

KASHIRAM
v.
STATE OF M.P.

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OCTOBER 16, 1998

[M. K. MUKHERJEE AND M. SRINIVASAN, JJ.]

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Indian Penal Code, 1860 :

Sections 302 and 324—Conviction under—Validity of—Accused firing gun shots—Murder—Bullet injuries to witnesses—Consistent testimony of prosecution witnesses—Fact of witnesses sustaining the injuries established—Absence of medical evidence therefore inconsequential—Circumstance disproving plea of Alibi by appellant—Conviction of and sentence imposed on appellant held valid.

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The appellant, along with six co-accused, was prosecuted under sections 147, 148, 302 read with sections 149 and 307/149 of the Indian Penal Code, 1860. The prosecution story was that on 29.12.1986 the accused persons formed an unlawful assembly; committed murder of one G and caused gun injuries to four prosecution witnesses. The prosecution witnesses were consistent in their version that the appellant fired the gun after taking it from a co-accused, R. S(PW-1) said to have been working in the field heard sounds of screaming and wailing; saw a bullock cart carrying the dead body of G. He reported the matter to the police.

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The Trial Court acquitted all the accused. On appeal by the State, the High Court confirmed the acquittal of four accused but convicted and sentenced the appellant and R under sections 302 and 324. The appellant preferred appeal before this Court while the other accused R has not approached this Court.

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On behalf of the appellant not only alibi was pleaded but also it was contended that (i) no doctor has been examined to prove the alleged injuries of eye witnesses; and (ii) the evidence of prosecution witness was full of discrepancies.

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Dismissing the appeal, this Court

HELD: 1. The High Court was justified in reversing the judgment of

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A acquittal passed by the trial court and convicting the appellant under section 302 as well as section 324 IPC. The sentences awarded by the High Court are quite appropriate and there is no warrant to interfere with the same.

[341-H; 342-A]

B 2. There are several circumstances which disprove the case of alibi. There was no consistency in the suggestions made to prosecution witnesses when they were cross-examined. A suggestion was made to PW-2 that he himself and the members of his group attacked the appellant and his driver. This could be only on the basis that the appellant was present at the spot. There was no suggestion to PW-13 that the appellant was not present there.

C When the appellant was questioned under section 313 Cr. PC he did not say that he was not present at the spot. All his answers were mere denials of the evidence put to him. [341-B-C]

D 3. The evidence of eye witnesses is consistent and excepting minor discrepancies which are natural due to frailty of human memory, nothing has been pointed out for discrediting their evidence. All the five witnesses have categorically spoken about the presence of the appellant on the spot and his firing the gun after taking it from R. In the facts and circumstances of the case, there is no difficulty in rejecting the version of the appellant that he was not present on the scene of occurrence at the relevant time. The matters

E relied on by the counsel for the appellant in support of his contention that the evidence of the prosecution witnesses is unacceptable are not of much significance or sufficient importance to negative the reliability of the prosecution witnesses. [340-D-E; 341-G]

F 4. The argument that no doctor has been examined to prove the injuries of the witnesses is without any substance. Nothing has been elicited in the cross-examination to enable the court to discard their version of having suffered injuries. [340-E-F]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 57 of 1997.

From the Judgment and Order dated 14.11.96 of the Madhya Pradesh High Court in CrI. A. No. 158 of 1992.

A. Shashank and Shakeel Ahmed for the Appellant.

H Anoop G. Choudhary, Uma Nath Singh and Prashant Kumar for the

Respondent.

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The Judgment of the Court was delivered by

SRINIVASAN, J. The appellant and six other persons stood prosecuted for offences under Ss. 147, 148, 302 read with 149 and 307/149. They were acquitted by the Additional District Judge, Narisingharh, Distt. Rajgarh (Byara), M.P. State. On appeal, the High Court confirmed the acquittal of five persons but reversed the Judgment of the trial Judge with reference to the appellant and another by name Ram Singh. The appellant was convicted for offences under Ss. 302 and 324 IPC and sentenced to imprisonment for life u/s 302 and imprisonment for four months and a fine of Rs. 1000/- u/s 324. We are not concerned with the other accused as he has not come to this Court.

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2. The case of the prosecution is shortly as follows : There was prior enmity between the accused persons on the one side and Gorelal and others on the other. The accused persons formed an unlawful assembly and on 29.12.86 at about 2 P.M. committed the murder of Gorelal in the jungle of Padiliya Khadi. Ram Singh and the appellant shot the deceased with a gun. They caused gun shot injuries to Nanakram, Deochand, Beni Singh and Ramesh in the attempt to murder them. Nanak Ram became unconscious. Sewa Ram (PW1) was working in his field when he saw a bullock cart coming from forest side. On hearing sounds of screaming and wailing, he went to the cart and found the dead body of Gorelal. He was informed by Hiralal s/o Ramratan that the appellant, his brother Bhanwaria, Amritlal, Daryhao Singh, Kailash, Ram Singh and Pappu Killed Gorelal in Chhapra and that Ram Singh and the appellant fired guns at Gorelal. He was also informed that the others sustained bullet-injuries. Thereafter Sevaram went to the police Station at Kotra and reported the matter at 5.50 P.M., the same day. The report was recorded. J.S. Tomar (PW 19), SHO registered offences u/ss 147, 148, 302, 307 read with 149 vide Crime No. 148/86.

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3. After investigation the accused persons were prosecuted. They denied the charges and pleaded false implication. They also pleaded that the complainant party caused damage to their tractor. After trial, the trial Judge acquitted all the accused. On appeal by the State, the High Court reversed the judgment as regards the appellant and Ram Singh and convicted them while confirming the acquittal of the rest of the accused.

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A 4. The appellant's counsel made the following submissions:- The FIR was not lodged on the same day but it was done only on the next day. The appellant has proved *alibi* and he was not at the place of occurrence. No doctor has been examined to prove the alleged injuries of eye witnesses. Nor have they produced any medical certificate. The evidence of the prosecution witnesses is full of discrepancies. The driver of the tractor recovered by the prosecution was not examined by it, and he has been examined by the defence. His evidence corroborated by the damage on the tractor proves conclusively the defence version. The Judgment of the High Court is perfunctory and unsustainable.

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C 5. Learned counsel for the State submitted that all the witnesses of the prosecution are consistent in stating that the appellant fired the gun after getting it from Ram Singh. According to him the appellant has failed to plead or prove alibi and DW1 was not the driver of the tractor in question. He argued that no suggestion of alibi was put to the prosecution witnesses by the defence counsel. According to him the judgment of the high Court does not warrant any interference.

D 6. We heard counsel on both sides at length. We have perused the entire evidence on record. There are five eye-witnesses namely, PW2, PW12, PW13, PW14 and PW15. All of them except PW2 received gun-shot injuries. Their evidence is consistent and excepting minor discrepancies which are natural due to frailty of human memory, nothing has been pointed out for discrediting their evidence. All the five witnesses have categorically spoken to the presence of the appellant on the spot and his firing the gun after taking it from Ram Singh. The argument that no doctor has been examined to prove the injuries of the witnesses is without any substance. Nothing has been elicited in the cross-examination to enable the court to discard their version of having suffered injuries. On the other hand, suggestions have been made in the cross examination as if there was a fight between the two groups at the spot.

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G 7. Though learned counsel in the beginning of the arguments attempted to make a point about the lodging of the FIR on the next day, he realised the futility thereof when it was pointed out that PW1, the Chowkidar of the village rushed to the Police station and gave the information to the S.O. around 5 P.M. According to the witness, the S.O. before lodging the report went to the spot to make enquiry and returned much later to lodge the report. The witness cannot be disbelieved on that ground and the High Court has adverted to this aspect of the matter.

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8. The main plank of the argument of the appellant's counsel was 'alibi'. According to him the evidence of the DWs and the records produced by DW3 prove that the appellant attended the Court of Naib Tehsildar on that day situated about 60 to 70 kms away and the appellant could not have been present at the place of occurrence. There are several circumstances which disprove the case of alibi. There was no consistency in the suggestions made to prosecution witnesses when they were cross-examined. A suggestion was made to PW2 that he himself and the members of his group attacked the appellant and his driver. The suggestion could be only on the basis that the appellant was present at the spot. No suggestion was made to PW2 that the appellant was not there at the time of occurrence. There was no suggestion to PW13 that the appellant was not present there. When the appellant was questioned under s.313, he did not say that he was not present at the spot. All his answers were mere denials of the evidence put to him.

9. Strong reliance is placed on the evidence of DW1 who claims to be the driver of the tractor which was found on the scene of occurrence. But the number of the tractor given by him is different from the number of the tractor seized. His entire evidence is wholly unreliable. The High Court has rightly characterised him as got-up witness and his evidence is rejected.

10. The evidence of DW4 does not inspire any confidence. He claims to have been present in the court of Naib Tehsildar along with the appellant. But Ex. D-7 disproves his statement. In that case he was non-applicant and the order discloses that he was not present in Court and he should be informed of the order. DW3 who produced the records from the court of Naib Tehsildar proves equally unreliable. His version that cases in the Court of the Naib Tehsildar started only at 2 P.M. is too big a pill to be swallowed. He could not state clearly the time at which the statements containing the signature of the appellant were recorded. It is quite obvious that he is a partisan witness and no reliance can be placed on his evidence.

11. In the facts and circumstances of the case, there is no difficulty in rejecting the version of the appellant that he was not present on the scene of occurrence at the relevant time. The other matters relied on by the learned counsel for the appellant in support of his contention that the evidence of the prosecution witnesses is unacceptable are not of much significance or sufficient importance to negative the reliability of the prosecution witnesses.

12. In the result we hold that the High Court was justified in reversing

A the judgment of acquittal passed by the trial Court and convicting the appellant under section 302 as well as section 324 IPC. The sentences awarded by the High Court are quite appropriate and do not find any warrant to interfere with the same. The appeal fails and is dismissed.

T.N.A

Appeal dismissed.