

CASE NO.:
Appeal (crl.) 487 of 2000

PETITIONER:
State of Jammu & Kashmir

RESPONDENT:
S.Mohan Singh & Anr

DATE OF JUDGMENT: 09/03/2006

BENCH:
B.N.AGRAWAL & A.K.MATHUR

JUDGMENT:
J U D G M E N T

B.N.AGRAWAL, J.

Respondent No. 1 \026 S. Mohan Singh was convicted by the trial court under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default to undergo further imprisonment for a period of six months. Respondent No. 2 \026 S. Prithpal Singh was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default to undergo further imprisonment for a period of six months. On appeal being preferred, the High Court acquitted both the respondents. Hence, this appeal by special leave has been filed by the State of Jammu & Kashmir.

Prosecution case, in short, was that a dispute was going on between Yush Paul Singh son of Ram Lal and one Titu, nephew of Balwant Singh, on the one hand and the two respondents on the other hand and for resolving the same, a meeting was convened on 23rd July, 1985 at 6.00 p.m. on the bank of river near Gurdwara in village Sawan Chak. In the said meeting, no decision could be arrived at, as such, respondent No. 1 \026 S. Mohan Singh is said to have left the meeting in the midway and other people also dispersed after this. Thereafter, Ram Lal heard cries of his son Yush Paul Singh from the compound of Gurdwara and on arrival there, he found that respondent No. 1 had caught hold of Yush Paul Singh and respondent No. 2 was inflicting injuries upon him with knife. Seeing this, Ram Lal made an attempt to catch hold of respondent No. 2 in order to save his son but in the meantime, respondent No. 1 is said to have hurled a stone on him, as a result of which, Ram Lal sustained injuries and fell down. Apart from Ram Lal, the occurrence is said to have been witnessed by Babu Ram (PW 6), Pritam Singh (PW 4), Balwant Singh and Satnam Singh. Thereafter, Yush Paul Singh was immediately taken to the hospital on a truck where the doctor declared him dead. Thereupon, Ram Lal accompanied by witnesses, Pritam Singh and Balwant Singh went to Kathua police station to lodge a first information report where upon the statement of Ram Lal, a case was registered by the police on the same day i.e., on 23rd July, 1985 at 7.20 p.m. against the respondents. The police after registering the case, took up investigation and on completion thereof submitted charge-sheet, on receipt whereof the learned Magistrate took cognizance and committed the respondents to the court of Sessions to face trial.

Defence of the accused persons was that they were innocent, had no complicity with the crime, no occurrence much less the occurrence alleged had taken place and the prosecution party had received injuries in some other manner of occurrence at some other place inasmuch as they have been falsely roped in in this case to feed fat the old grudge.

During trial, both the parties adduced evidence and upon conclusion thereof, the trial court recorded conviction of the respondents, as stated above, which having been reversed by the High Court, the present appeal by Special Leave by the State of Jammu & Kashmir.

During the course of hearing, it has been submitted by learned counsel appearing on behalf of the respondents that respondent No. 2 \026 S. Prithpal Singh

died during pendency of this appeal on 27th November, 2003 which fact has not been denied on behalf of appellant \026 State. As such, the present appeal against respondent No. 2 stands abated. In view of this, in the present appeal, we are required to consider the case of respondent No. 1 \026 S. Mohan Singh alone.

The prosecution case as disclosed in the first information report is corroborated by the medical evidence as the doctor who examined deceased Yush Paul Singh opined that he received injuries by knife and the injuries were sufficient to cause death in the ordinary course of nature. Upon the disclosure statement made by respondent No. 2, a knife was recovered from his house.

The said knife was shown to the doctor who stated that only one side of the blade of the knife was sharp and the other edge was blunt. Doctor Harbans Singh, who was examined as PW-13 on seeing the said knife, stated that the injuries found on the person of deceased could have been inflicted by the same. As such, the High Court was not justified in coming to the conclusion that the medical evidence does not fit in with the prosecution case.

Objective findings of the investigating officer also prove the place of occurrence disclosed by the prosecution witnesses, as the investigating officer who immediately inspected the place of occurrence, after registration of the case, found and recovered blood stained earth therefrom which contained human blood.

Out of five eyewitnesses, witnesses Balwant Singh and Satnam Singh could not be examined during trial for the reasons, which were beyond the control of prosecution. The trial court has found and recorded, as such in its judgment that on several dates in the years 1986 and 1987, these witnesses were produced by the prosecution for their examination but on all the occasions, the accused took time in the case and did not allow the prosecution to examine them. Thereafter, when the witnesses did not appear, the trial court issued warrants of arrest against them on request being made by the public prosecutor. But all the time, they were found absent from their houses and it was reported that they had gone out for discharging their professional duties as drivers. From the aforesaid facts, it becomes clear that the prosecution was all the time ready and willing to examine the witnesses and had taken all possible steps for their examination but they could not be examined for the reasons beyond their control. As such, the High Court was not justified in drawing adverse inference against the prosecution for non-examination of these two witnesses.

The next eyewitness was Pritam Singh who was examined as prosecution witness in court. This witness supported the prosecution case by saying that a meeting was convened for resolving dispute between the parties but as the same could not be resolved, respondent No. 1 who was also present in the meeting, left the place. He admitted that he heard Yush Paul Singh crying but has not supported the prosecution case in relation to respondent No.1's catching hold of the deceased and respondent No. 2 assaulting him with a knife, although this witness in his statement made before the police had specifically mentioned these facts. This witness further stated in court that he took Yush Paul Singh along with other injured to the hospital where the doctor declared Yush Paul Singh dead and thereafter he accompanied Ram Lal to the police station. In our opinion, this witness has supported the prosecution case to a great extent, excepting the part played by the respondents, in his statement made in court and as he was gained over by the defence, he did not support the prosecution case in relation to part played by the respondents though presence of respondent No. 1 \026 S. Mohan Singh in the meeting has been admitted by him.

Other two eyewitnesses are the informant Ram Lal and his brother Babu Ram. Ram Lal is father of deceased Yush Paul Singh whereas witness Babu Ram is uncle of deceased Yush Paul Singh. These two witnesses have supported the prosecution case disclosed in the first information report in all material particulars and consistently stated that respondent No. 1 caught hold of the deceased and respondent No. 2 inflicted injuries upon him with knife. We have been taken through the evidence of these two eyewitnesses in extenso. Their evidence is quite consistent, natural and both the witnesses have stood the test of lengthy cross-examination by the defence. Out of these two witnesses, Ram Lal was the informant and an injured witness as the doctor who examined him on the date of occurrence itself found that he received injuries by hurling of stone. Nothing could be pointed out on behalf of defence to show that the evidence of these two eyewitnesses is not credible, excepting this that they were interested witnesses. The High Court was not justified in disbelieving them on

the sole ground that they were interested persons. It is well settled that in a murder trial, merely because a witness is interested or inimical, his evidence cannot be discarded unless the same is otherwise found to be not trustworthy. In the present case, we are of the view that the evidence of these two witnesses is credible more so when witness Ram Lal received injuries.

In the present case, the occurrence is said to have taken place on 23rd July, 1985 at 6 p.m., the first information report was lodged at 7.20 p.m. and a copy of the same was received by the Magistrate on the next day i.e., 24th July, 1985 at 12.45 p.m. The High Court was of the view that there was inordinate delay in sending the copy of the first information to the Magistrate as the same was not sent to the Magistrate during the night between 23/24th July, 1985. In relation to this, the prosecution has taken a definite stand that as there was no practice prevalent in the area for sending the report to the residence of Magistrate, as such no adverse inference should have been drawn by the High Court for not sending the report at the residence of Magistrate. In our view, copy of the first information report was sent to the Magistrate at the earliest on the next day in the court and there was no delay, much less inordinate one, in sending the same to the Magistrate. In any view of the matter, it is well settled that mere delay in sending the first information report to a Magistrate cannot be a ground to throw out the prosecution case if the evidence adduced is otherwise found to be credible and trustworthy.

Having perused the two judgments rendered by the trial court and the High Court and the evidence adduced on behalf of the parties, we are of the view that the trial court was quite justified in recording the order of conviction and the order of acquittal rendered by the High Court suffers from the vice of perversity and is liable to be set aside.

In the result, the appeal in relation to respondent No. 1 \026 S.Mohan Singh is allowed, the order of his acquittal rendered by the High Court is set aside and his conviction recorded by the trial court is restored. The respondent No. 1 is directed to be taken into custody forthwith to serve out the remaining period of sentence. The appeal in relation to respondent No. 2 \026 S. Prithpal Singh has abated in view of the fact that he died during the pendency of this appeal.