

(1985) 04 MP CK 0030

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 253 of 1979

State of Madhya Pradesh

APPELLANT

Vs

Betal Singh and others

RESPONDENT

Date of Decision : 10-04-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 225, 302, 332

Citation : (1986) MPLJ 652

Hon'ble Judges : Rampal Singh, J; Faizanuddin, J

Bench : Division Bench

Advocate : R.B. Tiwari, for the Appellant; B.R. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Rampal Singh, J.

After obtaining requisite leave, the appellant-State has preferred this appeal against the acquittal of the respondents by the judgment of 3rd Additional Sessions Judge, Gwalior, in Sessions Trial No. 161 of 1978, dated 27-2-1979.

Respondent No. 1 Beitalsingh alias Betalsingh was charged and tried under sections 302, 126B and 332 of the Penal Code and Respondents Nos. 2, 3, 4 and 5 were charged and tried for the offences punishable under sections 120B, 332, 201 and 225 of the Penal Code.

The facts of the case have fairly and fully been set out by the Trial Court and for the purposes of this appeal it is sufficient to set out story in broad essentials. The case of the prosecution was that one Sukhawasi lodged a report in Police Station Behal, against respondents Nos. 2, 3 and 4, which was recorded by the deceased Head Constable Rajendrasingh, on 14-7-1978, and a criminal case was registered u/s 451 of Penal Code against them. After investigation a challan was to be filed in the Court of Judicial Magistrate First Class, Gwalior, against Respondents Nos. 2, 3 and 4 by Premsingh constable. At 10 a.m. on 22-9-1978 he was proceeding to Gwalior, reached the Bus stand near Police Station Behat, for boarding a bus,

alongwith the said respondents. Deceased Head Constable Rajendrasingh, on beat duty reached Bus stand at the same time for checking "Kalari" (country liquor-shop) at the Bus stand. The deceased was checking the register of "Kalari" shop at about 11 a.m. It is at this time that Respondent No. 1 Betalsingh reached the spot with a gun slung on his shoulder and started talking with the deceased Head Constable. Bus stand is in the front of "Kalari". Deceased Head Constable recommended to Premsingh constable to give another suitable date to Respondents Nos. 2, 3 and 4 so that their agriculture work may not suffer and advised to file the challan on 29-9-1978. Upon this, Premsingh constable postponed the date to 29-9-1978 and accordingly intimated the said date to the said respondents. It is alleged that at that very time respondent No. 1 Betalsingh abused the deceased after quick drink in "Kalari" that he has registered the criminal case against his father and brothers on the report of Chamara and that he will kill him today. Respondent No. 1 then fired the gun and the bullet hit the left side of the chest of the deceased. Then he rushed and boarded the standing bus. It is also alleged that Respondent No. 1 threatened the driver of the bus with gun and Premsingh constable followed him, snatched the gun from the hands of Respondent No. 1 and got down from the stationary bus. Premsingh was then surrounded and caught hold of by Respondent Nos. 2, 3, 4 and 5 and the attempt was made to snatch the gun from his hands. Respondent No. 1 then came from behind, grappled with the constable, and after assaulting him snatched the gun away. The Respondents took to their heels and fled away to the nearby Jungle. A report of the incident was lodged by Premsingh constable in the Police Station Behat. Deceased Rajendrasingh was rushed to hospital in the bus but he succumbed to his injury. After investigation the respondents were committed to the Court of Sessions for standing their trial.

Prosecution, during the trial, examined constable Premsingh P.W. 1, Bechanlal P.W. 2, Abdulbeg P.W. 4, Mahendrasingh Rana P.W. 5 and Basant Ram Sharma P.W. 10, as eye witnesses of the incident. Except Premsingh P.W. 1, others turned hostile to the prosecution and they were confronted with their previous statements recorded by the Police, during the course of investigation. The Trial Court has taken the bits from the statements of the witnesses recorded during the trial, to discredit the testimony of Premsingh P.W. 1. The Trial Court reached the conclusion that the prosecution has failed to prove the case against the respondents, beyond reasonable doubt.

Respondent No. 4 is the father and Respondent Nos. 1, 2, and 3 are his sons. Respondent No. 5 is cousin brother of Respondent No. 4. Respondent Nos. 1, 2 and 4 were prosecuted for having committed the murder of one Sripat, brother of Prem Narayan P.W. 7, but were acquitted in that Trial. This fact was put to Prem Narayan P.W. 7 and Ganeshsingh Patwari P.W. 12 in cross-examination and was also admitted at the Bar by the learned counsel for the respondent Shri B.R. Sharma.

Shri R.B. Tiwari, the learned Panel Lawyer for the State, has contended that the

impugned Judgment is based upon conjectures and surmises and the minor contradictions on non-material issues have been magnified disproportionately by the Trial Court. He further contended that the reasons for recording the acquittal of the respondents are not only flimsy, unsound and frivolous but are based upon speculation and conjectures. We were taken through the entire evidence on record and also through the impugned Judgment by Shri Tiwari and we are of the view that the impugned judgment needs interference by this Court.

The defence of respondent Nos. 2 to 5 was that they have been falsely implicated in this case. The defence of Respondent No. 1 Betalsingh at the trial was that Premsingh P.W. 1 grappled with him while his loaded gun was slung on his shoulder and in this scuffle the gun fired accidentally due to which the deceased Head Constable, sitting on the cot at "Kalari" was hit on the chest. This defence, taken by the Betalsingh, has been accepted by the Trial Court as probable.

We are aware of the settled position of law propounded by the Hon. Supreme Court with regard to an appeal against the order of acquittal. Although in an appeal from an order of acquittal, the powers of this Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence it should give proper weight and consideration to the view of the Trial Judge, who had the advantage of seeing the witnesses. But if the view taken by the Trial Judge appears to be unreasonable then the appellate Court is called upon to interfere in the interest of justice. We are also aware that the appellate Court should be slow in disturbing the finding of the fact of the Trial Judge and even if two views are reasonably possible, the appellate court is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it. We are well aware of the principles laid down by Hon. the Supreme Court in the cases of Ganesh Bhavan Patel and Another Vs. State of Maharashtra, and Babu and Others Vs. State of Uttar Pradesh, .

The Trial Court should have kept in view, that while appreciating the evidence, the variances and discrepancies in details, contradictions in narrations and embellishments in essential parts, should not affect the core of the testimony of witnesses. Discrepancies in matters of detail always occur even in the evidence of truthful witnesses because of natural differences in faculties of individuals. The credibility of the prosecution witnesses should have been subjected to judicial evaluation of totality and not only isolated scrutiny as has been done in this case. Sometimes even truthful witnesses are tempted to opt for exaggerations and over enthusiasm but it should not be taken as an embellishment in their testimony.

In the light of the hereinabove mentioned settled principles, we proceed to examine the reasons given by the Trial Court while recording the order of acquittal of the respondents. Premsingh P.W. 1 had no axe to grind against the respondents yet his testimony was not relied upon by the Trial Court. Premsingh P.W. 1 describes the main incident of shooting by Respondent No. 1 Betalsingh.

He has clearly described all the facts prior to the shooting and then the main incident. According to him the respondent No. 1 Betalsingh put the gun end on the chest of the deceased and then fired. Trial Court has disbelieved this fact because according to him, Dr. D.S. Badkur has not corroborated this fact but repelled it. Trial Court has further reasoned (hat this fact was not stated by Premsingh P.W. 1 in the First Information Report Ex. P-4. and police case diary statement Ex. D-1. The Trial Court should have therefore for these reasons rejected this part of the testimony of Premsingh as an improvement and should have accepted the opinion of Dr. D.S. Badkur who had performed the postmortem examination. According to Dr. Badkur the barrell end could have been from the body only 3" away, when fired. To search the truth we perused Ex. P-7, the spot map prepared and proved by the investigating officer, Loknathsingh P.W. 14. In this map the "chabutra" on which the deceased was sitting on the cot is of 20" of length on calculation and the cot was nearer to the West-end while respondent Betalsingh is alleged to have shot the deceased from the Eastern middle portion of the chabutra. Thus the distance from the cot could be about 6" or 7" from where respondent Betalsingh fired. Excluding the barrel length of the gun, the distance of the gun end from the target would be about 3" as stated by Dr. Badkur P.W. 8. The respondents could not shake Premsingh P.W. 1 on the point that the deceased was sitting on the cot facing East and the respondent No. 1 shot at him in standing pose facing West i.e. both were facing each other, decased sitting and Betalsingh standing.

An important circumstance further corroborates the fact that the bullet while making an exit from the body broke into pieces and one piece was found stuck at the exit wound and other fragments made their way towards spot shown as No. 6 on Ex. P-7, after hitting one of the Western leg of the cot. Dr. Badkur has annexed a diagram Ex. 22A with the Past Mortem Report in which the path of the bullet has been shown. The bullet has taken an angular downward straight path i.e. the direction of the bullet is from higher level of the body to the lower. This diagram completely belies the struggle theory of the defence and proves that Betalsingh fired at the deceased standing, while deceased was sitting facing him on the cot. Assuming that the defence theory is genuine then how could the bullet, suddenly discharged from the gun in the struggle, travel from spot No. 12 of Ex-P7 on the nothern side, to southern side, where the deceased was sitting facing East. If it would have happended so, the entrance wound should have been on the left side of the body of the deceased and exit wound on the right side. But as stated by Premsingh P.W. 1 and Dr. Badkur P.W. 8, that the respondent No. 1 fired from the front, facing the deceased seems to be true. Thus, this important and most significant part of the incident stands proved against Betalsingh Respondent No. 1 that he shot at the left front side of chest of the deceased, standing on the eastern side both facing each other.

Presence of Premsingh P.W. 1 at the incident cannot be doubted because of the injuries on his body which he received in scuffle, noted by Dr. Badkur P.W. 8 in Ex, P-24. He received the injuries at or about the time of the incident. He is the

witness upon whom complete reliance should have been placed by the Trial Court. The reasons, given by the Trial Court for not placing reliance upon the testimony of Premsingh given in the impugned Judgment, are not only thin and flimsy but are based upon assumptions. Reason given is that when the deceased pointed and aimed the gun at the chest of the deceased, why did the deceased and Premsingh not react. There is nothing strange if at the point of gun the deceased remained immobilised on the cot where he was sitting. The act of the respondent Betalsingh was not only unexpected but sudden also. How could the deceased and Premsingh react and believe that Betalsingh will shoot ultimately. There was no background of enmity of Betalsingh with the deceased. The deceased had only recorded First Information Ex. P-3 against the father and brother of respondent Betalsingh and registered a criminal case.

Another reason given by the Trial Court is that parts of the evidence of Premsingh P.W. 1 are not corroborated by Bachanlal P.W. 2, Mahendrasingh Rana P.W. 5 and Basant Sharma P.W. 10. These witnesses were clearly hostile to the Prosecution and they were confronted and discredited by their previous Police Case Diary Statements. Mahendrasingh Rana P.W. 5 who was the driver of the bus, himself, on the day of the incident lodged the report Ex. P-15 in the Police Station Behat in which he described the incident as deposed by Premsingh P.W. 1 but he has denied having made such report at the trial. These hostile witnesses seem to be of weak moral fibre or they, out of fear, have favoured respondents. Strangely, the Trial Court has sought corroboration of defence theory from the testimony of these hostile witnesses and has held that Premsingh P.W. 1 is not corroborated in material particulars by their evidence. Similarly the Trial Court has used the evidence of Abdulbeg P.W. 4 and Prem Narayan P.W. 7, another set of hostile witnesses to bolster up the defence theory of accidental fire to discredit the truthful eye witness account of Premsingh. Trial Court while placing reliance on Bachanlal P.W. 2 held that the deceased and respondent Betalsingh before the incident took country liquor together. This fact was not put to the autopsy surgeon as to whether any liquor was found in the stomach of he deceased or not. Bachanlal P.W. 2 is a hostile witness and on confrontation with his police case diary statement he has been proved to be not telling the truth. Trial Court has wrongly placed reliance upon this hostile witness to get support for the defence.

Trial Court on the basis of weak reasoning concluded that it is more probable that the gun fired accidentally from spot No. 12 of Ex. P-7 Map. This conclusion of the Trial Court is only based upon assumptions on the face of strong eye witness account of Premsingh P.W. 1. This witness stated that it was respondent Betalsingh who intentionally shot at the Head Constable Rajendrasingh from front. In the opinion of the Trial Court, because the facts stated by Premsingh P.W. 1 were denied by the hostile witnesses hence Premsingh cannot be relied upon, is based upon wrong appreciation of facts and hence deserves total rejection. The basis upon which the Trial Court doubts the Prosecution story are not only retorted and baseless but doubts the Prosecution story are not only retorted and baseless but also unlogical and hence deserves outright rejection.

Without burdening this judgment unnecessarily we are of opinion that the grounds given by the Trial Court for the acquittal of respondent No. 1 Betalsingh were palpably wrong and manifestly, erroneous and are shocking to the sense of justice. We are not impressed by the circumstance that the Trial Court had the opportunity of observing the demeanour" of Premsingh P.W. 1 and as no demeanours have been noted in his deposition, it does not get any mystical wright. The approach of the learned Trial Judge cannot be said to be judicial one with regard to the culpability of the respondent, Betalsingh. The learned Trial Judge prepossessed by suspicion, smelled something sinister in the evidence of Premsingh P.W. 1 and also with every document he was connected with. Instead of logical retiocination he depended upon speculations and conjunctures (Abdul Mazid and others vs. State of Gujrat, AIR 1976 S.C. 1982.)

The Trial Court strangely held the First Information Report Ex. P. 4, lodged by Premsingh P.W. 1 in Police Station Behat and recorded by Jamna Prasad P.W. 9 without delay and within 30 minutes from the time of the incident. The testimony of Premsingh P.W. 1 stands well corroborated not only by the First Information Report Ex. P-4 but also by General Diary entries Ex. P-1, Ex. P-2, Ex. P-3, Ex. P-8, Ex. P-10, Ex. P-11, Ex. P-13 and also seizure memos. Ex. P-5, Ex. P-12 by which the fallen gun-licence was seized and also the empty shell of 315 cartridge recovered from spot marked as No. 12 on Ex. P-7 map. Medical expert, P.W. 8 also corroborates the testimony of Premsingh P.W. 1 on material particulars except one fact i.e. that the gun was tired point blank and this fact has been held hereinabove as an improvement in the otherwise honest testimony of Premsingh. This witness may have exaggerated or added this fact due to over enthusiasm but on close examination it has to be discarded.

In the opinion of the Trial Court, the copy of Ex. P-4, the First Information Report was sent after some delay in the Court of Judicial Magistrate, in contravention of the provisions of Section 157 of the Code of Criminal Procedure. Assuming that it was sent at a later stage, though it was not under the circumstances, still if no prejudice is shown to have been caused to the accused slight delay will not either vitiate the Trial or affect the core of the testimony of Premsingh P.W. 1. So far as the culpability of the respondent Betalsingh is concerned, we have viewed the evidence against him more objectively and carefully because the Trial Court has discarded the evidence of Premsingh P.W. 1 on erroneous assumptions. Because some insignificant facts have been omitted in the First Information Report, it cannot be said that he is not a truthful witness. Evidence of every witness is to be judged on its own merits and if he can be relied upon the vital facts, he should be accepted as truthful witness. The credit to be given to the statement of witnesses, is a matter not regulated by the rules of Procedure. The power of a person to speak truth depends upon his knowledge, his power of expression and his will to speak the truth. Each of these factors on its own depend upon other infinite number of circumstances. As such any one single circumstance cannot be taken to be decisive or determinative for judging the credibility or otherwise of a witness but cumulative effect of all the circumstances has to be considered.

Merely because the details and minute particulars about an incident and its constituent parts are not mentioned in First Information Report or not stated by a witness to the Investigation Officer, it cannot be said that the statement of the witness in court, on oath in relation to such details is not true.

Witnesses in our Courts do exaggerate and at times give wide omnibus statements, as in this case Premsingh P.W. 1 has given, with regard to the dying declaration of the deceased recorded by Lalta Prasad P.W. 3, Ex. P-14. But on close scrutiny we have come to the conclusion, like the Trial Court that it deserves rejection. The Trial Court has rightly rejected the evidence of prosecution with regard to the Ex. P-14 and we maintain it. Similarly, the reasons given for the acquittal of Respondent Nos. 2, 3, 4 and 5 by the Trial Court also deserve to be maintained because in its opinion their culpability in the crime was doubtful. But we have recorded our reasons hereinabove to rely upon the evidence of the sole witness of the crime, Premsingh P.W. 1. It is well settled that even though no absolute reliance could be placed on the evidence of some of the prosecution witnesses with regard to some of the accused, Court can still accept the evidence of those with regard to other acts and hold them guilty. (Ahmed Suleman Bhorat and Others Vs. The State of Gujarat,

We, therefore, propose to examine, whether the respondent No. 1 Betalsingh can be convicted on the sole testimony of Premsingh P.W. 1. The contention that in a murder case the Court should insist upon plurality of witnesses, is much too broadly stated. The Indian legislature has not insisted on laying down any such exceptions to the general rule recognised in Section 134 Evidence Act which lays down that no particular number of witnesses as shall, in any case be required for the proof of any fact has enshrined the well recognised maxim that "Evidence has to be weighed and not counted". Their Lordships of the Supreme Court have laid down the law in this regard in the case of *Vadivelu Thevar vs. The State of Madras*, AIR 1953 S.C. 614 in the following words:-

Generally speaking oral testimony in this context, may be classified" into three categories, namely (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way- it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if Courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The Court naturally has to weigh carefully such a testimony and if it is satisfied

that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion it becomes its duty to act upon such testimony. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the Court to convict, if it is satisfied that the testimony of a single witness is entirely reliable.

(Emphasis supplied.)

The same view has been reiterated by Hon. the Supreme Court in the case of *Badri Vs. State of Rajasthan*, and *Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra*. Thus, in our opinion, since under the Evidence Act no particular number of witnesses are required for the proof of any fact, it is a sound and well established rule of law that quality and not quantity of evidence matters. After having considered that the testimony of Premsingh P.W. 1 can safely be relied upon for basing the conviction of respondent No. 1 Betalsingh, we are reasonably satisfied to act upon his testimony, because substantial and compelling grounds, stated hereinabove, exist for such a course. There is clear and unimpeachable evidence in the testimony of this single witness with regard to the culpability of respondent No. 1 Betalsingh in crime. To us it seems that the conviction of this respondent can be sustained on the sterling testimony of this honest witness, though single, yet well corroborated on material particulars. Motive for this crime is also obvious from Ex. P-3 which was written by the deceased Head Constable Rajendrasingh and he had registered a case u/s 451 of the Penal Code against the brothers and father of the respondent Betalsingh is being set at rest. Shri Sharma was also heard on the point of sentence.

We therefore, for the reasons stated hereinabove partly allow this appeal, set aside the order of acquittal and convict the Respondent No. 1 Betalsingh for having committed the offence of murder of Head Constable Rajendrasingh, punishable u/s 302 of the Penal Code and sentence him to imprisonment for life. The order of acquittal of respondents Nos. 2, 3, 4 and 5, recorded by the Trial Court in the impugned judgments is, however maintained.