered the court room as soon as the first shot was fired. This statement is obviously wrong because all the three witnesses stated that the shots were fired while they were outside the court room and they actually saw the respondent firing the shots. It was only after a few shots were fired that they entered the court room and even so they were able to see the whole occurrence from the glass panes of the court room. There is absolutely no evidence on record to show that there were no glass panes in the window and that the place of occurrence could not be visible from the court room. In these circumstances the conclusion of the High Court is purely speculative and against the weight of evidence on the record.

The High Court seems to have placed some reliance on the evidence of D.W.1 but as he was highly interested, his evidence unless corroborated by independent evidence should not have been acted upon in the peculiar facts and circumstances of this case.

Lastly, the High Court seems to have completely overlooked the fact that there was no reason for three eye-witnesses, one of whom was a standing counsel for about 30 years, to have falsely implicated the respondent merely because he was Secretary of the Union. The consistent course of conduct of the respondent speaks volumes against his innocence. He was caught red-handed

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at the spot and was surrounded by the witnesses so that he could not escape, and the police arrived within fifteen minutes of the occurrence and took him to the police station. Some comment was made by the High Court about the delay in the inquest report but that does not appear to be of any consequence if the evidence of the three eye-witnesses is to be believed.

We have given our anxious consideration to the evidence of the three witnesses (Pws 5, 6 and 7) and we find ourselves in complete agreement with the Sessions Judge that these witnesses were both reliable and trustworthy. In fact, the High Court committed a grave error of law in not going into the intrinsic merits of the evidence of each of the eye-witnesses and in discarding the same on general ground which also have no substance.

For the reasons given above, we are satisfied that this is not a case in which it could be said by any stretch of imagination that another reasonable view may be possible on the evidence and circumstances of the case, viz. that the accused was innocent. The result is that the appeal is allowed, the judgment of the High Court is set aside and the appellant is convicted under s.302 of the Indian Penal Code to imprisonment for life as also under s.25(1)(a) of the Indian Arms Act to one year's R.I. because he was undoubtedly found using a country made pistol which was recovered from the place of occurrence.

H.S.K. Appeal allowed.

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