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STATE OF MADHYA PRADESH

v.

SEWA SINGH

JUNE 13, 2007

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[DR. ARIJIT PASAYAT AND B.P. SINGH, JJ.]

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Penal Code, 1860—s.304 (Part II)—Sub-Inspector subjecting person in custody to kicks and slaps on his vital parts resulting in his death—Conviction under s.304 (Part II)—Acquittal by High Court—Held: Justified, since medical evidence clearly shows that there was no external or internal injury—Evidence of prosecution witness on which trial court relied, contradictory and at variance with medical evidence—Evidence.

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According to the prosecution case, when the deceased was in police custody, he was slapped and kicked on his vital parts by respondent-SHO, which resulted in his death. Trial Court relying on the evidence of PW 6, convicted and sentenced the respondent under section 304 (Part II) IPC. High Court set aside the conviction. Hence the present appeal.

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Dismissing the appeal, the Court

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HELD: Two factors weighed with the High Court in directing acquittal i.e. (a) apparent contradictions in the evidence of PW-6 and (b) her version being at variance with the medical evidence. If the deceased had been subjected to kicks on vital parts or slapped as was stated by PW-6 there certainly would have been marks of injury. Doctor's evidence clearly rules this out. The evidence of PW-6 was rightly held to be unreliable by the High Court. During investigation she has stated that the accused had slapped the deceased. There was no mention about the kick on the thigh or that the accused kicked the deceased after he fell down. Further the evidence of PW-2 (brother of PW-6) was to the effect that PW-6 had told him that the deceased was assaulted by Sub Inspector and the accused. Evidence of PW-6 is entirely different. It is true that in the case of custodial violence there would be less possibility of getting direct evidence, and direct independent witness. In the instant case, medical evidence clearly shows that there was no external or internal injury. Thus, the acquittal order passed by High Court does not suffer from any

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infirmity to warrant interference. [Paras 6 and 7] [1016-C, D, E, F, G]

State of M.P. v. Shyamsunder Trivedi and Ors., [1995] 4 SCC 262, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1275 of 2001.

From the Final Judgment and Order dated 11.07.2000 of the High Court of M.P. at Jabalpur in CrI. A. No. 1461 of 1998.

Govind Goel, C.D. Singh, Merusagar Samantaray and Vairagya Vardhan for the Appellants.

Mridula Ray Bhardwaj (N.P.) for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. The State of Madhya Pradesh is in appeal against the judgment of Madhya Pradesh High Court, Jabalpur, directing acquittal of the respondent. Respondent, who had been convicted for offence punishable under Section 304 Part II of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to undergo RI for five years and to pay a fine of Rs.5,000/-, preferred an appeal against the judgment of learned Additional Sessions Judge, Tikamgarh. The High Court accepted the appeal and directed acquittal of the respondent.

2. The background facts in a nutshell are as follows:

Achelal (hereinafter referred to as the 'deceased'), while in custody, was slapped and kicked on his testicles by the accused, who was the S.H.O., and that resulted in his death. The autopsy on the body of Achelal was conducted by a panel of three doctors on 14.12.1987. The post mortem report is Ex. P-1A. According to this report no external or internal injury was found on the dead body. The cause of death has been shown as 'unknown'. The viscera of the dead body was preserved. It was sent to the Forensic Science Laboratory, Sagar and as per report Ex.P-21, the presence of Ethyl Alcohol was detected therein.

3. The respondent took the plea that he had not assaulted the deceased. Placing reliance on the evidence of Kusum (PW-6) who claimed to be witness,

A conviction was recorded by the Trial Court and sentence was imposed as noted above. The High Court found that the evidence of PW-6 was not reliable and in any event the medical evidence completely ruled out the version presented by PW-6.

B 4. In support of the appeal, learned counsel for the appellant-State submitted that the High Court has erroneously directed acquittal of the respondent. Evidence of PW-6 should have been accepted and there was no contradiction between medical evidence and the ocular evidence.

C 5. There is no appearance on behalf of the respondent in spite of service of notice.

D 6. Two factors weighed with the High Court in directing acquittal i.e. (a) apparent contradictions in the evidence of PW-6 and (b) her version being at variance with the medical evidence. The post-mortem was conducted by a team of doctors. It was noted that there was no external or internal injury and the cause of death is unknown. On forensic examination presence of Ethyl Alcohol was noticed. If the deceased had been subjected to kicks on vital parts or slapped as was stated by PW-6 there certainly would have been marks of injury. Doctor's evidence clearly rules this out. Further the evidence of PW-6 was rightly held to be unreliable by the High Court. During investigation she has stated that the accused had slapped the deceased. E There was no mention about the kick on the thigh or that the accused kicked the deceased after he fell down. Further the evidence of PW-2 (brother of PW-6) was to the effect that PW-6 had told him that the deceased was assaulted by Sub Inspector Pandey and the accused. Evidence of PW-6 is entirely different. It is true that in the case of custodial violence there would be less possibility of getting direct evidence, and direct independent witness. This was the position as indicated by this Court in *State of M.P. v. Shyamsunder Trivedi and Ors.*, [1995] 4 SCC 262). There were injuries on the body of the deceased in that case. In the present case medical evidence clearly shows that there was no external or internal injury.

G 7. Above being the position, the judgment of acquittal passed by the High Court does not suffer from any infirmity to warrant interference.

8. The appeal is dismissed.

N.J.

Appeal dismissed.

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