

CASE NO.:
Appeal (crl.) 624 of 1998

PETITIONER:
Ramsewak & Ors.

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 13/04/2004

BENCH:
N Santosh Hegde & B P Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The appellants herein, who are 6 in number, and 6 others were accused of having caused the death of one Preetam Singh on 15.7.1980 at about 12.30 p.m. in village Bhadera which incident according to the prosecution, was witnessed by Babu Lal PW-1 and his father Man Singh PW-2 along with Karan Singh PW-6. PW-2 was the elder brother of deceased Preetam Singh, PW-1 was his nephew while PW-6 Karan Singh was the uncle of the deceased. Prosecution alleged that all the accused persons including the appellants herein had enmity with the deceased on different grounds, hence on the date of the incident they formed themselves into an unlawful assembly being armed with deadly weapons like gun, farsa, lathi, barchhi, axé etc. and attacked the deceased while he was grazing his cattle in a field at village Bhadera, causing him multiple injuries consequent to which he died. It is the further case of the prosecution that PW-1 who witnessed the incident then went to the Police Station which was situated about 3 kms. away from the place of incident, and lodged a complaint which was registered as FIR Ex. P-1. Based on the said complaint, the Police initiated investigation and came to the spot of the incident and Ex. P-2, an inquest report was prepared and the body was sent for post mortem examination. PW-9 the doctor who conducted the post mortem examination on the dead body found 7 external injuries on the body out of which injury Nos.5 and 7 were bruises while injuries 1 to 4 and 6 were incised wounds; one such wound caused the left hand of the deceased to severe from the joint of the wrist while consequent to the other injuries the deceased suffered cut wounds on the right hand and on the left side of the head. The doctor had opined that the injuries were ante mortem and the deceased had died due to shock resulting from the injuries suffered on the head and haemorrhage resulting from other injuries.

Out of the 12 accused only 11 accused were sent up for trial before the IIIrd Additional Sessions Judge, Bhind, including the appellants herein while the 12th accused according to the prosecution, had absconded but came to be arrested subsequently and his trial was separated and was found not guilty hence was acquitted in the said separate trial which acquittal has become final.

The trial court after examining the prosecution evidence came to the conclusion that the presence of PWs.1 and 2 at the place of incident was doubtful and PW-5 not having supported the prosecution case and noticing the contradiction between the ocular evidence of PWs.1 and 2 and the medical evidence came to the conclusion that the prosecution had not established its case

against the accused, and consequently acquitted all the 11 accused who were tried by the said court.

In an appeal filed against the said judgment of acquittal by the State before the High Court of Madhya Pradesh, Gwalior Bench, the High Court accepting the evidence of PWs.1 and 2 partly allowed the appeal and while setting aside the acquittal of A-1 Ram Sewak, A-4 Ranveer Singh, A-7 Mullu, A-8 Narayan Singh, A-9 Mizaji Lal, A-10 Ram Swaroop and A-11 Mewa Lal held them guilty of offences punishable under sections 147, 302 read with section 149 and sentenced them to undergo imprisonment for life for the offence under section 302 read with section 149 while no separate sentence was awarded for the offence under section 147 IPC. It however dismissed the State appeal in regard to other accused persons.

On behalf of the appellants, it was contended that the trial court on a proper appraisal of the evidence of PWs.1 and 2 rightly came to the conclusion that their presence at the time of the incident was highly doubtful hence they could not have witnessed the incident and because of prior enmity, these accused persons were falsely implicated in the case after due deliberation. It is pointed out that though A-1 and A-2 are brothers, A-3 and A-10 were brothers and A-5 and A-11 were brothers, others had no relationship with each other and none of them had any common enmity with the deceased, therefore, the trial court justly came to the conclusion that the prosecution had roped in all such persons who had some sort of enmity against the deceased as accused in this case at the instance of PWs.1 and 2. It was further contended that the trial court also noticed the fact that the FIR in this case had come into existence at the place of alleged incident after due deliberations and not at the Police Station, as stated by PW-1. Learned counsel for the appellants also contended that the medical evidence did not tally with the ocular evidence therefore the trial court was justified in acquitting the accused. He contended that the High Court on the same set of facts and on re-appreciation of the evidence without properly noticing the contradiction in the ocular evidence has erroneously convicted the appellants.

The learned counsel for the respondent however supported the judgment of the High Court by contending that there was no reason why the evidence of PWs.1 and 2 should be rejected. It was his argument that the High Court as a first court of appeal had a duty to reconsider the evidence and correct the error committed by the trial court.

The facts necessary for the disposal of this appeal are as follows :

There was some dispute between the deceased and some of the accused in regard to the lands which were allotted to the deceased by the Government while other accused and the deceased had some other dispute which was not common because of which the prosecution alleges that these accused persons together formed an unlawful assembly on 15.7.1980 and committed the murder of deceased Preetam Singh.

It is the prosecution case that on the fateful day Preetam Singh had taken the cattle for grazing to village Bhadera which is in a forest area at about 7 a.m. It is the further case of the prosecution that at about 10 a.m. PW-1 the nephew of the deceased took the lunch for the deceased to the field where deceased was grazing the cattle and gave him the food. PW-1 in the complaint states that after giving food he went to village Itayali to call one Moti Ram Kachhi which village was about a mile away from the place of the incident and having gone there and having failed to meet him, he returned to Bhadera, the place where the deceased was grazing his cattle at about 12 noon. On his way to Bhadera, it is alleged that he saw 12 accused persons

armed with deadly weapons walking towards the place where his uncle was grazing the cattle which was about 100 yards from the place from where he saw these accused persons. PW-1 then states that on being apprehensive of the possible danger he stayed back and hid behind a tree and noticed these accused persons attack Preetam Singh. He in his evidence graphically describes the nature of attack on his uncle. He stated that Bhure Singh asked others to kill Preetam Singh then A-4 Ranveer Singh gave a farsa blow on the head, A-6 Rajendra Singh also assaulted on the head of Preetam Singh when the latter fell down. Bhure Singh then pierced the left thigh of the deceased with a Barchhi, A-11 Mewalal severed the left hand with a farsa, A-7 Mullu Singh gave a farsa blow on the right hand and all the accused persons caused injuries to Preetam Singh with their respective weapons and thereafter they went away towards the village, leaving behind the dead body. After the departure of the assailants, PW-1 went near his uncle and found him to be dead. This witness also says that during the incident he noticed his father PW-2 Man Singh and PW-6 Karan Singh witnessing the incident. He then states that he went to the Police Station and lodged a written complaint and returned to the place of incident with the Police.

PW-2 Man Singh, father of PW-1 in his evidence stated that in the morning of 15.7.1980 he went to the temple for the darshan of Hanumanji situated in village Dadurua and while returning to the village from the temple he came on a road which leads to village Bhadera where his brother Preetam Singh was grazing the cattle. He enquired from Preetam Singh about his having had his lunch and thereafter he proceeded further where he met PW-6 his uncle who was also grazing the cattle. He says that he stayed there with PW-6 smoking a bidi. Meanwhile, he saw all the accused persons armed with deadly weapons going towards the place where the deceased was grazing his cattle and started attacking the deceased. He in the course of his evidence stated that he and PW-6 ran to the place of attack and asked the accused persons not to beat but they did not listen. He further states that after committing the murder the accused persons went away from the place of incident and by that time his brother Preetam Singh had died. He then says that at that point of time PW-1 arrived there and when asked PW-1 told him that he being scared was hiding behind a tree and had noticed the incident and thereafter PW-1 went to the Police Station to lodge a complaint and returned to the place of incident with the Inspector and some policemen. He then stated that the Inspector then did 'likha padi' on the spot and sent the dead body to the hospital. During the course of his cross examination it was elicited that when he went to the temple he did not know that his brother would be going to Bhadera village for grazing cattle and from his village to go to the temple there were two routes; one which would go via the field where the deceased was grazing his cattle which was a forest area and the other was a route going straight to Dadurua where the temple is situated but this route does not go near the village Bhadera. He also stated that there was bus service from his village to Dadurua. When he was asked why he chose to come via the place of incident particularly when he had taken a different route to go to the temple, he had no specific answer for the same except saying that he chose to come that way.

PW-6, the uncle of PW-2 and the deceased did not support the prosecution case at all and denied that he ever witnessed the incident or that he met PW-2 at the time of the alleged incident. Therefore, the prosecution case primarily rests on the evidence of PWs.1 and 2. The trial court in its judgment held that PWs.1 and 2 were chance witnesses because it was not normal for either of them to be present at the time and place of the incident. It also noticed the fact that according to the medical evidence the deceased had suffered 7 external injuries out of which two were

bruises. While according to the evidence of PWs.1 and 2 all the accused persons had assaulted the deceased with deadly weapons. Thus, it found contradiction between the ocular evidence and the medical evidence which according to it makes the ocular evidence of PWs.1 and 2 suspect. The court also noticed the fact that one of the weapons carried by the accused was a licensed gun which was loaded but was found not to have been discharged as also there was no corresponding gunshot injury on the body of the deceased, still the two eye witnesses had stated before the court that each of the accused had assaulted the deceased with the weapon carried by them. The trial court also noticed the contradictions in the evidence of PWs.1 and 2 and further noticed the fact that PW-1 in his cross examination had specifically admitted that his complaint was recorded by the investigating officer at the place of incident, thus, it came to the conclusion that the FIR was not recorded at the Police Station but the same was recorded at the place where the dead body was found. The trial court on an overall appreciation of the facts and circumstances of the case, came to the conclusion that it is not safe to place reliance on the evidence of PWs.1 and 2 who were otherwise closely related to the deceased hence, acquitted all the accused persons.

The High Court in appeal however, came to the conclusion that the discrepancies found in the evidence of PWs.1 and 2 are not material discrepancies as also the difference in the medical evidence and the oral evidence of PWs.1 and 2 was not so much at variance so as to reject the oral evidence of PWs.1 and 2. It came to the conclusion that there is no surprise in PW-2 taking a different route than the one taken by him while going to the temple and placing reliance on the evidence of PWs.1 and 2 after separating the grain from the chaff, convicted 6 of the appellants while it rejected the evidence of PWs.1 and 2 in regard to five other accused persons.

We, having heard the arguments of learned counsel for the parties and perused the records, are inclined to agree with the findings of the trial court rather than that of the High Court. Though the finding of the trial court that PW-1 should be treated as a chance witness, in our opinion, cannot be correct because it is quite often the normal practice in the village that when a member of the family takes the cattle for grazing, somebody else carries the lunch for that person therefore, it cannot be said with certainty that PW-1 was a chance witness. However, other circumstances make us agree with the trial court that this witness might not have seen the incident at all. It is to be noted that in the complaint it was stated that he went to Itayali to meet Moti Ram Kachhi, but he could not meet him hence he came back to Bhadera. Most likely finding it difficult to convince the court the reason why he went to Itayali and came back just in time to witness the incident, he improved his evidence when he stated before the court that he went to Itayali because the deceased had asked him to go there and call Moti Ram Kachhi which was not the case in the complaint. Be that as it may, the fact remains his going to Itayali which accounts for the purpose of timing is not established because said Moti Ram was never contacted nor this part of the evidence of PW-1 is corroborated from any other source. This is a vital piece of link evidence which is missing from the prosecution case and creates a doubt why PW-1 stayed back in the grazing field for nearly two hours after serving lunch to his uncle. Therefore, the trial court was justified in drawing an adverse inference in regard to the possible presence of PW-1 at the time of the incident. Then again we notice that this witness when he saw the accused persons heading towards his uncle, allegedly got scared and hid behind a tree but he also says that he had seen his father and uncle in the neighbouring field but he did not make any attempt to join them. This is an unusual conduct

because even according to PW-1, the accused persons did not attempt to threaten him or his father PW-2 and uncle PW-6 even though they intervened in the fight which makes the presence of PWs.1 and 2 doubtful. As noticed by the trial court, we also see that there are material contradictions between the evidence of these witnesses and the medical evidence which also adds to the bundle of suspicions as to the presence of this witness.

The most important factor which creates more substantial doubt as to the prosecution case is found in the cross examination of PW-1. According to this witness, after the accused persons took to their heels, he went to the Police Station and lodged a written report which is marked as Ex. P-1. It is the case of the defence throughout that the incident in question was not witnessed by anybody and Ex. P-1 came into existence after the murder of the deceased came to be known and after due deliberations a complaint involving these accused was prepared. In this background, if we notice the answer given by PW-1, in our opinion, it neatly fits into the defence theory. In paragraph 18 of his evidence, PW-1 states : "It is wrong that I, Udayveer Singh and Budh Sen are of the same party. I do not remember if the police took my signature on my report after spot inspection. It may be but I do not remember exactly. My report was written on the spot only. It was not raining at that time. When we took the dead body from the spot, the sun had set and it was dark."

The learned counsel for the State of M.P., however, contended that what was stated in the said part of the evidence of PW-1, was referable to the inquest report and not the FIR. We have examined the original which is in Hindi and the translation is admittedly correct. A reading of this part of the evidence shows that this witness was speaking about 2 reports. The first report which he refers to must be in regard to the inquest in regard to which he says that he does not remember if the Police took his signatures after the spot inspection. The latter part of the evidence certainly refers to his complaint which he in specific terms states was written on the spot only. Even assuming that there is some doubt as to the interpretation of this part of his evidence since the same is not clarified by the prosecution by way of re-examination, the benefit of doubt should go to the defence which has in specific terms taken a stand that the FIR came into being only after the dead body was recovered. We also notice that there is considerable doubt in regard to the place of incident also. From the medical evidence we notice that the deceased suffered 3 major incised wounds leading to the severance of the blood vessels and amputation of his hand near the wrist and the body in question was lying at the spot till the Police came which was nearly 4 to 5 hours later but still the investigating agency was unable to find any blood on the spot. Of course, the prosecution has given an explanation that after the incident in question it had rained but even then it is difficult to believe even traces of blood could not have been found on the soil inspite of the rain. The absence of any such material also supports the prosecution case that the incident in question might not have happened at the place of incident. In the background of these deficiencies in the prosecution case, we think the trial court was justified in coming to the conclusion that the prosecution has not established its case hence the trial court was justified in acquitting all the accused persons. Consequently, we are of the opinion that the High Court was not justified in taking a contrary view.

For the reasons stated above, this appeal succeeds and the same is allowed. The conviction of the appellants is set aside. The appellants are on bail. Their bail-bonds shall stand discharged.