

(1992) 08 MP CK 0027

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 450 of 1990

Ramlal Prabhulal and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 04-08-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 161, 164
Penal Code, 1860 (IPC) — Section 109, 120B, 149, 302, 324

Citation : (1994) 39 MPLJ 165 : (1994) MPLJ 165

Hon'ble Judges : V.D. Gyani, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : K.G. Maheshwari, Jaishingh, A. Shukla, A.M. Mathur and Pandaya, for the Appellant; G.S. Chouhan, Deputy Government Advocate, for the Respondent

Judgement

A.R. Tiwari, J.

This appeal is filed by 28 persons, who stand convicted under Sections 302/149 of the Indian Penal Code on two counts that is for committing murder of Ramnarayan and Ramesh and sentenced to suffer imprisonment for life on each count and to pay fine of Rs. 300/- each and in default to suffer Rigorous Imprisonment for three months on each count with a direction that both the sentences shall run concurrently, in Sessions Trial No. 21 /85 by the judgment dated 8-9-1990 rendered by Addl. Sessions Judge, Rajgarh (Biora). Widows or legal representatives in their absence of each deceased have been directed to be paid a sum of Rs. 3,000/- out of the fine deposited or realised as compensation.

The appellant Laxminarayan, who is also one of the appellants in Criminal Appeal No. 450/90, has also preferred a separate appeal No. 424/90 against the aforesaid judgment.

This judgment will govern the disposal of Criminal Appeal No. 424/ 90 also.

Adumbrated in brief, the facts as are relevant for this appeal are that the

deceased Ramnarayan and his son Mohanlal (PW-21) faced a case under Sections 302/34 of the Indian Penal Code for the offence of murdering one Kaluram, erstwhile Sarpanch, in which, Ramnarayan had absconded. Later, he appeared before the Court and was admitted to bail by the order of High Court. Anticipating fear from Lodha community, Ramnarayan and his members of family shifted to Narsingharh to settle there. On 27-3-1984, Ramnarayan proceeded to lodge a report in Police Station Mau against the damage done to his property. His servant Mishrilal (PW-12) also accompanied him. After lodging the report, they came to village Gagahoni at about 3.30P.M. and alighted from the bus. Ramnarayan went to the shop of Laxminarayan (PW-15) for drinking water whereas Mishrilal (PW-12) and Chaukidar Amarchand (PW-3) got busy in loading the wood of Ramnarayan on the bus. At this stage, the accused persons, being members of an unlawful assembly, mounted murderous attack on Ramnarayan by means of guns, Ballam, Farsi, axe and lathis. His son came to rescue him, but he too was assaulted. Later they put the wood on them, sprinkled kerosene and set the fire. Thus, they were roasted alive. Shiv Singh, Constable (PW-26) had tried to intervene without success since some one among the accused persons had hurled a ballam on him. A report (Ex. P/62) was entered in Roznamcha by Chatrapal Singh (PW-10) on the information given by Awadh Bihari Conductor (PW-3) as directed by Shiv Singh (PW-26) Dehati Nalishi (Ex. P/19) was registered. Formal First Information Report was registered as Ex. P/63. Report (Ex. P/64) had come from Narsingharh Police Station. Weapons were seized pursuant to disclosures u/s 27 of the Evidence Act. Dead bodies in full flames were found at the bus-station. The post mortem was performed by Dr. D. K. Satpathi (PW-27) whose reports are Exs.P/99 and P/101. Reports from Chemical Examiners are Ex. P/105 and Ex. P/106. Spot maps were prepared. Blood stained earth and clothes were also seized. After investigation, challan was put up in the Court against 32 accused persons out of whom, Roshan is absconding, Chatrural s/o Bhagya is dead. Charges under Sections 120B, 302/149, 302/109, 324 of the Indian Penal Code and Section 27 of the Arms Act were framed. The accused persons pleaded not guilty to the charges as levelled against them and urged that they have been falsely roped in due to pre-existing enmity. On trial, Dattatrya and Laxman Singh have been acquitted whereas remaining 28 persons have been convicted and sentenced as above.

We have heard Shri K. G. Maheshwari, learned counsel for the ten appellants, Shri A. M. Mathur learned counsel for the appellant Laxminarayan, Shri Jaisingh, learned counsel for two appellants (Bansilal and Dhurilal s/o Rupaji) and Shri Ashok Shukla, learned counsel for the remaining 15 appellants as also Shri G. S. Chauhan, learned Dy. Government Advocate, for the State.

Shri Maheshwari has directed manifold attack, scathing in nature, and formulated his submissions as under. M/s. Mathur, Jaisingh and Shukla have adopted the arguments:

(a) It is not proved that Ramnarayan and his son Ramesh have died because the

corpus have not been identified satisfactorily so much so that even photographs have not been proved.

(b) It is a case almost without the First Information Report and in any case real First Information Report is Ex. P/62 and all other ones Exs.P/63, P/64 and P/19 are hit by Section 162 of the Code of Criminal Procedure as being statements made during the course of investigation.

(c) Entire investigation is tainted. The case has been foisted on the appellants after due deliberation.

(d) All witnesses are inimical and have no regard for truth. They are got up witnesses and stand contradicted by medical evidence which clearly negatives the presence of gun-shot injuries. Independent witnesses have been withheld and not examined.

On the other hand, Shri Chauhan, strenuously supported the impugned judgment and submitted that case stands proved by eye-witness account duly corroborated to some extent even by other witnesses turning hostile. He urged that the motive for such a crime existed and, in the face of conflict with medical evidence, ocular evidence furnished by eye-witnesses must be preferred. There is thus, counsel urges, no ground to interfere.

Before going into the finer aspects of the case, it is apt to notice few things right at the threshold :

(a) Section 120B of the Indian Penal Code was added by the police on 28-5-1984, after two months from the date of alleged incident on arrest of the then MLA Jagtap Dattatrya (para 2 of PW 29). Accused persons have been acquitted of the offence punishable u/s 120B of the Indian Penal Code (para 38 of the judgment).

(b) Appellants Ramlal, Kaluram and Gopilal, as charged, have been acquitted of the offence punishable u/s 109 read with Section 302 of the Indian Penal Code (para 40 of the judgment).

(c) Appellants Ramlal, Kaluram and Gopilal as charged have been acquitted of the offence punishable u/s 324 of the Indian Penal Code as regards the alleged gun-shot injuries on the persons of Roopsingh and Hemraj (paras 45 and 46 of the judgment).

(d) Appellants Ramlal, Kaluram and Gopilal, as charged have been acquitted of the offence punishable u/s 27 of the Arms Act (para 47 of the judgment).

(e) Seizure of weapons has been held to be valueless and thus not constituting as an incriminating material (para 70 of the judgment).

(f) Identification parade (Ex. P/96) by witness Shiv Singh (PW-26) has been discarded as worthless (para 62 of the judgment).

(g) Medical evidence has been treated to be inconsequential due to extensive

burns and condition of the corpus (para 84 of the judgment).

(h) Enmity is an admitted position (para 5 of the judgment). There is group-rivalry and the village is evidently faction-ridden.

(i) Principal witnesses have been tied down by statements u/s 164 of the Criminal Procedure Code

(j) PW-27 D. K. Satpathi categorically deposed on oath that he did not find any gun-shot injuries on the bodies of the deceased (para 9). This is thus, in direct conflict with ocular version as well as documentary evidence including the First Information Report.

The fate of the case thus, inevitably hinges on the ocular version of PW-5 Badrilal, PW-12 Mishrilal, PW-14 Gangaram and PW-26 Shiv Singh. To some extent, corroboration from those who have turned hostile may be sought since the testimony is not liable to be totally washed away. This corroboration would however, be significant only if the aforesaid four witnesses are held to inspire confidence imprimis. It is, therefore, necessary to examine the statements of the aforesaid four witnesses carefully.

Now, first submission first. It is vehemently argued that the prosecution has not proved that the dead bodies were of Ramnarayan and Ramesh. The Trial Judge has given elaborate reasons in para 21 of the Judgment. PW- 21 Mohanlal, son of deceased Ramnarayan and brother of the deceased Ramesh, has categorically asserted about this fact (para 1 of his statement). He was handed over the dead bodies (para 5). This fact has not been challenged in cross-examination implying thereby that this was accepted as true. This is also not raised as a ground in the appeal memo. We are thus, not persuaded to take a different view from the one taken by the Trial Judge. Hence, this submission lacks substance and deserves to be rejected. Moreover, the trial lasted for about five years and none came forward to show or suggest that they were seen alive. Photographs lose the significance in the face of other evidence.

As regards Ex. P/62 being asserted as real First Information Report, bare perusal of it goes to show that it is a vague piece of information conveyed by Awadh Bihari (PW-9). Proper First Information Report, first in point of time, is Ex. P/64 lodged at crime No. 0/84 at Narsingh Garh Police Station and later registered at Mau Police Station marked Ex. P/65. It would however, be important to compare Ex. P/62 with Ex. P/64. We notice the undernoted features :-

(a) Ex. P/62 is based on the Information given by none other than PW-26 yet it does not contain even the number of assailants.

(b) It does not mention assault by weapons like Farsis, Ballam axe and Lathis.

(c) It does not mention anything about deceased Ramesh.

(d) It does not mention names of eye-witnesses.

(e) It does not depict even Shiv Singh as an eye-witness.

Now, if PW-26 Shivsingh is an eye-witness, as he claimed, then he would have conveyed essential particulars to Awadh Bihari. Absence delivers dent on the prosecution version almost beyond repair. In Ram Kumar Pandey Vs. State of Madhya Pradesh, it is held as under :-

"No doubt, an F.I.R. is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9.15 p.m. on 23-3-1970, were bound to have been communicated, if his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the F.I.R. We think that omissions of such important facts, affecting the probabilities of the case, are relevant u/s 11 of the Evidence Act in judging the veracity of the prosecution case".

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The credibility thus, stands impaired and veracity of the prosecution version stands affected.

Now, Ex. P/64 itself is totally silent about the deceased Ramesh. It mentions the assault by 8-10 persons by means of Farsi, Ballam. Two are said to be armed with guns but none is said to have fired in his presence. No one is named therein as eye-witness to the incident. Ex. P/19 and Ex. P/63 cannot be treated as First Information Report. Now, if only 8-10 persons were assailants, then how is it that as many as 32 have been made as accused in this? Ex. P/19 is resting on the fulcrum of information by Amarchand (PW- 3) but he does not support. Hence, Ex. P/19 is not substantiated. Ex. P/63 is based on Ex. P/19 only and P/19 mentions the names of 14 persons as assailants. Badrilal (PW-5) and Gangaram (PW-14) are not eye-witnesses according to Ex. P/19. Laxminarayan (PW-15) is hostile. The only witness as per Ex. P/19 is then Mishrilal (PW-12) who is servant of the deceased and tied down by statement u/s 164 of the Criminal Procedure Code (Ex. D/6). It cannot be said that it is a case without First Information Report. However, as discussed above, serious infirmity is introduced. How Medical Officer could opine about other injuries in peculiar state of the corpus consigned to flames?

We shall now assess the value of the statements of principal witnesses. PW-5 Badrilal is a person whose statement was recorded u/s 164, Criminal Procedure Code (Ex.D/4). He was interrogated u/s 161 of the Criminal Procedure Code on 3-4-1984 i.e. after about one week. He has deposed in Court on the strength of Ex. D/3, the gist of his statement u/s 164, Criminal Procedure Code, given to him by Mohanlal (PW-21), the son of the deceased (paras 23 to 26 of PW-5). Now how does he understand anything about 120B? (para 37). He has hostile animus (para 47). He is alleged to be introduced as a witness (para 52). It is also not clear as to why he was present at the spot. His testimony is fraught with several

contradictions. He is not named as a witness even in Ex. P/19. PW-5 is thus not reliable. PW-12 Mishrilal is a servant of the deceased. The alleged report of Mau Police Station is not produced and proved. He is contradicted by medical evidence. He names Kaluram, Gopilal and Ramlal as the only assailants armed with guns. Five more (Kishanlal, Biharilal, Bansilal, Lalchand and Narayan) are said to be armed with Karpas and Farsi. They are not said to have attacked. He, thus, does not say a word about 24 others. He was accompanied by Mohanlal (son of the deceased) and Government Pleader (para 13). Tutoring thus, cannot be ruled out. He was interrogated again after four days (para 15), but this version is withheld. There are material omissions in earlier statements Ex. D/5 and D/6 (para 23). Lalchand is not even named in Ex. D/6 (para 27). PW-12 thus does not inspire confidence. PW-14 Gangaram is not named in Ex. P/19. He too is contradicted by medical evidence. Roopsingh and Hemraj alleged injured persons have not been examined. He speaks about 8/9 persons. Kaluram, Gopilal, Chatrural, Kishanlal and Laxminarayan are named by him. This statement is not consistent with the version of PW-12 Mishrilal. There are material omissions in Ex. D/7, earlier statement. In fact statement of PW-15 shows that Gangaram and Badri did not know the names of assailants {para 4}. PW-14 is thus, not trustworthy. PW-26 speaks of 10-12 persons and then augments the number to 30-35 persons (para 3). He claims to know Laxminarayan and Chatru by name (para 4), yet he does not name them in Ex. P/64. He does not name any one to Awadh Bihari (PW-9) (see Ex. P/62) or to PW-21 Mohanlal. Identification parade has been treated to be worthless and we agree with this finding. Firstly, it is delayed and there is no satisfactory explanation. The delay is about one and a quarter month. Secondly, he has not given any marks of description either. Following rulings illumine the path :-

In *Bali Ahir and Others Vs. State of Bihar*, it is observed :-

"The witness.....went to identify him when he fully knew him and identification of two of the accused took place after a gap of four days after their arrest without any explanation for delay, it was held that the accused could not be convicted for offence u/s 394, Indian Penal Code....."

And in *Wakil Singh and Others Vs. State of Bihar*, it is held that:-

"In the instant case we may mention that none of the witnesses in their earlier statements or in oral evidence gave any description of the dacoits whom they have alleged to have identified in the dacoity, nor did the witnesses give any identification marks viz stature of the accused or whether they were fat or thin or of a fair colour or of black colour. In absence of any such description, it will be impossible for us to convict any accused on the basis of a single identification, in which case the reasonable possibility of mistake in identification cannot be excluded."

Hence, PW-26 is also not creditworthy.

Now when these principal witnesses are not found to be trustworthy, then

corroboration as pointed out has no significance. There is, however, no proper and adequate corroboration either. Even according to prosecution, the aforesaid principal witnesses are liable to be partly disbelieved as compared to medical evidence. In Mathura v. State of M. P. 1982 WN 396, it is held as under:-

"The witnesses therefore, have not been treated as wholly reliable even by the Trial Court. For this reason some other evidence to provide at least some corroboration to the version of budhman (PW-2) for convicting the appellant even for the third murder of Patiraj must be found in order to sustain his conviction. There is no such corroboration available in the prosecution evidence."

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The Trial Judge has discussed the relevant evidence from para 49 onwards of the judgment. We find that the assessment is rather perfunctory and is not in accordance with judicial principles. The approach is vitiated and reasoning demonstrably is not sound. It is settled law that one infirm witness cannot corroborate another infirm witness. Falsehood and truth seem to be so inextricably mixed up here that there is no basis even to separate the grain from the chaff.

It is a case of enmity. It is a case of group rivalry in more than one way. Kalal community v. Lodha community, is one factor. Bhartiya Janta Party v. Congress Party is another. Added to this is pre-existing enmity yielded by intolerable incident like murder of one Kaluram. In such setting and with such hostility, omnibus allegations are surely un saffe to be accepted. It is pertinent to refer to Lala Ram and others Vs. State of U.P., which laid down as under :-

"Having given our anxious consideration we find it extremely difficult to accept such an omnibus allegation and confirm the conviction of all the 10 accused. Such a confirmation, in our view, is bound to result in injustice and there is no other way of scrutinising evidence of the interested witnesses to separate grain from the chaff. In the result the conviction and sentences of the accused-appellants are set aside and if they are in jail they should be set at liberty forthwith. Accordingly the appeal is allowed."

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In Budhwa alias Ramcharan and Others Vs. State of Madhya Pradesh, it is held as under :-

"Held that the conviction of the appellants accused, was principally based on the evidence of the deceased's mother and sister. Though their evidence is not to be discarded as interested, the necessary caution has to be observed in accepting the evidence of these witnesses. It is an accepted proposition that in the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault. The Courts have, therefore, to be very careful and if after a close scrutiny of the evidence, the reasonable doubt arises with regard to the participation of any of those who have

been roped in, the Court would be obliged to give the benefit of doubt to them."

Reasonable doubt does arise with regard to participation of the appellants. It is said to be a case at Bus-Stand and that too in broad day light around 3.30 P.M. The evidence of the principal witnesses suffers from several infirmities introduced by interestedness, enmity, repeated statements u/s 161, Criminal Procedure Code, statements u/s 164, Criminal Procedure Code, supply of guide by document like Ex. D/3, prompting by Mohanlal, son of the deceased, unnaturalness, material omissions, late interrogation, inconsistency in name and number etc. Proper corroboration thus was essential and this is not available from independent source, seizure of weapons, identification parade, report of Chemical Examiner or medical evidence. In fact medical evidence destroys ocular version. Independent witnesses are not interrogated and examined. In *Bir Singh and Others Vs. State of Uttar Pradesh*, it is succinctly cautioned as under :-

"It is not incumbent on the prosecution to examine each and every witness so as to multiply witnesses and burden the record. This rule, however, does not apply where the evidence of the eye-witnesses suffers from various infirmities and could be relied upon only if properly corroborated."

"Where all the eye-witnesses examined by the prosecution had serious animus against the accused and were interested in implicating the accused and neither independent witnesses were examined nor any reasonable explanation was given by the prosecution, the Court would be justified in drawing an adverse inference against the prosecution." ;

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And when we say reasonable doubt, we do not mean proof beyond shadow of doubt and do not approve of fanciful possibilities which may deflect the course of justice. Lord Denning J. in *Miller v. Minister of Pensions* (1947) 2 All. E.R. 373, stated thus:-

"That degree is well-settled. It need not reach certainty but it must reach a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the courts of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course, it is possible but not in the least probable", the case is proved beyond reasonable doubt."

And regarding the concept of benefit of reasonable doubt Lord Du. Parqu J. in another context observed thus :-

"All that the principle enjoins is a reasonable scepticism, not an obdurate persistence in disbelief. It does not demand from the Judge a resolute and impenetrable incredulity. He is never required to close his mind to the truth."

Tested on this principle, we find that evidence in this is qualitatively weak and

does not appear to be safe enough to act upon. The shortcomings are prodigious in number as if it is a case of infirmities-galore. Even Mohanlal, son of the deceased, is conspicuously mum as regards the assailants. It seems that the hostile camp then drew upon imagination and opted to draw things, favourable to it, out of, "airy nothings". Quite visible, then is such an attempt and such a tendency. Allegations may be true, but nothing turns on that unless they are such that they must be true. This gap between may and must is not found filled in by cogent and convincing evidence. The allegation cannot rest on causerie.

So viewed, we find that tendency to rope in is obvious. Attempt to harm through judicial process is clear. Macbeth of Shakespeare had thus bemoaned -

"The attempt and not the deed confounds us".

Now the double murder in this case is diabolical in conception and cruel in execution. But the moot point, remaining unanswered still, is as to who did them to death? The evidence adduced does not unerringly establish that all the appellants or any of them are the real culprits. Suspicion, however strong, is not the substitute of proof. In Sharad Birdhichand Sarda Vs. State of Maharashtra, Their Lordships of the Supreme Court have reiterated the dictum and pointed out that the suspicion, however great it may be, cannot take the place of legal proof and that "fouler the crime, higher the proof".

We thus, remain unimpressed by the evidential material available on record and see compelling reasons to disagree with the findings of the Trial Court as regards the verdict of guilt and have no option but to vacate the same. And this we are forced to do after scrutinising scrupulously and examining carefully the entire evidence with serious and onerous responsibility imposed on the Court lest there may be a miscarriage of justice. It appears that after Ex. P/6s, several patently false factors have been introduced with a surge of an urge to finish those belonging to other camp and community. Law has to take care of this human instinct. Every witness is found to have his own rhythm. Consequently, the product has lost the sonorous touch. It fails to appeal.

In our view, it is thus, hazardous to act on the testimony of the aforesaid witnesses. We may observe that we would have preferred the ocular version, as is urged, in the face of admitted conflict with medical evidence particularly in the peculiar condition of the corpus, but the witnesses do not inspire confidence and doubts are not dispelled. Motive in such cases loses significance because it cuts both ways and paves the ground for false implication too.

What is insufferably intriguing is the total omissions of material facts in Ex. P/62, despite the basis coming from an alleged eye-witness. It is equally strange that such acts would be undertaken in view exposed to all and sundry. It is not less significant that Section 120B was added after about two months and even on its failure, conviction has been recorded. How can a conviction, one faces the legitimate question, be sustained when there is acquittal for offences punishable under Sections 120B, 302/109, 324 of the Indian Penal Code and Section 27 of

the Arms Act? How can the allegation u/s 324 be delinked from those under Sections 302/149 of the Indian Penal Code? The approach of the trial Court is, thus, conglomeration of contradictions and conclusion is not warranted from the evidence on record. Circumstances speak more eloquently.

In the ultimate analysis, we accept both the appeals (Criminal Appeal No. 450/90 and Criminal Appeal No. 424/90) and set aside the conviction as well as the sentences imposed on all the appellants and acquit them of all the charges levelled against them, in the aforesaid case. Some of them are reported to be on bail. Their bail-bonds are cancelled. The appellants who are in jail are directed to be set at liberty forthwith, if not wanted in connection with any other case. Fines, if paid, shall be refunded.

The appellants are exculpated. Yet a word more. This is indeed a ghastly and gruesome act revolting to conscience. Two persons are roasted alive. Fate of as many as 32 persons was sought to be put in jeopardy. We have excruciatingly noticed that the investigation is casual and not of the desired level. We are distressed that such acts go unpunished. We thus, feel that the remedy does lie in proper and searching investigation. We may thus, observe that investigation of such cases, having cruel manner, several persons allegedly armed with deadly weapons, serious portents and political overtones involving arrest of M.L.A. albeit belatedly, must invariably be entrusted to high officials, preferably an officer not below the rank of D.S.P. with vivacious vigil and spirited supervision and resplendent reminder of what was superbly said in *Jennison v. Backer*, 1972 (1) All.E.R., at Page 1006 :-

"The law should not be seen to sit limply, while those who defy it go free, and those who seek its protection lose hope."

Let there be fair investigation and proper prosecution. As obeisance to law, this observation, we trust and hope shall be borne in mind so that like cases in future receive better deal at the investigative stage and cause is not seen to be lost like this. We have appended this because we have felt that real tale remains untold. It cannot be denied that obligations imposed by Sections 156 and 157 of the Criminal Procedure Code are indeed both serious and serene. We have to sustain the hope of those who seek protection of the law then. All must be seen in action towards this goal. So much for the day.

A copy of this judgment is directed to be placed on the record of Criminal Appeal No. 425/90.