

(2015) 09 SC CK 0185

In the Supreme Court Of India

Case No : Criminal Appeal Nos. 2110 and 2111 of 2009

Narender Singh and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 27
Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 302

Citation : (2015) 12 AD (SC) 92 : (2015) 91 ALLCC 930 : (2016) ALLMR(Cri) 444 : (2016) 121 CLT 459 : (2016) 1 JCC 223 : (2016) 1 JLJ 1 : (2015) 11 SCALE 557 : (2015) 3 UC 1953

Hon'ble Judges : F.M. Ibrahim Kalifulla and U.U. Lalit, JJ.

Bench : Division Bench

Final Decision : Disposed Of

Judgement

F.M. Ibrahim Kalifulla, J—Out of 7 accused, A2 to A6 are the Appellants before us in these two appeals.

2. These appeals are directed against the common judgment and order dated 7th September, 2006 of the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 666 of 2000. Altogether there were seven accused. One accused by name Ravi was a juvenile and, therefore, his case was separated and dealt with separately. As A1 has not preferred any appeal, we are not concerned with his case.

3. Shorn of unnecessary details, the case of the prosecution is that on 27th June, 1997 at 10:00 p.m. P.W. 3, 6 and the deceased were sitting and conversing with each other along with one Rangnath Sharma behind the Hotel of Jaggi Chourasia of village Katra. The deceased was the Sarpanch of the village near Katra which is part of Nayagaon. According to P.W. 3, there was sufficient light since the street lights were on apart from a chimney burning near the hotel. It was stated that the accused arrived at the spot, among whom A5 was holding a sword, A6 was holding a Farsa, A2 was having an axe while A1, A3 and A4 were having

lathis. On arrival at that spot, it was alleged that A5 while abusing the deceased and making a pronouncement that he cannot escape that day, dealt with a sword blow on the head of the deceased pursuant to which blood flush out and that thereafter A6 dealt a farsa blow which also landed on the head of the deceased. Closely followed by that A2 caused an injury with an axe again on the head of the deceased, after which the deceased fell down. The other accused A1, A3 and A4 stated to have caused further injuries with lathis. P.W. 3, P.W. 6 and others. pleaded with the accused to spare the deceased upon which A5 with a warning to the deceased that he should not contest against him in future left the place of occurrence along with other accused. P.W. 3, thereafter stated to have reached the Police Station Saleha which was hardly within one kilometer from the place of occurrence where the FIR Exhibit P3 came to be registered at 10:45 p.m.

4. P.W. 15, the Investigating Officer after registration of the FIR stated to have rushed to the place of occurrence between 11:00 and 11:15 p.m. whereafter he prepared Exhibits P7 P/1A, P/1B and subsequently ended with P10 which are the crime details form [Form No. 2], application for examination of injured P.W. 3 and the application for post mortem. P.W. 3 was examined by P.W. 1 who issued Exhibit P1, M.L.C. Report. Pursuant to the requisition Exhibit P10 made by P.W. 15, the post mortem was conducted on the body of the deceased by P.W. 10 and as many as 8 injuries were noted on the body of the deceased. Out of the 8 injuries, injury Nos. 4, 5, 6 and 7 were noted as grievous injuries while the other injuries were contusions.

5. Based on the above details gathered, prosecution laid the charge sheet as against the accused for offences Under Sections 147, 148, 149, 302 and 294 of the Indian Penal Code. The trial Court, having considered the oral as well as documentary evidence namely, P. Ws. 1 to 16 and Exhibits P1 to P31 convicted the Appellants accused for the offence Under Section 302 read with Sections 148 and 149 Indian Penal Code. The Appellants were imposed with the punishment of life imprisonment. As against the above conviction and sentence imposed, the Appellants along with other accused namely, A1 preferred the appeal before the High Court. The Division Bench having confirmed the conviction and sentence imposed on the Appellants, they are before us.

6. We heard Mr. Tripurari Ray, learned Counsel for the Appellants and Mr. Arjun Garg, learned Counsel for the State.

7. The main plank of attack on the judgment impugned in these appeals are two-fold namely, that the FIR was ante-dated and that the Appellants were falsely implicated. In support of the above submissions, Mr. Ray while making reference to the version of P. Ws. 1, 3, 10 and 15 and Exhibits P/1A, P/1B, P7 and P10, contended that there were very many inconsistent circumstances which would show that the case was not as projected by the prosecution for implicating the Appellants and, therefore, the conviction and sentence imposed are liable to be set aside. The learned Counsel, by referring to the evidence of P.W. 3 as compared to the evidence of P.W. 15 contended that there were serious doubts

as to whether the said FIR was registered at 10:45 p.m. on 27th June, 1997 as claimed; whether P.W. 3 was injured at all as claimed by him and as stated by P.W. 1, that non-mentioning of the various details relating to the FIR, the names of accused in Exhibits P1A, P7 and P10 would also belie the case of the prosecution and would support the stand of the Appellants that the FIR was ante-dated. The learned Counsel submitted that it was further strengthened by the fact that it was claimed by P. Ws. 3 and 6 that one Ranganath Sharma was also present at the place of occurrence and that for no reason he was not examined by the prosecution. It was further contended that while the registration of the FIR was claimed to be 10:45 p.m. on 27th June, 1997, there was no valid explanation as to why the Express Report Under Section 157 of the Code of Criminal Procedure was not forwarded to the Judicial Illaka Magistrate forthwith which in the case on hand admittedly reached the learned Magistrate only at 1:20 p.m. on 30th June, 1997.

8. While elaborating his submission, learned Counsel pointed out that Exhibit P7 is the statutory form namely, Form No. 2 called "Crime Details Form", wherein there is a specific column, namely, Column No. 6 to note the description of the injured persons, that the name of deceased Ram Bhuvan, son of Sunder Lal Sharma alone was noted and without any valid explanation the name of P.W. 3 who was stated to have been injured in the same transaction was not mentioned. Learned Counsel then pointed out that in Exhibit P1A, which is the application for examination of injured P.W. 3, either the Crime Number or the FIR Number was not noted apart from the fact of non-mentioning of the time at which the said application was sent to the Doctor on 28th June, 1997. The learned Counsel while making reference to the application for post mortem Exhibit P10 also dated 28th June, 1997, pointed out that while the said application was presented to the Doctor at 7:30 a.m. on 28th June, 1997, for conducting the post mortem, there was no reference to any of the names of the accused whose names were already disclosed to the police at 10:45 p.m. as per FIR registered at 10:45 p.m. on 27th June, 1997.

9. The learned Counsel also brought to our notice Exhibit D8 to show that the Express Report was received by the Illaka Magistrate only at 1:20 p.m. on 30th June, 1997. The learned Counsel also while making reference to the evidence of P.W. 1 contended that there was a specific suggestion put to P.W. 1 that the injuries alleged to have been sustained by P.W. 3 was a fake one and that the examination of P.W. 10, the Doctor who conducted post mortem also revealed that the injuries which were noted on the body of the deceased were not specifically attributed to the alleged seized weapons from the accused and thereby creating serious doubts as to whether or not such weapons were used and were the cause for the death of the deceased. The learned Counsel also drew our attention to various other minor infirmities in the evidence of the prosecution and contended that the prosecution failed to establish the charges levelled against the Appellants and consequently the impugned judgment deserves to be set aside.

10. As against the above submissions, Mr. Arjun Garg, learned Counsel for the State by drawing our attention to the arrest of the Appellants effected on 28th June, 1997 and the subsequent seizure made on 29th June, 1997 supported by Exhibits P22 to 24, as well as, Section 27 Statement under Exhibits P18 to P21, contended that the arrest of the accused and the seizure made by the panch witnesses duly established that the Appellants were involved in the killing of the deceased as well as causing of the injuries on P.W. 3. The learned Counsel for the State submitted that even though there was a delay in forwarding the Express Report to the Illaka Magistrate the same did not cause any prejudice to the Appellants and that the charges were found proved against the Appellants. The learned Counsel, further, contended that P.W. 15 after registering the FIR forwarded the Express Report through the Police Constable Narendra Chauhan on 27th June, 1997 itself by noting it down in the Despatch Register and that though under Exhibit D8 the receipt of the same by the Illaka Magistrate is noted as 1:20 p.m. on 30th June, 1997, he was unaware as to the reason which caused the delay. The learned Counsel would contend that the Illaka Magistrate was at Panna which was 60 KMS away from the place of occurrence and that though there was some delay in forwarding the receipt of the Express Report, since there was every clinching evidence in the form of eye witness account as well as other material evidence supported by medical evidence as well, as no prejudice was caused to the Appellants on account of such delay, no infirmity can be found in the judgment impugned in these appeals.

11. Having heard respective counsel for the Appellants as well as the State, we are also convinced that the judgment impugned does not call for interference. When we considered the submission of learned Counsel for the Appellants with particular reference to the evidence of P.W. 3 who was an injured eye witness, it was contended that the FIR itself could not have been registered at 10:45 p.m. inasmuch as even according to P.W. 3 his signature was obtained at a later point of time. At the very outset, it must be stated that by referring to this part of the evidence, we are not able to state that registration of FIR could not have been made at 10:45 p.m. inasmuch as other consequential steps taken thereafter with particular reference to Exhibit P7, P1A to B and P10 which were all contemporaneous documents which disclose that immediately after the registration of FIR at 10:45 p.m., P.W. 15 reached the place of occurrence and proceeded with further course of action. Therefore, the said contention stands rejected.

12. As far as the contention that the injuries sustained by P.W. 3 could have been a fake one and consequently his presence itself was not true, the said contention is also liable to be rejected, inasmuch as we do find from the evidence of P.W. 1 who examined P.W. 3 on the night of 27th/28th June, 1997 itself noted the various injuries sustained by him in Exhibit P1B based on the application made under Exhibit P1A dated 28th June, 1997 Exhibit P1B discloses the time as 1:30 a.m. in the night on 28th June, 1997. In the evidence of P.W. 1 at the end of the examination there was a specific question put to P.W. 1 as to the examination of

P.W. 3, wherein he made it explicit to the effect that P.W. 3 was examined in the night intervening 27th and 28th June, 1997 and the injuries noted by him in Exhibit P1B was also confirmed by him in his oral evidence. In fact, there was a broad reference to the nature of injuries sustained by P.W. 3 in Exhibit P1A. Therefore, reading Exhibits P1A and P1B together with the oral evidence of P.W. 1, it has come out in evidence that P.W. 3 sustained the injuries on the night of 27th June, 1997. Therefore, the submission that P.W. 3 could not have been present at the place of occurrence cannot be accepted.

13. We come to the rest of the contentions. It must be stated that evidence of P.W. 3 as an eye witness was cogent in every respect, as he narrated the manner in which the occurrence took place on the night of 27th June, 1997, the role played by each of the accused and the subsequent events that occurred thereafter such as the complaint which he preferred in the Saleha Police Station, the registration of the FIR at 10:45 p.m., the subsequent visit of P.W. 15 to the place of occurrence and the shifting of the body of the deceased to the hospital for carrying out the post mortem by P.W. 10. The said part of the evidence of P.W. 3, as an eye witness account was fully supported by the version of P.W. 6, and also fully corroborated by the evidence of P. Ws. 7 and 11 who reached the place of occurrence on hearing the shouts of P. Ws. 3 and 6.

14. The contention raised on behalf of the Appellants was that P.W. 15 was not truthful in registering the FIR as well as launching the prosecution case against the Appellants inasmuch as according to P.W. 5, the Constable who shifted the body of the deceased to the hospital in his evidence stated that there was a short post mortem report issued by the Doctor which he delivered at the Police Station and that thereafter in consultation with the so-called eye witness Ranganath Sharma who was not examined for no good reasons and who had a grudge against the Appellants who all belonged to same community, the Appellants were implicated in the offence. Though in the first blush, such a contention raised on behalf of the Appellants appeared to be appealing, when we refer to the various other contentions raised in support of the said submission, we find no substance in the said contention. First of all, we do not find any serious discrepancy or infirmities in the preparation of the statutory records as well as any serious lacuna in the oral version of the witnesses examined in support of the charges.

15. It was contended that in the Crime Details Form, Exhibit P7, which is a statutory form wherein there was no mention as to the nature of weapons used as well as the name of the so-called injured eye witness P.W. 3 and also the names of the accused though their names were very much known to the prosecution as early as at 10:45 p.m. on 27th June, 1997. When we consider the said submission, we find that Form No. 2 is an enclosed Report prepared by P.W. 15 in which in Column No. 5 it is specifically mentioned while referring to motive of the crime either due to old enmity, it is mentioned "due to old enmity, attacked with sharp weapon with intention to kill". Similarly, in Column No. 6, under the heading " description of injured persons", the name of deceased alone

has been mentioned and there is no reference to the injured eye witness P.W. 3. Insofar as the non-mention of P.W. 3 in the said column is concerned, we have also referred in detail as to how and why such a non-mention would not in any way vitiate the case of the prosecution by virtue of the other clinching evidence which established the presence of P.W. 3 at the place of occurrence and the same reason will hold good here as well.

16. Insofar as Column No. 5 is concerned, it has been duly noted as to the use of sharp weapon. When we looked into Column No. 10 the place of incident, the description of the place, the facility of chimney which was available and all other minute details have been noted. It must also be stated that the said Form was prepared on the basis of the visit made by P.W. 15, Investigating Officer at 23:10 hours i.e. 11:10 P.M. on 27th June, 1997. In fact, when we later made a further reference to Exhibit P10 which is an application for carrying out the post mortem on the dead body of the deceased, it contains separate statements about the details of the dead body of the deceased. The same was despatched at 7:00 a.m. on 28th June, 1997 and was received at the mortuary by 7:30 a.m. on the same day. We have also noted the time of the existence of P1A and P1B which when read along with the evidence of P.W. 1 it is quite clear that the same came into existence by 1:30 a.m. on the intervening night of 27th and 28th June, 1997.

17. Having regard to the above features, namely, the registration of FIR at 10:45 p.m. on 27th June, 1997; the inspection made by P.W. 15 at 11:10 p.m. on the same date; the sending of P.W. 3 for medical examination which was concluded by 1:30 a.m. on 28th June, 1997; and the shifting of the body of the deceased from the place of occurrence to the hospital by 7:30 a.m. on 28th June, 1997 read along with the version of P. Ws. 3, 6 and other supporting witnesses it was sufficiently established that the occurrence took place as spoken to by P.W. 3, 6 and Ors. and the involvement of the Appellants was, therefore, fully established.

18. With that we come to the submission relating to the delay in forwarding of the Express Report to state that the implication of the Appellants was false. As has been rightly contended by the learned Counsel for the State, even though the delay was quite apparent by virtue of Exhibit D8, in the first place, it must be stated that when there was overwhelming and incriminating evidence both oral as well as documentary to support the case of the prosecution, as regards registration of the FIR and the subsequent investigation carried on coupled with the arrest of the accused on 28th June, 1997 supported by reference made in Exhibits P22 to P24 as well as Section 27 Reports under Exhibits P18 to 21, it must be held that in spite of such minor discrepancies pointed out on behalf of the Appellants, the case of the prosecution cannot be faulted. Therefore, the delay in forwarding the Express Report to the Illaka Magistrate was concerned, it must also be noted that in the evidence of P.W. 15 he stated that in the Despatch Register on 27th June, 1997, itself a mention was made to the effect that he handed it over to the Head Constable Narendra Chuahan for delivering it to the Magistrate which cannot be doubted, inasmuch as, we do not find any suggestion

having been put to him that as to what transpired after he directed the said Head Constable to deliver it to the Illaka Magistrate. Further, the Illaka Magistrate was in Panna, which is 60 kms. away from the place of occurrence. In any event, even assuming the delay did really happen in forwarding the Express Report, we find that such a delay has not caused any serious prejudice to the Appellants. In this context, reliance was placed on the decisions of this Court reported in *Pala Singh and Another Vs. State of Punjab*,

The State of Karnataka Vs. Moin Patel and Others, , *Bhajan Singh @ Harbhajan Singh and Others Vs. State of Haryana*, , which decisions fully support the stand of the Respondents. We only refer to the last of the said decisions wherein in paras 29 and 36 it has been held as under:

29. It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression "forthwith" mentioned there in does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high, delay in dispatching the report is natural. of course, the same is to be sent within reasonable time in the prevalent circumstances.

36. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (*Vide Abdul Sayeed Vs. State of Madhya Pradesh*, ; *Kailas v. State of Maharashtra* (2011) 1 SCC 793 ; *Durbal Vs. State of U.P.*, and *State of U.P. Vs. Naresh and Others*, .)

19. As far as minor discrepancies noted and pointed out by learned Counsel for the Appellants are concerned, here again we find that such discrepancies does not in any way seriously impinge on the judgment impugned in these appeals.

20. As far as the submissions made based on the injuries, we do not find any scope to interfere with the decision in the impugned judgment on that score inasmuch as on a detailed reading of evidence of P.W. 10, we find that his

evidence fully supported the case of the prosecution in regard to the nature of injuries inflicted upon the deceased on his hand by the Appellants and it was also further supported by the weapons which were recovered at the instance of the Appellants. For all the above reasons, we do not find any merit in these appeals and the same are dismissed.