
(2005) 11 MP CK 0014
In the Madhya Pradesh High Court
Case No : Cr.A. No. 54/91

State of M.P.

APPELLANT

Vs

Sant Ravindra Das Guru Swaroopanand and Others

RESPONDENT

Date of Decision : 10-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307

Citation : (2007) 1 MPJR 145

Hon'ble Judges : S.A. Naqvi, J; Abhay K. Gohil, J

Bench : Division Bench

Advocate : C.S. Dixit, P.P, for the Appellant; B.K. Kulshrestha, Advocate for respondents No. 1 and 3 and Mr. J.P. Gupta with Mr. Atul Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Abhay K. Gohil, J.

State has filed this appeal under S. 378 of the Code of Criminal Procedure after obtaining leave against the judgment dated 5/7/1990 passed by Addl. Sessions Judge, Sheopurkalan. District Morena, in Sessions Trial No. 1/89 whereby respondents have been acquitted under Ss. 302, 307, 147, 148 and 149 of Indian Penal Code.

As per prosecution story, incident took place on 25/1/86 at about 6 PM on the road at village Saaypura, P.S. Aavda, Sheopurkalan, District Morena. Respondents Amar Singh, Shambhu S/o Gopi, Babu, Mudya, Gunda, Shankar and Gopi, alias Bhoori were present at the place of occurrence. Injured Ramcharan Singh was bringing the crop of mustard in his Tractor from his field. Amarlal and nephew of Ramcharan, Vasudev were also present in the Tractor. Vasudev was driving the Tractor. When they came near "Gadori", respondents who were members of the unlawful assembly were present. Ravidas Baba alias Ravindradas immediately stood up and stopped the Tractor. He was carrying katta in his hand.

Balla also exhorted and said that "Today is your last day. You have forcibly taken possession on our land". When complainant Ramcharan Singh was alighting from the Tractor, Balla fired on him. Ramcharan Singh received fire arm injury in his left thigh which started bleeding and he fell down. Ravidas Baba also fired on Amarlal who received fire arm injury in his chest. He also fell down and died on spot (here-in-after referred to as deceased only). Thereafter, Shambhu told that now the evidence is vanished. Seeing this Vasudev left the Tractor and ran away towards the river. Thereafter, the remaining respondents who were carrying Lathi in their hands gave Lathi blows in the head and back of injured Ramcharan Singh and some of the respondents also chased Vasudev. They also gave Lathi blows to Vasudev. Seeing this Babu Singh, brother of Ramcharan Singh also came on spot. Other villagers also gathered on spot and the respondents ran away from the spot. Vasudev went to lodge FIR but his FIR was not written. Police reached on spot and recorded Dehati Nalishi (Ex.P/4). Thereafter, criminal law was set into motion. Matter was investigated, injured was referred for medical examination, dead body of the deceased was referred for post mortem, statements of the witnesses were recorded and chargesheet was filed after completing the investigation. It has also come in the evidence that Kaptan Singh Morya (P.W. 10), Sub Inspector started the investigation, but the members of the complainant party were not satisfied. Some complaints were made against him to the higher authorities of the Police department and thereafter the investigation was handed over to Kamal Singh (P.W. 13) who was T.I. at that time. It has also come in the evidence that statements of some of the material witnesses were also recorded second time by T.I. Kamal Singh (P.W. 13) at the police station.

At trial, all the accused persons abjured their guilt and their defence was that at the time of commission of crime some function was going on in a temple and all the persons were busy in performing religious rituals and Havan. They pleaded that they were not present on the spot and they have not committed the crime. Respondent no. 1 Ravindra Das is a "Sadhu" and is a Guru of Banjara community. All the respondents are also members of the Banjara Community. It has also come in the evidence that there was some dispute between the complainant party and the respondents, over sale of land and this fact has not been denied by respondents nos. 1 and 3 in their statement recorded under S. 313 of the Code of Criminal Procedure. During trial, prosecution examined as many as thirteen witnesses and the trial Court after considering their evidence found that the prosecution has failed to prove the allegations against the respondents by producing evidence beyond reasonable doubt. Trial Court has discussed the evidence in detail and has found that the prosecution evidence is not reliable at all and acquitted the respondents against which State has preferred this appeal after obtaining leave from this court.

Shri C.S. Dixit, learned public prosecutor appearing for appellant-State vehemently submitted that even if it is found that there is no evidence regarding participation of all the respondents and that no case is made out for formation of unlawful assembly by all the respondents, even then the prosecution has

successfully proved the charges against respondents nos. 1 Sant Ravindra Das Guru Swaroopanand and respondent no. 3 Ballaram. He further submitted that the trial Court has not correctly and properly appreciated the evidence against respondents nos. 1 and 3 and has committed grave illegality in acquitting. His submission was, that so far as the case against respondents nos. 1 and 3 is concerned the findings recorded by the trial Court are perverse. He frankly admitted before this Court that the prosecution could not successfully prove the involvement of other respondents in the commission of crime by producing cogent and reliable evidence but he submitted that the prosecution has successfully proved the charges against respondents nos. 1 and 3.

In reply, Shri J.P. Gupta, learned senior Counsel and Shri B.K. Kulshrestha, learned counsel appearing for respondents supported the judgment of the trial court and submitted that the trial Court has rightly appreciated the evidence on record and has rightly recorded the findings. They further argued and submitted that the prosecution has failed to explain that how the police came on spot and started the investigation. Prosecution has not produced copy of Roznamacha entries. There is no compliance of S. 154 Cr.P.C. Prosecution has also not examined Sumor to whom Vasudev had narrated the incident and prosecution has also not recovered any weapon from respondents nos. 1 and 3 and no report of ballistic expert has been produced on record. They also submitted that the statements of the witnesses under S. 161 of the Cr.P.C. were recorded twice and in both the statements, prosecution story was changed. Earlier, the prosecution story was that respondents no. 1 Ravindra Das firstly fired on Amarlal and secondly he fired on Ramcharan Singh and Balla fired on Ramcharan but in the statement recorded under S. 161 at the first stage by the investigating officer, witnesses have stated that Balla fired on Amarlal and Ravindradas fired on Ramcharan, and the story of Dehati Nalishi was not supported by the witnesses in their statements. Thereafter, complaint of investigating officer was made by the complainant party, and the investigation was handed over to Kamal Singh (P.W. 13) who again recorded the statements of the witnesses after a month to make them fall in the line of Dehati Nalishi (Ex.p/4). It was also argued that the evidence of injured witness Ramcharan (P.W. 6) and the sole eye-witness Vasudev (P.W. 7) is not at all reliable and findings cannot be reversed as they are not perverse. It was also argued by Shri Gupta that in this case the FIR has been suppressed and the Dehati Nalishi (Ex.P/4) recorded by the I.O. is not admissible in evidence and cannot be treated as FIR. He submitted that there is no compliance of the provisions of S. 157 CrPC which is mandatory. Prosecution evidence is contradictory on the point of direction, duration and distance of operation of fire arm. They also submitted that Dwarika Prasad (P.W. 4) and Kaptan Singh (P.W. 10) have not supported the prosecution story but they were not declared hostile, therefore no case is made out for interference in this appeal and prayed dismissal of this appeal.

After hearing the vival contentions of learned counsel for the parties, we have also perused and scrutinized the evidence on record.

Bhanwariya (P.W. 1) was declared hostile. Siyaram, (P.W. 2) is son of Ramcharan. He was not present on spot at the time of commission of crime. The incident was narrated to him by Ramcharan and he has given evidence on that basis only. Sukan (P.W. 3) has also not supported the prosecution and has stated that he does not know that who killed the deceased. He was also not declared hostile. Dwarika Prasad (P.W. 4) has also not supported the prosecution. He has stated that respondent no. 1 Ravindra Das Guru was busy in a temple in performing "Puja" and "Havan" alongwith Balla. He does not know that who caused injuries to Ramcharan. He was also not declared hostile. Babu Singh (P.W. 5) is also the brother of injured Ramcharan. He also came on spot after the incident and the incident was narrated to whom by Ramcharan.

Ramcharan (P.W. 6) is the injured witness. He has admitted in the cross-examination that before the fire was made, Vasudev had run away from the spot after jumping from the tractor. He has further admitted in his statement that Dehati Nalishi (ExP/4) was got recorded by him. His statement under S. 161 Cr.P.C. was recorded twice. One is Ex.D/3 and another is Ex.D/ 4. He has admitted that both of his statements were recorded correctly, but the version in both the statements is different. His statement (Ex.D/5) was also recorded in the D.E. against Gaya Prasad Mishra. Though in this statement he has stated that his correct statement was in Dehati Nalishi (Ex.P/4) but he had not clearly denied that he has not given the statement of Ex.D/3. In the statement Ex.D/3, it was recorded that Balla first fired on Ramcharan who bent forward to save himself and the bullet hit the deceased who was sitting on the tractor and the second fire was made by Baba Ravindra Das on Ramcharan which hit him in his left thigh but in Dehati Nalishi (Ex.P/4) it was recorded that firstly Balla fired on Ramcharan with his country made pistol which hit him in his left thigh and Ravidas Baba made a fire from his country made pistol which hit the deceased. Amarlal, in his statement Ex.D/ 4, has given statement which is contrary to his statement (Ex.D/3). In this statement he has supported the statement of Dehati Nalishi (Ex.P/4). In the cross-examination, he was confronted with his case-diary statement on various points. The trial court has found that the statement of Ramcharan (P.W. 6) is self contradictory. There are material omissions and contradictions in his earlier statement and the trial court also found that the statement of Ramcharan (P.W. 6) is not at all reliable.

Vasudev (P.W. 7) was cited as an eye-witness. He has denied the suggestion that because the police was suspecting their involvement in the murder of deceased, they complained against the Investigating officer of Avda Police Station and the Investigating Officer was changed, but it has come in the evidence that the complaint was made to the higher authorities against the investigating officer and subsequently, the investigating officer was changed. The court has also found that the statement of Vasudev was recorded thrice. Firstly, his statement was recorded on 26/1/86 which is Ex.D/ 6, secondly on 24/2/86 which is Ex.D/7 and thirdly on 1/6/87 which is Ex.D/8. The court has found that there are material contradictions in all the three statements of this witness. This witness

has admitted that at the police station, he had given this information to the police that some Banjaras have killed Amarlal and have caused injuries to Ramcharan. We have also perused all the three statements and his court statement and there is no dispute that he made contradictory statements in each of them. He was confronted with his statements and thereafter the court has recorded a finding that his evidence is also not trustworthy and reliable.

Kaptan Singh Morya (P.W. 10) was earlier Investigating officer. In his statement, he has admitted that as per Ex.P/4, the place of occurrence was shown as village Saaypura Ka Haar, but during investigation it was found that no incident had taken place at that place. He has also admitted that the spot of incident which was shown in spot map (Ex.P/6) was not found to be correct during investigation. He has stated in cross-examination that dead body of the deceased was kept at a particular place before he reached on spot. He further admitted that he has not seen any blood stains on the Tractor nor he has seen any bullet marks on the body of the Tractor or on the Bonnet. He has further admitted that he was having doubt on the version recorded in Dehati Nalishi (Ex.P/4). He has admitted that Babu Singh (P.W. 5) has not told him that Ramcharan had informed him about gun shot fires made by Ravindra Das and Balla. He has further admitted in the cross-examination that he was suspecting the involvement of the complainant party in the murder of Amarlal, therefore he had interrogated Siyaram and he had not found any blood stains on the body of Amarlal. Thus, Kaptan Singh Morya (P.W. 10) who was investigating officer has not supported the prosecution but he was not declared hostile and he was not cross-examined. Prosecution has also not produced the Roznamacha entries regarding the movements of Kaptan Singh Morya (P.W. 10) and to prove that how he started investigation.

We have also noticed yet another important legal aspect of this case that it has come in the evidence of Vasudev (P.W. 7) that he went to the police station to lodge the FIR, but he has stated that the same was not written and the police officer proceeded on spot to inquire into the matter. While interpreting the scope of S. 154 of Cr.P.C, the special five judges Bench of Calcutta High Court in the case of Jay Engineering Works Vs. State (AIR 1968 55 Cal 407 (C 84) has held that where a person goes to a police station and gives information regarding the commission of a cognizable offence, it is mandatory, and the same should be written and in this respect no discretion is given that the officer-in-charge will not reduce it in writing by some one under his direction. No circular which violates the provision of S. 154 Cr.P.C. can be issued. Postponing taking down of FIR and making an investigation before this is done has been repeatedly said to be illegal and not warranted by law. In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the apex Court has held that the condition which is sine qua non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence. It is also held therein that:

32. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

In the case of *State of Andhra Pradesh Vs. Punati Ramulu and others*, it has been held that if it is found that the investigating officer deliberately does not record FIR after receipt of information of cognizable offence and registers the complaint as FIR after reaching the spot and after due deliberations, consultations and discussion, the complaint would not be treated as FIR and it would only be a statement made during investigation and would be hit by S. 162.

We have also considered the scope of interference in appeal against acquittal. The law is also well settled on this point that when two views are possible from the same set of evidence and if it is found that the view taken by the trial court is also possible, the scope of interference in such an appeal against acquittal is very limited and there cannot be any interference by this Court unless the findings recorded by the trial Court are found to be perverse and contrary to the evidence on record.

In the case of *C. Antony Vs. K.G. Raghavan Nair*, , the Hon. Apex court has held as under:

6. This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate Court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness-box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court. See *Bhim Singh Rup Singh Vs. State of Maharashtra*, and *Dharamdeo Singh and Others Vs. The State of Bihar*,

Again in the case of *Hem Raj and Another Vs. State of Punjab*, , the Supreme Court has held as under:

It is well settled that if on the basis of the same evidence two views are reasonable possible and the trial court takes the view in favour of the accused, the appellate court, in an appeal against acquittal, will not be justified in reversing the order of acquittal, unless it comes to the conclusion that the view taken by the trial court was wholly unreasonable or perverse and it was not possible to take the view in favour of the accused on the basis of evidence on

record.

After discussing the prosecution evidence as well as the law laid down on the legal questions involved in this case, we find that in this case the prosecution has failed to prove the charges by producing evidence beyond reasonable doubt. The evidence of prosecution witness is binding on the prosecution and prosecution cannot travel beyond it. The prosecution has also not produced any documentary evidence that on what basis the I.O. proceeded on spot to investigate the matter and why the FIR lodged by Vasudev (P.W. 7) was not recorded. Even the copies of the Roznamcha entries have not been produced to prove that on what information he proceeded on spot. It is clearly proved and an admitted position that Vasudev (P.W. 7) had gone to the police station to lodge the report and he had informed that some Banjaras have killed deceased Amarlal and have caused injuries to injured Ramcharan. As discussed above, it has been held consistently by the Apex Court that the recording of the FIR by the police officer in a cognizable offence is a mandatory requirement and it is not permissible that should be recorded after due deliberations or after inspection of the spot. If it has been done, the act of the officer would be deemed to be illegal. Therefore, it can be safely held that in this case the prosecution has suppressed the FIR and has not followed the provision of S. 154 Cr.P.C. the prosecution has also failed to produce the relevant documents and no documents have also been produced on record to show the compliance of second check relating to S. 157 of Cr.P.C. forwarding the copy of the FIR to the Magistrate forthwith.

Thus considering the totality of the prosecution evidence on record and the findings recorded by the trial Court, we are also of the considered opinion that the trial court has not committed any illegality in recording the findings of acquittal of the respondents. Prosecution has failed to prove the allegations beyond reasonable doubt. The evidence of Ramcharan (P.W. 6) and Vasudev (P.W. 7) is not at all reliable. Kaptan Singh Morya (P.W. 10) who is the first Investigation officer has not supported the investigation. He himself found various doubts regarding the commission of crime by the respondents. Even Kamal Singh (P.W. 13) who was the second Investigation officer was also having similar doubts during investigation. Doctor has not found any Lathi injuries on the body of injured Ramcharan. Therefore, there is no clinching, cogent or sufficient evidence regarding the formation of unlawful assembly by the rest of the respondents on record. No weapon has been recovered. No blood stains were found on the Tractor nor any marks of fire arm were found on the body of the Tractor. The evidence of all the witnesses are contradictory to each other and the prosecution has failed to perform its duty by not declaring Kaptan Singh Morya (P.W. 10) hostile. The evidence of Investigating Officer is binding on the prosecution. Dwarka Prasad (P.W. 4) has also not supported the prosecution but he was also not declared hostile. Therefore, his evidence is also binding on the prosecution. Therefore, we have no hesitation to say that the trial court has rightly recorded the findings of acquittal and no case is made out to interfere in them.

Consequently, from the evidence on record it is clear that two views are possible and the trial court has taken one view which is also not perverse. Therefore we do not find any ground to interfere in the findings and judgment recorded by the trial Court. Accordingly, this appeal fails and is hereby dismissed. Bail bonds and sureties of the respondents stand discharged.