

CASE NO.:
Appeal (crl.) 388 of 2000

PETITIONER:
Moti

RESPONDENT:
State of U.P.

DATE OF JUDGMENT: 07/03/2003

BENCH:
N Santosh Hegde & B P Singh

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The appellant in Criminal Appeal No.388/2000 was charged along with four other accused persons for having committed murder of one Ram Briksha on 18.6.1979 at about 9.30 p.m. The learned Sessions Judge who tried the said accused persons in S.T. No.31/1980 found all the accused persons including the appellant herein guilty of the offences charged and convicted them for offences punishable under Section 302 IPC read with Section 149 IPC and imposed the sentence of imprisonment for life. While doing so, the learned Sessions Judge relied upon evidence of PWs.2 to 5 who were produced by the prosecution as eye witnesses.

The aggrieved accused persons preferred an appeal before the High Court of Judicature at Allahabad in Criminal Appeal No.1622/1980. The High Court rejected the evidence of PWs.3 and 4 as not believable but relied on the evidence of PW-2, the mother-in-law of the deceased and PW-5, the wife of the deceased and based on their evidence while acquitting the other accused persons convicted the appellant alone by confirming the judgment of the learned Sessions Judge and awarded to the appellant punishment under Section 302 read with Section 149 IPC.

It is against the said judgment of the High Court convicting the appellant herein, the appellant has preferred Criminal Appeal No.388/2000.

The State has preferred the connected Criminal Appeal No.389/2000 against the acquittal of the other accused.

The entire prosecution case as accepted by the High Court in this case so far as appellant Moti is concerned rests on the evidence of PWs.2 and 5.

The brief facts necessary for the disposal of these appeals are that on 18.6.1979 at about 9.30 p.m. When the deceased and his father-in-law Ram Nath (since dead) were sitting outside the house of his father-in-law, the accused persons came there. At that time appellant was armed with a spear and the other accused persons were armed with lathis. Thereafter, the prosecution states that on an exhortation made by Bhola and Mahatam, the respondents in the connected appeal, all the five accused persons assaulted the victim with lathis and thereafter dragged him to the courtyard of the house of appellant Moti

which was nearby where the appellant Moti allegedly gave a blow with the spear on the chest of the deceased and others gave him lathi blows consequent to which he died. The complaint of this incident was given by the father-in-law Ram Nath at Balipar Police Station on 19.6.1979 at about 0030 hrs. with PW-3 Dilraj. The said Station House Officer of the Police Station registered the complaint and the investigation was subsequently conducted by PW-8 Devi Sharan Singh, Sub Inspector. On completion of the investigation, as stated above, a charge-sheet under Sections 147, 148, 149 and 302 IPC was lodged against all the accused persons. After completion of the trial all the accused persons were convicted by the learned Sessions Judge, as stated above, based on the evidence of eye witnesses PWs.3 to 5. While the High Court disbelieving the evidence of PWs.3 and 4 allowed the appeal of the four accused persons but convicted the appellant Moti, as stated above.

During the pendency of these appeals, accused Chinku who is respondent in Criminal Appeal No.389/2000 has died and the appeal has abated as against him.

Shri U.U. Lalit, learned counsel appearing for the appellant Moti in Criminal Appeal No.388/2000 submitted that both the courts below have seriously erred in not noticing the medical evidence which clearly establishes the falsity of the prosecution case in regard to the time of incident. He contended that the incident in question could not have happened at 9.30 in the night and must have happened much earlier in the day which was not noticed by anybody and it is only subsequently when the body of the deceased was found, based on suspicion the appellant as well as the other accused persons were implicated in this case. He also pointed out from the evidence of PWs.2 and 5 the inherent discrepancies which make their evidence unreliable. Learned counsel pointed out that the High Court having rightly rejected the evidence of PWs.3 and 4 produced as eye witnesses by the prosecution ought not to have relied upon the evidence of PWs.2 and 5 only to convict appellant Moti and in the absence of there being any acceptable direct evidence as to the overt act of appellant Moti, he could not have been convicted for an offence under Section 302 read with Section 149 IPC when the other accused persons were acquitted. He also submits that there is no material as against this appellant even to convict him for an offence punishable under Section 302 IPC simplicitor.

Mr. Praveen Swarup, learned counsel appearing for the State of U.P., per contra, contended that as held by the High Court the medical evidence in regard to the contents of the stomach of the deceased is immaterial for the purpose of establishing the time of incident. He submitted that evidence of PW-2 who is the mother and PW-5 who is the wife whose presence at the time of incident could not be disputed clearly shows the involvement of the appellant in the crime. He also submitted that the High Court was in error in rejecting the evidence of PWs.3 and 4 and acquitting the other accused persons and therefore the State appeal (Crl. A. No.389/2000) in regard to them ought to be allowed.

Dr. I.P. Tyagi, learned counsel appearing for the respondents in Criminal Appeal No.389/2000 supported the judgment of the High Court so far as the respondents in the said appeal are concerned.

Having heard the learned counsel for the parties and perused the material on record, we notice that there is a serious

flaw in the prosecution case as to the time of the incident. According to the prosecution, the incident in question has occurred around 9.30 p.m. on 18.6.1979 when deceased and his father-in-law were sitting on a cot outside their house after finishing their dinner. PW-5 Tara, the wife of the deceased in her evidence has stated thus :

"Ram Briksha used to look after it in day time and he used to return back in the evening. He was sitting after taking his meal. First of all, male member of family took their meal then female member of the family took meal. Rice, roti and vegetable were prepared in food. Amongst the male members my father and husband were there at my home. We had taken meal half an hour before the murder. As my father and husband sat outside the house after taking food then accused armed with bhalla and lathi came there I had prepared food. Today my mother has accompanied me."

It is clear from the said evidence of the wife of the deceased that on the date of incident her husband after coming back from working in the evening along with his father-in-law took his meal which was cooked by PW-5. She also says that for the said meal she had cooked rice, roti and vegetables and the said meal was served to her father and husband about half an hour before the incident in question. This evidence has not been clarified in any manner by the prosecution. Though PW-2 Parvati, the mother-in-law of the deceased at one place in her evidence says that the dinner was not cooked when the incident had taken place, we find it difficult to reject the evidence of PW-5 when she states that the dinner was cooked and the deceased and her father had eaten by the time the incident had taken place. It is common knowledge that in a village, more so, in a place where there is no electricity, the villagers after finishing their work normally have their meals early. Therefore, the evidence of PW-5, in our opinion, fits in to the normal conduct of a villager and hence is worthy of acceptance. If this be the evidence that is adduced by the prosecution then the post mortem report should clearly show at least semi-digested food, if not undigested food in the stomach of the deceased, but the evidence of the doctor in this regard is quite the contrary.

Both the post mortem report and the medical evidence adduced by the prosecution clearly show that the entire stomach of the deceased including both the intestines were empty which would indicate that at the time of the murder the deceased had not taken his meals and his murder must have taken place at least 3 to 4 hours after he had his last meal. PW-5 at one place in her evidence states that her husband had his lunch in the afternoon and was resting because he was not feeling well. Therefore, it is possible that the deceased was done to death much after his afternoon meal and much before his night meal. If this be the fact then there is a serious dispute as to the actual time of incident which is a very much important factor in finding out whether the case as presented by the prosecution is true or not. This discrepancy also affects the credibility of evidence of eye-witnesses because if really the incident had occurred much before the dinner time, a doubt is created in our minds whether these eye-witnesses could have noticed the incident at all and if they noticed the incident why they are stating the time of incident as 9.30 in the night.

It is rather surprising that the High Court should find this part of the medical evidence as being of no consequence at all. The High Court referring to this part of the medical evidence has observed : "In our opinion the stomach contents are not very material to determine the time of incident." We are of the considered opinion this view of the High Court is wholly erroneous. It may be possible to contend that contents of the stomach may not always be an indicator of the time of death. But in a case where stomach is empty and the prosecution evidence is that the murder had taken place shortly after the deceased had his last meal, to say that the contents of the stomach have no material bearing on the determination of the time, in our opinion, is not acceptable. In the instant case, time of death being a material factor to verify the presence of the eye-witnesses it was obligatory for the prosecution to have clarified the discrepancy between the medical evidence and the oral evidence. The prosecution having failed to do so, in our opinion, a serious doubt as to the time of incident and the presence of the eye-witnesses at the time of incident and their narration of the incident also becomes doubtful.

Incidentally, we may also notice that even according to the prosecution, appellant Moti had no motive to commit the crime in question. The incident as narrated by the eye-witnesses having taken place in a place where there was no proper light to identify the actual accused who dealt the fatal blow also contributes to the factum of doubt in the prosecution case. Therefore, in our opinion, the prosecution has failed to establish its case against the appellant Moti.

Since we are in agreement with the contention of the learned counsel for the appellant in Criminal Appeal No.388/2000 that the prosecution has failed to establish the charge alleged against the appellant therein, there is no need for us to discuss the merits of Criminal Appeal No.389/2000.

For the reasons stated above, Criminal Appeal No.388/2000 is allowed and Criminal Appeal No.389/2000 is dismissed.

Appellant Moti in Criminal Appeal NO.388/2000, if not required in any other case, shall be released from custody forthwith.