

PETITIONER:
STATE OF MADHYA PRADESH

Vs.

RESPONDENT:
UDAI SINGH

DATE OF JUDGMENT: 01/12/1997

BENCH:
M.M. PUNCHHI, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

THE 1ST DAY OF DECEMBER 1997

Present:

Hon'ble Mr.Justice M.M.Punchhi
Hon'ble Mr.Justice M.Srinivasan

Anoop G.Choudhary, Prashant Kumar, Uma Nath Singh, Adv. for
the appellant
S.K. Bhattacharya, Pradeep Kumar, P.K.Jain, Advs. for the
Respondent

J U D G M E N T

The following Judgment of the Court was delivered:
Srinivasan, J.

The state of Madhya Pradesh has preferred this appeal against the judgment of the High Court acquitting the respondent by reversing the judgment of the III Additional Sessions Judge, Behind whereby he was convicted under Section 302 I.P.C. for committing a string of three murders and Section 307 I.P.C. for attempting to commit a fourth murder. Even here, we are constrained to observe that the High Court has chosen to reject the natural evidence of eye-witnesses on the basis of unwarranted conjectures of eye-witnesses on the basis of unwarranted conjectures and surmises.

2. The undisputed facts are that three women Ram Piyari, Mathura and Bhagwati were shot dead and Deya daughter of Mathura got injured by gun shots in the night of 6.4.79 and the respondent remained absconding till he surrendered himself on 25.10.81. The parties belong to the village Kakora within the jurisdiction of Lahar Police Station which is at a distance of about nine kilo metres. The case of the prosecution is supported by the evidence of PWs 1 to 3, eye witnesses for the murder of Ram Piyari, PWs 5 and 6, eye witnesses for the murder of Mathura and PW 4, eye witness for the murder of Bhagwati. PW 6 is the daughter of Mathura and she herself received injuries by gun shots. The occurrence was between 8 and 9 P.M. on 6.4.79 and it was reported in the police station around 10.00 A.M., the next day.

3. According to PW 1 the husband of Ra, Piyari, the respondent and his brother Bachoo Singh came with two other persons, when himself and his younger brother Devi Lal (PW

2) were sitting on the Chabutra after having dinner at about 8 O'clock in front of their house. The respondent was carrying a Mark-3 gun and his brother was having a lathi. One of the other persons had a mouser gun and the fourth had a lathi. The respondent fired at PW 1 and PW 2 twice by missed them. Both jumped over the wall of the Chabutra and hid behind the same. On hearing the sound of the gun-shot Ram Piyari came out of the house and was going back after shutting the door when the respondent fired one shot which hit her. She fell down dead inside the door. The respondent and his companions went towards house of Chhote PW 4. PW 2 has also spoken on the same lines as PW 1. PW 3 is the wife of PW 2. According to her she was working with Ram Piyari in the kitchen and on hearing the sound Ram Piyari came out and she was not dead when she was trying to go back after closing the door. The evidence given by the aforesaid three witnesses has to been shaken in the cross examination. Their presence at the place of occurrence is quite natural and the slight differences in the narration are negligible. PW 11 Dr. Srivastava has described the injury on the body of Ram Piyari as follows:

"There was a wound in the back of Ram Piyari and wound of gun cartridge entrance and that cartridge breaking Diaphragm, liver, pericardium, heart and left lung and breaking 6th and 7th lungs (paslis) came out from the chest and there was mark of one external injury (wound)."

He has deposed that the death was caused by the said anti mortem injury and the bleeding from the said injury as well as shock. The trial court has accepted the aforesaid evidence and concluded that Ram Piyari was murdered by the respondent.

4. The High Court has, however, adopted a curious process of reasoning. The High Court has observed that 'deflection of the fire was below to upwards' and 'any male killer shooting from a standing posture at a female victim - former presumably taller than the latter - could not have the shot victim from below upwards'. We are unable to appreciate how the court could embark upon such a kind of imaginary surmise without any foundation therefor in the evidence. It is pointed out by the High Court itself that PW 1 and PW 2 do not speak about the posture taken by the respondent to fire at Ram Piyari. We find that no question has been put to any witness by the cross examining counsel on that matter. The doctor has not also been questioned about 'deflection of the fire'. Nothing has also been brought on record whether the victim was shorter than the respondent. In such circumstances there was no justification or warrant to invoke the aid of such unsustainable presumptions and formulate a theory on the strength thereof.

5. Another reason given by the High Court is that in the First Information Report PW 1 has not said that the respondent fired the first two shots. It is pointed out by the learned counsel for the appellant that the said reasoning is factually erroneous as the F.I.R. contains such a statement. The High Court has also observed that if PW 1 and PW 2 had hidden themselves behind the Chabutra, they could not have seen Ram Piyari walking from the kitchen inside the house to the door. It is further observed that the two witnesses would immediately have run away under cover of the Chabutra as there was a risk of their being picked up by the respondent if he came around the Chabutra.

Comments have also been made by the High Court that PW 12, the Investigation Officer failed to seize the door of the house to demonstrate that there was enough space for the passing of a bullet or that there was any damage to the door by gun shot. It has also been observed that PW 12 has not stated on oath whether he had collected empty cartridges near the house. None of the comments made by the High court is appropriate.

6. The reasoning of the High Court is palpably wrong as the evidence of PWS 1 to 3 presents a clear picture of the occurrence. In the absence of any suggestion in the cross examination of the witnesses, the evidence can not be rejected as not acceptable. The circumstances referred to by the High Court do not impinge upon the acceptability of the version given by PWS 1 to 3. We do not agree with the reasoning of the High Court.

7. The second incident is that of killing of Mathura, wife of PW 5 and mother of Pw 6. The injury on her body is described by Pw 11 as follows:-

"the woman Mathurabai had wound on the left side of her arm and below that was gun wound of entrance in her chest which was deep in left plura, lungs, pericardium, mediastinum and passing through the heart that cartridge stopped between the heart and below the fifth lung bone from where it was taken out."

Even PW 1 has stated that after shooting down his wife, the respondent and his companions went towards the house of Chhote (PW 5). The evidence of PW 6 is very clear and unimpeachable. She was by the side of her mother when the respondent fired. She herself got injured by two gun shots though she escaped death. She had seen the respondent firing from a close distance. In the chief examination she has stated that the moon light was just then coming out when the incident occurred. In the cross examination she had stated that there was no moon light and torch light was there. Much is made of this to disbelieve her version. The trial court has described it as a mistake and opined that nothing turns on it. The High Court has, however, given great importance to the same in order to reject her evidence. We are unable to agree with the High Court. In fact, there is no discrepancy between the two statements. In the chief examination she has only stated that moon light was just coming out. In the cross examination the emphasis was on the sufficiency of the light at that place. In answer to such a question she had replied that there was torch light and no moon light. It can not therefore be said that her entire deposition is not credit worthy. A perusal for the evidence alongwith that of her father PW 5 taken in conjunction with the fact that PW 6 got injured by gun shots shows that it was the respondent who shot dead Mathura and injured Pw 6. The High Court has commented upon the matters which are not in evidence. The reasoning of the High Court borders on perversity.

8. The next incident is the killing of Bhagwati, wife of PW 4. the victim was the aunt of the respondent. it is in evidence that she left her husband and began to live with PW 4 and therefore the respondent and the members of his Family were entmical to her. According to the evidence of PW 4 the respondent fired twice. Once shot hit her eyes and the second hit her behind the ear and head. It is also his deposition that the brother of the respondent hit her with lathi on the head. The injury on her body is described by

PW 11 as follows:

"On the forehead of woman Bhagwati one wound of entrance of the gun firing was at the upside of Nose which breaking temporal bone and marking an outgoing wound on the face came out. Apart from this one more gun wound was found on the left side of head which was only to the depth of skin and it appeared that the gun fire went out whole touching that part of the body".

Here again, the doctor has described the death as due to murder. No doubt, the only witnesses who has spoken about the killing of Bhagwati is PW 4 but we do not find any reason to reject his evidence as unworthy of acceptance. The High court thus rejected the evidence of Pw 4 as a made up story and implausible as the respondent did not go after him when he hid himself behind the wall and took shelter. Comment is made by the High Court that there is no acceptable evidence that any cartridges or spent bullets were found inside the house. We do not find any justification for the observation made by the High Court that the sole testimony of PW 4 'most unconvincing'. At that time of the high in the village it is not possible to expect other independent persons to be at the place of occurrence to witness the same.

9. A general comment is made by learned counsel for the respondent that the evidence adduced by the prosecution is perfunctory and slip shod. It is also argued that no other independent witnesses have been examined in support of the prosecution and all the witnesses are interested. There is no merit in either of the contentions. The depositions given by the witnesses are cogent and natural. As pointed out already the occurrence was between 8 to 9 P.M. in the night and one can not expect other villagers to have assembled already in the houses of the deceased. There is nothing on record to show that the witnesses are in any way interested in falsely implicating the accused. The attempt made by the respondent by examining DW 1 is to show that some scoundrels had come to the village and shot dead the aforesaid women and fled away. There is absolutely no support for the said version. If there was any truth in the same, there is no explanation for the respondent and his brother remaining absconding for quite a long time. DW 1 has stated in the Chief examination that the respondent is his nephew. In the cross examination he has deposed to the contrary that the respondent is not of his caste and that he is a Harijan. It is also argued that the First Information Report was given to the Police 14 hours after the occurrence and there is no explanation for such a delay. There is no merit in this contention. The occurrence was in the night time and the police station was about 9 kilometers away. There were three deaths and the killers had deadly weapons. The villagers would not have dared to go out in the night time. In the circumstances of the case, it can not be said that there was undue delay on the part of the complainants to inform the police. It should be noted that the respondent and his brother were named in the F.I.R. The respondent's brother were named in the F.I.R. The respondent's brother is stated to have died in an encounter. The other two unnamed persons were not traceable. On Balwant Singh was charged alongwith the respondent, by the prosecution but he was later discharged.

10. We have no doubt whatever that the evidence on record

is sufficient to prove beyond doubt the guilt of the respondent. He is not only guilty of murder of three women but also of attempt to kill PW.6. Hence, the conviction of the respondent by the trial court is correct and the High Court is in the error in setting aside the same. The sentences awarded by the trial court are appropriate. In the result, the judgment of the High Court is set aside. The judgement and order of the IIIrd Additional Sessions Judge, Behind (M.P.) are restored. The bail granted to the respondent stands cancelled. He shall be taken into custody forthwith to undergo the sentence

JUDIS