

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1466 OF 2012

Sobaran Singh & Ors. .. Appellant(s)

versus

State of M.P. ..
Respondent(s)

J U D G M E N T

C. NAGAPPAN, J.

1. This appeal is preferred against the judgment dated 16.3.2012 passed by the High Court of Madhya Pradesh Bench at Gwalior in Criminal Appeal No.353 of 2004.

2. The appellants herein are accused nos.1 to 3 in the case in Sessions Trial No.8/97, on the file of Additional Sessions Judge, Gohad, District-Bhind (M.P.) and they were tried for the offence punishable under Section 302 read with Section 34 IPC and the Trial Court convicted them for

the said offence and sentenced each one of them to undergo imprisonment for life and to pay a fine of Rs.500/-, in default to undergo Rigorous Imprisonment for one month.

3. Challenging the conviction and sentence, the accused preferred appeal in Criminal Appeal No.353 of 2004 in the High Court and the same came to be dismissed by the impugned judgment and that is now under challenge in this appeal.

4. Briefly, the case of the prosecution is as follows :

PW5 Satyendra Singh, PW16 Brijendra Singh and deceased Narendra Singh are sons of PW7 Hanumant Singh. PW6 Uday Singh and PW10 Om Prakash are brothers of PW7 Hanumant Singh. On 6.9.1994 at 8.00 a.m. PW5 Satyendra Singh and PW16 Brijendra Singh had gone to attend call of nature in the drain (Nalah) and they heard the sound of weeping and alarm raised by PW10 Om Prakash and they went there and saw Narendra lying on the ground and accused no.3 Sardar Khan put his knee on his chest after holding his hands tight and accused no.1

Sobaran Singh and accused no.2 Suraj Singh tied his neck with a muffler (Safee) and accused no.1 Sobaran Singh was armed with a 12-bore gun and due to fear, they did not go near Narendra and in the meanwhile, PW6 Uday Singh and PW11 Vishwanath Sharma also rushed to the spot and on seeing them, accused nos.1 to 3 ran away. They found Narendra alive with injuries on the neck, chest and right knee and they carried him to the tube-well and thereafter, put him on the tractor-trolley and drove him to the hospital at Mau where he was declared dead by the Doctor. PW14 Dr. O.P. Tengar conducted the post-mortem at 12.30 p.m. on 6.9.1994 over the body of Narendra and found the following :

- (i) Abrasion admeasuring 3.0 cm x 1.0 cm on calf muscle of right leg;
- (ii) Abrasion multiple in number size varies from 2.5" to 3.0" in length and linear in width over right side of neck 2" below the ear lobule and 2.2" above the clavicle;
- (iii) Abrasion 2 in number size 2.2", 2.0" x linear just over the cricoids cartilage;
- (iv) Contusion 1.5" x 1.0" on the middle sternum.

On dissection of the body, he found contusion on sternum and ecchymosed underneath the contusion (rupture of small capillaries and ventricles) with tracheal rings and cricoids cartilage fractured. Pharynx and larynx were congested. He expressed opinion that death was caused due to strangulation (Asphyxia), 4-6 hours prior to autopsy and issued Exh.P16 post-mortem report. Thereafter, PW6 Uday Singh went to Mau Police Station and lodged a report, which was registered in the shape of Marg, under Section 174 CrPC by Assistant Sub-Inspector of Police Balram Singh. During the investigation of Marg, statements of the witnesses were recorded. On 7.8.1995, PW9 Assistant Sub-Inspector Ram Naresh Singh Kushwah registered a case in Crime No.76/1995 against accused nos.1 to 3 for the alleged offence under Section 302 read with Section 34 IPC and prepared Exh.P13 FIR. During investigation of the case, witnesses were examined and final report was filed. Charge under Section 302 IPC was framed against accused nos.1 to 3 and they were found guilty and were sentenced as narrated above and the appeal preferred by them was dismissed by the High

Court. Challenging the same, accused nos.1 to 3 have preferred this appeal.

5. The learned counsel for the appellants contended that the Marg Intimation Report shows that the complainant had only a suspicion against the accused and he has not stated about their involvement in the crime and the accused have been convicted merely on the evidence of the informant and other eye witnesses, who are none else, but the family members of the deceased, having enmity against the accused and the First Information Report came to be registered after nearly a year from the date of occurrence and on deliberation and afterthought, the statements of the material witnesses have been recorded falsely implicating the accused and there are embellishment and material contradictions in the statements of the witnesses and the investigation is biased and tainted and the prosecution has failed to prove the charge against the accused persons and the High Court fell in error while confirming the conviction imposed by the

Trial Court and the impugned judgment is liable to be set aside.

6. Per contra, the learned counsel for the respondent State contended that the courts below, relying on the testimonies of the ocular witnesses have found the accused guilty of the offence charged and the conviction and sentence imposed are sustainable and does not call for any interference.

7. Narendra died of Homicidal violence is sought to be proved by testimony of the post-mortem Doctor and opinion of the Forensic Science Expert. PW14 Dr. O.P. Tengar conducted autopsy on the body of Narendra and found abrasions multiple in number with varying size over the right side of the neck and on dissection of the body, contusion on sternum and ecchymosed underneath with tracheal rings and cricoids cartilage fractured and pharynx and larynx congested. In his post-mortem report, he has opined that the death was caused due to strangulation (Asphyxia), 4-6 hours prior to autopsy.

8. PW15 Dr. Ashok Sharma, Junior Forensic Specialist has testified that he perused the post-mortem report, the

Case Diary and all the materials collected and was of the view that there was no scientific basis to disagree with the opinion of the Autopsy Surgeon. Exh.P18 is the written opinion expressed by him. Accepting the medical evidence it is clear that Narendra died of Asphyxia by strangulation.

9. The prosecution case is that accused nos.1 to 3 in furtherance of their common intention committed the murder of Narendra by strangulating him with a muffler (Safee) and to prove the same, they examined PW5 Satyendra Singh, PW6 Uday Singh, PW10 Om Prakash, PW11 Vishwanath Sharma and PW16 Brijendra Singh as having witnessed the occurrence. PW10 Om Prakash and PW11 Vishwanath Sharma did not support the case of the prosecution in full and were treated as hostile. Two among the remaining ocular witnesses are brothers of deceased Narendra.

10. PW5 Satyendra Singh and PW16 Brijendra Singh have testified that on 6.9.1994 at 8.00 a.m. they had gone to Nalah to attend call of nature and they heard the sound of weeping and the alarm raised by PW10 Om Prakash and

went there and found Narendra lying on the ground and accused no.3 Sardar Khan put his knee on the chest of Narendra and holding his hands tight and accused no.1 Sobaran Singh and accused no.2 Suraj Singh pressing the neck of Narendra by tying a muffler (Safee) and accused no.1 Sobaran Singh was armed with a 12-bore gun and due to fear, they did not go near and in the meanwhile, PW6 Uday Singh and PW11 Vishwanath Sharma rushed to the spot and on seeing them, the accused left the place and they took injured Narendra to the hospital at Mau in a tractor-trolley, where he was declared dead.

11. Immediately after the occurrence, during Marg investigation, PW5 Satyendra Singh was examined and in the said statement, he has stated that he was ploughing his Banjara field with tractor on 6.9.1994 and his uncle Om Prakash came running to his field and informed him about the death of Narendra and this statement was put to PW5 Satyendra Singh in the cross-examination and, of course, he has denied the same. In this context it is also relevant to point out that, after registration of the First Information Report on 10.8.1995, the statement of Satyendra Singh

was recorded by the Investigation Officer, wherein, for the first time, he has stated about having witnessed the occurrence.

12. In the Marg investigation, Brijendra Singh was not examined and he was examined only after registration of the FIR on 10.8.1995, which is almost a year after the occurrence. Though both the above witnesses claimed to have seen the occurrence, during which the accused attacked Narendra resulting in his death, they have not lodged a complaint in the police station and had not taken immediate steps for the arrest of the accused. Their testimonies do not inspire confidence and conduct belies their version.

13. It is the testimony of PW6 Uday Singh that on 6.9.1994 at about 8.00 a.m. he went to the tube-well and met Vishwanath Sharma and they heard the alarm raised by PW10 Om Prakash and they rushed there and he saw from a distance that Narendra lying on the ground with accused no.3 Sardar Khan armed with a 12-bore gun sitting on his chest after holding both his hands tight and accused no.1 Sobaran Singh and accused no.2 Suraj Singh

pressing the neck of Narendra by trying a muffler and PW5 Satyendra Singh and PW16 Brijendra Singh also reached there and on seeing them, all the accused ran away and they took injured Narendra in the tractor-trolley to the hospital where he was declared dead by the doctor and he went to police station and lodged Exh.D1 Complaint. In his complaint PW6 Uday Singh has stated that on the occurrence day around 8.00 a.m. he went from his house for grazing the cattle and around 9.00 a.m. his brother Om Prakash told him that Narendra is lying unconscious at the Har and thereafter, he, PW11 Vishwanath Sharma and PW5 Satyendra Singh went to Har and saw Narendra lying unconscious on the ground and a safee was there around his neck and there were red coloured marks on the chest and they took him in the tractor to the hospital at Mau, where he was declared dead and he came to the police station for filing the report and he has doubt on accused no.1 Sobaran Singh and accused no.3 Sardar Khan. In the Marg Investigation, his statement was recorded, in which the same version has been told by him. As already seen, about 11 months after the occurrence, the First

Information Report came to be registered on 10.8.1995 and the statement of Uday Singh was recorded and in that statement, for the first time, Uday Singh has come out with the version that he witnessed the attack made by the accused on Narendra, which resulted in death. If really, Uday Singh had seen the attack made by the accused persons on Narendra during the occurrence, he must have stated so in his complaint given before the police station implicating the accused. On the other hand, Uday Singh has only expressed his suspicion on accused no.1 and accused no.3 in his complaint and has not whispered about witnessing the occurrence for a period of 11 months.

14. Exh.D2 is the statement of PW6 Uday Singh given on 6.9.1994 to the police, wherein, he has stated that around 9.00 a.m. on the occurrence day, his brother PW10 Om Prakash told him at the tube-well that Narendra is lying unconscious near the drain (Nalah) and he and his nephew Satyendra and Vishwanath Sharma went to the drain and found Narendra lying unconscious with injuries and there was safee around his neck and they took him in a tractor-trolley to the hospital at Mau where he was declared dead

and he has doubt on accused no.1 Sobaran Singh and accused no.3 Sardar Khan as the dispute is going on with them. During cross-examination, the said statement was put to PW6 Uday Singh and he simply denied it and stated that he informed the police about the accused attacking Narendra. In short, the testimony of PW6 Uday Singh does not inspire confidence and no credence can be given to it.

15. The complainant PW10 Om Prakash has testified that on 6.9.1994 at 8.00 a.m. he took buffaloes for grazing to Banjara field and saw the accused persons beating his nephew Narendra and he cried and thereafter, PW5 Satyendra Singh, PW6 Uday Singh and PW16 Brijendra Singh came there and the accused fled away and they took injured Narendra to the hospital at Mau where he was pronounced dead. It is his further testimony, in examination-in-chief that he could not see by which weapon the accused persons were beating Narendra and due to the impairment of vision, he could not say whether the signatures found in the spot map and seizure memo were that of his and he was treated as hostile by the prosecution.

16. In the cross-examination, PW10 Om Prakash admitted that he was examined by police on the date of occurrence itself, namely 6.9.1994, and the said Marg diary statement is Exh.D/2-A, and he has stated therein that on the occurrence day in the morning Narendra took buffaloes to Banjara wale Har and after sometime, he went with his buffaloes and saw Narendra lying in the grass with white liquid coming from mouth and nose and he saw at a distance that accused no.2 Suraj Singh with a 12-bore gun, accused no.3 Sardar Khan and another person, who could not be identified, going down by crossing the drain (Nalah) and he ran to the tube-well and informed the same to others and he along with PW5 Satyendra Singh, PW6 Uday Singh and PW11 Vishwanath Sharma went to the occurrence place and found injured Narendra alive and they took him to the hospital at Mau, where he was declared dead and he has doubt on accused nos.1 and 3 about their involvement in the death of Narendra. The above version is the earliest in point of time wherein, he has not stated about the attack made by the assailants on

Narendra. Moreover, he did not support the prosecution case in full and was declared as hostile.

17. PW11 Vishwanath Sharma is an independent witness and he was staying in the tube-well of PW10 Om Prakash on 6.9.1994 and according to him, he heard the cry of PW10 Om Prakash and he along with PW5 Satyendra Singh and PW6 Uday Singh ran there and saw Narendra lying seriously injured and saw the accused proceeding towards village from Nalah and they took injured Narendra to the hospital in the tractor-trolley and he was dead by then. This witness was also treated as hostile by the prosecution and his testimony does not help the prosecution case in any way.

18. The investigation in this case is slipshod. Balram Singh, Assistant Sub-Inspector of Mau Police Station, who registered the Marg under Section 174 CrPC was not examined in the trial. No explanation was offered by the prosecution for his non-examination. PW12 Bharat Singh Sikarwar, who is the station in-charge, has admitted that during Marg enquiry he could not ascertain the names of culprits nor could register the crime. In fact, at the

instance of the higher police authority, the FIR came to be registered against the accused on 10.8.1995, after a period of 11 months from the date of occurrence and the statements were recorded on 10.8.1995 and only in those statements, for the first time, PWs 5, 6, 10, 11 and 16 have stated that they saw the accused persons attacking Narendra during the occurrence. The Marg Intimation Report, which was recorded, was neither exhibited nor proved by prosecution in the trial. The Investigation Officer Santosh Singh Gaur, who conducted part of investigation did not testify in the trial. The High Court has elaborately dealt with the said omissions in paragraph nos.19 and 25 of the judgment and proceeded to observe that investigation agency cannot be permitted to conduct investigation in a tainted and biased manner and concludes that the investigation was defective and tainted and the defective investigation by itself cannot be a ground for acquittal.

19. Our independent analysis of the evidence on the record coupled with the infirmities which we have noticed above has created an impression on our minds, that the

prosecution has not been able to bring home guilt to the appellants beyond a reasonable doubt. The High Court even after noticing the infirmities, in our opinion, fell in error in confirming the conviction of the appellants. The reasons given by the High Court do not commend to us to sustain the conviction and sentence. They are neither sufficient nor adequate or cogent much less compelling to uphold the impugned judgment.

20. As a result of our above discussion, we hold that the case against the appellants has not been proved beyond a reasonable doubt and they are entitled to benefit of doubt. Their appeal consequently succeed and is allowed and the conviction and sentence imposed on them are set aside and they shall be set at liberty forthwith, if not required in any other case.

.....J.
(T.S. Thakur)

.....J.
(V. Gopala Gowda)

.....J.
(C. Nagappan)

**New Delhi;
July 7, 2014**

SUPREME COURT OF INDIA



JUDGMENT