

(2007) 08 MP CK 0094

In the Madhya Pradesh High Court

State of Madhya Pradesh

APPELLANT

Vs

Gopal Dariyav Singh and Others

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 161, 172, 378
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307

Citation : (2007) CriLJ 4585

Hon'ble Judges : W.A. Shah, J; S.K. Kulshrestha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The State has filed this appeal against the judgment dated 20-3-1998 of the 4th Additional Sessions Judge, Indore in Session Trial No. 416/1995 by which the learned Additional Sessions Judge: has acquitted all the respondents. The leave granted to the State u/s 378(3) of the Code of Criminal Procedure is restricted to respondent Nos. 1 to 6 while the same has been declined in the case of Mohan s/o Ramprasad, accused No. 7 before the trial Court.

2. According to the prosecution, on 5-6-1998, P.W. 8 Prabhu Dayal was standing outside his door in his house situated at Lalpura, Indore, his neighbour, Laxman s/o Nathulal (deceased) was in his courtyard. Prabhu Dayal saw that accused-Santosh approached Laxman and demanded money but on his refusal, Santosh abused him and stated that he would return soon. A short while thereafter, accused-Santosh, his brother Gopal and 5 to 6 other persons arrived. Santosh was armed with a sword, his brother Gopal with a GUPTI and companions had knives. Accused-Santosh and Gopal and their companions, hurled filthy abuses at Laxman and stated that he should be killed. With a view to cause his death, Santosh assaulted Laxman with a sword which landed on his face, accused-Gopal and other accused persons assaulted Laxman with the weapons with which they were armed. Laxman raised an alarm and P.W. 8 Prabhu Dayal, P.W. 12 Vijay, P.W. 14 Poonamchand and P.W. 16 Mohan rushed to intervene. Enraged by the

intervention of all these witnesses, Santosh assaulted Vijay Singh (P.W. 12) with a sword and caused injury in his abdomen. Laxman ran for his life towards drainage line but he fell down. The report of the incident was promptly lodged by P.W. 8 Prabhu Dayal at Police Station, Tukoganj in which he also informed the Police that P.W. 13 Mohan had taken Laxman and Vijay Singh for treatment to M.Y. Hospital.

3. On receipt of the report, Sub-Inspector Narayan (P.W. 22) recorded the First Information Report Ex. P/18 and registered an offence against the accused persons under Sections 147, 148, 149 and 307 of the Indian Penal Code. Further investigation was conducted by P.W. 20 Jitendra Singh Rathore and P.W. 22 Sub-Inspector Narayan.

4. During investigation, Sub-Inspector Jitendra Singh reached M.Y. Hospital and learnt that Laxman had expired. Accordingly, inquest was held and report Ex. P/27 was prepared. The body was referred for post-mortem examination which was performed by P.W. 1 Dr. Surendra Dube who gave post-mortem report Ex. P/2 to the effect that the death was homicidal.

5. The death of the deceased and injuries to P.W. 3 Nathulal were not disputed by the accused persons. P.W. 1 Dr. Surendra Dube in his deposition and his report pointed out that there were 22 injuries on the body of the deceased caused by hard and sharp and hard and blunt weapons, which resulted in his death.

6. On charge being framed against the respondents, they pleaded that they had not committed any offence and they were innocent. On the basis of the evidence, learned Additional Sessions Judge found that a large number of eye-witnesses had turned hostile and the eye-witness P.W. 9 Munnibai, P.W. 13 Mohan and P.W. 15 Raju could not be believed. In respect of P.W. 14 Poonamchand, it was stated that on the basis of his testimony, it was not possible to convict the respondents. It is against the order of acquittal that the State has been granted leave to appeal against acquittal of the respondent Nos. 1 to 6.

7. We have heard learned Deputy Advocate General and perused the record.

8. Learned Additional Sessions Judge has referred to the testimony of P.W. 9 Munnibai, P.W. 13 Mohan and P.W. 15 Raju but as he found it perilous to act upon the same in view of their admission that the police had interrogated them several times before recording the statement, the same was rejected. The said position is confirmed by P.W. 20 Jitendra, Investigating Officer. Investigating Officer has also admitted that although these witnesses had been repeatedly examined, he had not made any entry to that effect in his case diary.

9. We have examined the testimony of P.W. 9 Munnibai, P.W. 13 Mohan and P.W. 15 Raju. Repeated interrogation by the Police apart, in paragraph 17 she has candidly conceded that she did not know the assailants from before. She has also admitted that Police had not recorded her statement and that she had for the first time stated before the Court only, that Laxman was assaulted by Gopal and

Santosh. She has also admitted in her statement that her eye sight is weak and that, she could not see who was amongst the 15-20 boys who had participated in the assault. P.W. 13 Mohan has admitted that although they had reached MIG Police Station but the report was not recorded by the said Police Station and he was directed to lodge report at Police Station, Tukoganj. He has further admitted that in the M.Y. Hospital, no report was recorded in his presence and that, he was allowed to leave the Police Station only at 1.30 in the night. He has also admitted that Police MIG had asked him to go to the Hospital and that they would follow and the Police had come to the Hospital after half an hour. He has admitted that while preparing the spot map, Town Inspector did not record his statement though he was present and it was later that he was called to the Police Station that his statement was recorded.

10. P.W. 15 Raju has also been examined as an eye-witness. He has stated that the accused persons passed by his shop armed with sword, GUPTI, hockey and knives abusing Laxman. He has stated that Santosh stabbed Vijay with a sword and at that time Gopal had stated that he should not have done so and though Laxman tried to run away, he was chased by the accused and assaulted. In paragraph 14, he has admitted that Police had taken his statement twice. The first statement was not read over to him but the second statement which was recorded at the Police Station, was read over.

11. It is clear from the statement of these witnesses that they have admitted that they were repeatedly examined by the Police and their statements were accordingly recorded. P.W. 20 Jitendra Singh Rathore, Investigating Officer, has admitted that these witnesses were interrogated time and again but this fact has not been incorporated in the case diary.

12. The trial Court has taken into account the decision of the Supreme Court in Ganesh Bhavan Patel and Another Vs. State of Maharashtra, in which their Lordships have observed that though delay of a few hours, simpliciter, in recording the statements of eye-witnesses may not, by itself, amount to a serious infirmity in the prosecution case, but it may assume such a character if there are concomitant circumstances to suggest that investigator was deliberately marking time with a view to decide about the shape to be given to the case and eye-witnesses to be introduced. It has also been observed that normally, in a case where the commission of the crime is alleged to have been seen by witnesses who are easily available, a prudent investigator would give to the examination of such witnesses precedence over the evidence of other witnesses. Though these witnesses were available immediately after the incident, despite repeatedly oral examination, their statements were recorded later and, therefore, the learned Additional Sessions Judge has not committed any infirmity in appreciation of the evidence and rejecting the testimony of P.W. 9 Munnibai, P.W. 13 Mohan and P.W. 15 Raju.

13. It is not disputed before us that all other eye-witnesses namely Prabhu Dayal (P.W. 8), injured witness Vijay Singh (P.W. 12), Mohanbai (P.W. 2), Sunitabai (P.W.

10) and Ramdevi (P.W. 11) have turned hostile. As discussed above, the evidence of P.W. 9 Munnibai, P.W. 13 Mohan and P.W. 15 Raju suffers from inherent infirmity as their statements were recorded later though available on earlier occasions and that too after repeated examination of which no record was made in the case diary. At this juncture, we may refer to Section 172 of the Code of Criminal Procedure providing for maintenance of proceedings in investigation. The said provision reads as under:

Section 172. (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall be or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of Section 161 or Section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.

14. It is clear from the Sub-section (1) that Investigating Officer is under an obligation to make an entry, day-by-day, about the proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation. If the Investigating Officer was not satisfied with the statement of the witnesses in earlier part of the examination of the witnesses which was not reduced into writing, he was enjoined with the duty to mention this fact in the case diary. Learned Additional Sessions Judge has duly observed that this fact having not been mentioned in the case diary, it was a case where the police was trying to give a particular shape to the prosecution case. In doing so, the statements of the eye-witnesses were recorded later to bring them in line with the other circumstances of the case.

15. The evidence of all other eye-witnesses having thus been rejected, the only surviving eye-witness is P.W. 14 Poonamchand. P.W. 14 Poonamchand has stated that when Laxman raised an alarm and persons of the vicinity rushed to the spot, Mohan caught hold Vijay and Santosh stabbed him in the abdomen. He has admitted in paragraph 12 that Police had examined him on the date of the incident and after about 5 days when he was called to the Police Station, his statement was recorded. He has categorically denied that his statement was recorded on the next day of the incident. From the above narration of the facts

by this witness, it is patent that his testimony also suffers from the same flaw as the testimony of P.W. 9, P.W. 13 and P.W. 15 Munnibai, Mohan and Raju. Though the Investigating Officer has stated that the statement u/s 161 of the Criminal Procedure Code were recorded the next day, in view of the categorical denial by P.W. 14 Poonamchand about his statement having been recorded next day and in the absence of the entry to the effect that he had been questioned more than once, much credence cannot be given to the testimony of P.W. 14 Poonamchand.

16. In the appeal against acquittal, it is settled that if the view of the trial Court which has had an opportunity to see the demeanour of the witnesses also, is a possible view, then merely because another view is also possible, it is no ground to dislodge the finding of the trial Court.

17. From the analysis of the prosecution evidence, it is clear that all eye-witnesses turned hostile and it was only P.W. 9 Munnibai, P.W. 13 Mohan, P.W. 15 Raju and P.W. 14 Poonamchand who gave an account of the incident but since their evidence suffers from many defects such as delayed recording of their statements and during this period, examination of these witnesses, the trial Court has not in any way erred in coming to the conclusion that the prosecution was marking time to first collect the evidence and thereafter to create it and give desired shape to the case. We are, therefore, of the view that the conclusion drawn by the learned Additional Sessions Judge are reasonable and logical and the judgment does not suffer from any infirmity or perversity.

18. Under these circumstances, we do not perceive any merit in the appeal of the State. The appeal is dismissed. The bail bonds of the respondents are discharged.