

RAMESH S/O LAXMAN GAVLI

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v

STATE OF MADHYA PRADESH AND ORS.

SEPTEMBER 16, 1999

[G.B. PATTANAİK AND N. SANTOSH HEGDE, JJ.]

B

Penal Code, 1860—Ss. 302/34—Murder—Testimony of eye witnesses—Duly corroborated by other witnesses—Nothing brought in cross examination to discredit the eye witnesses—Held; conviction and sentence justified.

C

Criminal Procedure Code, 1973—S.161—Witnesses—Delay in examining the witnesses—Effect of—Held; ipso facto cannot be a ground to discredit their testimony when nothing tangible was brought in cross examination to impeach their testimony.

Criminal Trial :

D

Benefit of doubt—Grant of—Murder—Testimony of eye witnesses—Discrepancy between eye witnesses regarding which accused pierced 'Gupti' on the chest of deceased—Held, sufficient to grant benefit of doubt—Penal Code 1860, S.302/34.

E

Appellant alongwith 'D' and 'R' was prosecuted for offences under S. 302/34 of IPC. The prosecution case was that accused and deceased belonged to two rival fractions of 'Gawli' community. On the fateful day, while 'K' leader of one of the fraction was proceeding to temple for offering puja alongwith PW1, accused person armed with weapons assaulted him. 'K' succumbed to his injuries in the hospital. Trial court, relying upon the evidence of PWs 1, 2 and 4, duly corroborated by PW 12, Doctor, convicted and sentenced the accused persons to imprisonment for life. On appeal, High Court while confirming the conviction and sentence of appellant and accused 'D' set aside the conviction and sentence of accused 'R' by giving benefit of doubt. Hence the present appeals.

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On behalf of appellant it was contended that the evidence of prosecution witnesses cannot be relied on as there was delay in examining them; the FIR dated 1.10.85 was a fabricated document and no FIR was lodged till 3.10.85.

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A Dismissing the appeals, the Court

HELD: 1. The reliable evidence of PW 1, who was accompanying the deceased right from the beginning was fully corroborated by evidences of PWs 2 and 4. Nothing substantial was brought on record in the cross examinations of the said witnesses to disbelieve them. Thus there is no infirmity in the judgment of the High Court convicting the appellant under S.302 IPC requiring interference by this Court. [607-G; 608-B]

2. Delay in examining the witnesses, *ipso facto* cannot be a ground to discard their testimony, when nothing tangible was brought in the cross examination to impeach their testimony. [607-F]

3. It is wholly misconceived to state that the FIR lodged on 1.10.85 is a fabricated document and no FIR had been given till 3.10.85. PW 1 is himself the informant and has categorically stated that he had given the report to the police on 1.10.85 itself and there is no reason to discard his statement. The letter dated 3.10.85 written to Superintendent of Police indicates that several persons had already been arrested, persons can be arrested only after lodging of FIR and not before that. Further the explanation given by the investigating officer, that due to public holiday on 2.10.85 the documents were sent on 3.10.85 having been accepted by the courts below, there is no need to take a separate view in the matter. [606-G; A-B]

4. High Court was justified in acquitting accused 'R' by giving him benefit of doubt. There is inconsistency between the eye witnesses regarding the role ascribed by the prosecution to accused 'R'. While according to PWs 1 and 4, 'R' pierced the 'Gupti' on the chest of the deceased but according to PW 2 it was 'D' who pierced the 'Gupti'. This discrepancy as to the alleged role played by the accused 'R' was sufficient to give him benefit of doubt.

[608-C-D]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 587 of 1996 Etc.

From the Judgment and Order dated 24.9.94 of the Madhya Pradesh High Court in CrI. A. No. 60 of 1987.

B.R. Naik and Vijay K. Jain for the Appellant.

Vivek Gambhir for the Respondent.

H K.N. Shukla, (Mrs. Sushila Shukla) for Uma Nath Singh for the State of

Madhya Pradesh.

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The Judgment of the Court was delivered by

PATTANAİK J. These two appeals, one by the convict, Ramesh and the other by the State are directed against one and the same judgment of the High Court of Madhya Pradesh and were, therefore, heard together and are disposed of by this common judgment.

B

Appellant, Ramesh along with two others *Dalla alias* Dayaram and Ramesh, son of Jagannath, commonly known as Ramesh (Junior), was convicted by the learned Sessions Judge for having committed offence under Section 302 and 302/34 IPC and sentenced to imprisonment for life. On appeal, the High Court confirmed the conviction and sentence imposed by the learned Sessions Judge on accused Dayaram as well Ramesh, son of Laxman, the present appellant but set aside the conviction of Ramesh (Junior) under Section 302/34 IPC and acquitted him of all the charges. The appeal preferred by the State is against the acquittal of Ramesh (Junior) of the charge under Section 302/34 IPC. It may be stated, at this stage, that the learned Sessions Judge has acquitted three other accused persons who stood trial along with the appellant and against their order of acquittal, the State moved the High Court in appeal and the State's appeal being dismissed, the State has preferred Special Leave Petition (SLP (Crl.) No. 295/96) which stood dismissed by this Court on 8.9.99.

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The prosecution case in nutshell is that the accused and the deceased belonged to 'Gawli' community and had been divided in two fractions, one led by the deceased, Kanhaiyalal whereas the other fraction was led by Mangilal, Jagannath and Pancham. Pancham is the father of accused, Dalla. Kanhaiyalal, the deceased was out-casted and on that score, there had been some dissension. On the date of occurrence, i.e. 1.10.85, the said Kanhaiyalal was proceeding to Kali temple for offering 'Puja', accompanied by Nandlal, PW 1. While they were proceeding, the accused persons came together armed with weapons in their hands and started mercilessly assaulting Kanhaiyalal. Accused, Dalla had an axe in his hand and gave blows on the head of the deceased by means of the axe. The present appellant, Ramesh (senior) gave also an axe blow and Kanhaiyalal tried to prevent him but his left hand was cut and Kanhaiyalal fell down. The other accused, Ramesh (Junior) pierced 'Gupti' on his chest. The further prosecution case is that the three other accused persons, who have since been acquitted, also caused injuries on the deceased with the weapons in their hands. 'Halla' was raised and a telephonic

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A message was given to the police station, which was duly recorded in the 'roznama' and PW11 came to the spot. Kanhaiyalal was taken to the hospital and he was declared dead. PW 1, Nandlal gave a written report which was treated as First Information Report and the police then registered a case and started investigation. On completion of the investigation, a charge-sheet was filed and the accused persons stood their trial, as already stated. The prosecution examined a number of witnesses of whom PWs 1,2 and 3 are the eye witnesses to the occurrence. PW3 did not support the prosecution case and was allowed to be cross-examined. PW8 is a post occurrence witness and PW 12 is the Doctor who had conducted the autopsy on the dead body of the deceased, Kanhaiyalal. The postmortem report indicates that there were five injuries on the dead body of the deceased, four were incised and one abrasion. On the basis of medical evidence, the Sessions Judge came to hold that Kanhaiyalal met a homicidal death and the same finding is not assailed before us. Relying upon the evidence of PWs 1, 2 and 4 and finding corroboration of the same with the evidence of Doctor, PW 12, the learned Sessions Judge convicted three of the accused persons while acquitted three others, as already stated. Appeal being preferred, the High Court considered the *inter-se* inconsistency between the eye witnesses with regard to the finding as to which accused person caused the injury on the chest by means of 'Gupti', inasmuch as while PW 1 and 4 had stated that 'Gupti' was pierced by Ramesh (Junior), PW2 stated that the 'Gupti' was pierced by Devilal and accordingly held that the said accused, Ramesh (Junior), son of Jagannath is entitled to benefit of doubt. But so far as appellant, Ramesh and accused Dalla are concerned, the High Court on re-appreciation of the evidence of the three eye witnesses came to hold that the prosecution case has been proved beyond reasonable doubt and, therefore, the conviction and sentence passed by the Sessions Judge was affirmed. It may be stated that no appeal has been preferred by Dalla.

Mr. Bhimrao Naik, learned senior counsel appearing for appellant, Ramesh (Senior) vehemently contended that the oral evidence of PWs 1, 2 and 4 cannot be accepted in this case as right from the beginning the prosecution has proceeded with fabricated documents and in fact the document which has been treated as FIR and is said to have been lodged on 1.10.85 is a fabricated document and no FIR had been given till 3.10.85.

The entire basis for the aforesaid argument is that in a letter dated 3.10.85 to the Superintendent of Police to which the informant himself was a signatory, it had not been indicated that a FIR had already been lodged earlier.

This argument made by Mr. Naik, learned senior counsel is wholly misconceived inasmuch as the said document indicates that several persons had already been arrested by them and persons can be arrested only after lodging of FIR and not before that. PW 1 is himself the informant and has categorically stated that he had given the report to the police on 1.10.85 itself and there is no reason why his statement should be discarded. Learned counsel, Mr. Naik in this context had urged that the fact that the FIR reached the Magistrate only on 3.10.85 substantiate his allegation that there was no FIR on 1.10.85, as alleged by the prosecution. But the Investigating Officer has indicated the reason that the 2nd of October being holiday on account of Gandhi Jayanti, he has sent the documents on 3rd October and this explanation has been accepted by the learned Sessions Judge as well as by the High Court. We do not think that a separate view could be taken by this Court on this score.

Mr. Naik then placed before us the evidence of the three eye witnesses and contended that their evidence does not inspire confidence and should be rejected. Normally, this Court, sitting in appeal against the conviction passed by the Sessions Judge and upheld in appeal, does not re-appreciate the evidence of the witnesses again. But the evidence having been placed before us and having been argued at length by the learned senior counsel, we have scrutinised the same. Nothing substantial has been brought to our notice in the cross-examination of these witnesses for which this Court would come to the conclusion that the witnesses are not believable. As stated earlier, PW 1 was accompanying the deceased right from the beginning when the deceased had gone to supply milk and was proceeding to offer 'Puja' and PWs 2 and 4 are independent witnesses who happened to be at the scene of occurrence and have narrated the occurrence vividly. The argument of Mr. Naik, appearing for the appellant against acceptability of the witnesses, No.2 and 4 is that they were examined by the police under Section 161 Cr. P.C. on 6.10.85 and 4.10.85 respectively. This delay in examining the two witnesses *ipso fact* cannot be a ground to discard their testimony, more so, when in the cross-examination of witnesses, nothing tangible had been brought out to impeach their testimony. On the other hand, evidence of PWs 2 and 4 fully corroborate the reliable evidence of PW 1 and therefore, the Courts below were justified in maintaining conviction of appellant, Ramesh of the charge under Section 302 IPC. In course of arguments, Mr. Naik learned senior counsel also raised a contention that the prosecution has not examined the independent witnesses though available and that an adverse inference should be drawn. But on going through the evidence on record, we do not find any material from which it can be said that the other independent witnesses were

A available and the same were not examined. That apart, PW 2 and 4 are independent witnesses and, therefore it is not necessary for the prosecution to multiply the witnesses. We, therefore. Do not find any substance in the aforesaid submission of Mr. Bhimrao Naik.

B In the net result, we do not see any infirmity with the judgment of the High Court convicting the appellant under Section 302 IPC requiring interference by this Court. Criminal Appeal No. 587/96, therefore fails and is dismissed.

C So far as the Criminal Appeal No 588/96 preferred by the State is concerned the same is directed against the order of acquittal of accused, Ramesh (Junior), son of Jagannath of the charge under Section 302/34 IPC by the High Court. A bare scrutiny of the impugned judgment of the High Court would indicate that the role ascribed by the prosecution to accused Ramesh (Junior) is that he pierced a 'Gupti' on the chest of the deceased. But so far as this case of the prosecution is concerned the eye witnesses were found to be inconsistent. While, according to PWs 1 and 4, Ramesh (Junior) pierced the 'Gupti' but according to PW 2, it is Devilal who pierced the 'Gupti'. This discrepancy as to the alleged role played by the accused, Ramesh (Junior) was sufficient to give him benefit of doubt and accordingly the High Court acquitted him of the charge. Mr. K.N. Shukla, learned senior counsel appearing for State of Madhya Pradesh was not in a position to assail the said conclusion of the High Court. We, therefore, do not find any merit in the appeal preferred by the State of Madhya Pradesh. In the result, this appeal is also dismissed.

Accordingly, both the Criminal Appeals are dismissed.

S.V.K.

Appeal dismissed.