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STATE OF MADHYA PRADESH.

v.

NISAR

JUNE 4, 2007

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[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Penal Code, 1860:

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Section 302—Double murder—Circumstantial evidence—Accused convicted on the basis of his extra-judicial confession and recovery of dead body and weapon of murder at his instance—Blood group on blood found on axe not ascertained—FIR recorded much after extra-judicial confession not mentioning anything about it—Held : High Court rightly set aside conviction recorded by trial court—Evidence—Circumstantial evidence.

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Respondent was prosecuted for double murder. The prosecution case was that two graziers, 'K' and 'C' did not reach home in the evening. A he-goat was also missing. The search party located the missing he-goat in the house of PW-4 in another village which had been brought there by the accused who had sought shelter for the night there. On being questioned, the accused admitted having killed 'K' and 'C'. Next morning body of deceased 'K' was recovered and at the instance of the accused body of 'C' was also recovered during the course of the day. The trial court convicted the accused of the offence charged. In the appeal before the High Court, it was contended for the accused that there was no eye-witness of the incident; that the so-called extra-judicial confession had no foundation and that blood grouping of the blood found on the axe recovered was not done. The High Court having acquitted the accused, the State filed the instant appeal.

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Dismissing the appeal, the Court

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HELD: 1.1. The First Information Report was lodged much after the so-called extra judicial confession was made. Evidence on record shows that the body of deceased 'K' was lying exposed in the jungle and his lathi and 'Khomari' were lying close-by. In the FIR, there was no reference to the so-called confession by the accused. Informant's explanation that he may have forgotten to disclose this fact to the police while lodging the FIR, is totally

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improbable and wholly unacceptable. If, in fact, there was any confession as claimed, that would have been the first thing to be mentioned and not that there was suspicion of the accused being the assailant. A

[Para 8] [929-A-B]

1.2. PW-12 had admitted that the body of deceased 'C' was lying about 100 paces from the dead body of 'K'. The High Court rightly noticed that no disclosure was necessary for locating the dead body, the axe and the 'Khomari' were also lying close-by and even a casual search would have revealed the dead bodies and the articles. The Chemical Examiner in his report had found that the axe was stained with human blood. Curiously, the blood group was not ascertained. It was, therefore, not possible to conclude that the axe was used for killing the two deceased persons. [Para 8] [929-C-D] B C

1.3. In view of the nature of the evidence of prosecution witnesses, the High Court was perfectly justified in finding the prosecution version vulnerable, and the evidence scanty to fasten the guilt on the accused in a case where the prosecution version rests on circumstantial evidence. D

[Para 9] [929-E]

CRIMINAL APPELLATE JURISDICTION : Civil Appeal No. 584 of 2001.

From the Final Judgment and Order dated 29.10.1999 of the High Court of M.P. at Jabalpur in CrI. A. No. 206 of 1989. E

Vijay Goel, Meru Sagar Samantrary and Vairagya Vardhan (for C.D. Singh) for the Appellant.

Vidya Dhar Gaur for the Respondent. F

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order of a Division Bench of the Madhya Pradesh High Court, setting aside the judgment of conviction recorded by the Trial Court by a learned Additional Sessions Judge in ST. No.44 of 1988 and directed acquittal of the respondent. Accused faced trial for offence under Section 302 of Indian Penal Code, 1860 (in short the 'Code'). G

2. Background facts in a nutshell are as follows:

The case, as presented at the trial was that Kandhai and Chherkoo did H

A not return home in the evening. A he-goat of Sitaram was also missing. The search party located the he-goat in village Karhitola in the house of Barelal (PW-4). Accused Nisar had sought shelter for the night at Barelal's house and had brought the he-goat with him. On being questioned, the accused admitted having killed Kandhai because the latter had abused him when he was taking away the he-goat. He also confessed the murder of Chherkoo whose body was recovered at his instance.

3. The first information report (Ex.P-1) was lodged by Bhaiyalal next morning, after recovery of the body of Kandhai. The body of Chherkoo was recovered during the course of the day on the information given by accused Nisar during investigation. The usual investigation followed, and in due course the accused was tried for the offences as already described above. The trial resulted in conviction on all heads of charge.

4. Accused challenged the conviction before the High Court.

5. Before the High Court, it was urged that the conviction was based on surmises and conjectures. The so called extra judicial confession has no foundation. The accused, who was a casual passer-by and taken shelter in the house of Barelal in the night has been made a scapegoat for the blind murder of the two graziers.

E Learned counsel for the State submitted that the Trial Court has analysed the evidence and after drawing proper inference, has found the accused guilty.

6. The High Court found that there was no eye-witness to the incident. Two factors which weighed with the Trial Court were the so-called recovery of an axe and the extra judicial confession. It was noticed by the High Court that there was no reference to the extra judicial confession in the FIR and though blood was stated to have been found on the axe recovered, the blood grouping was not done. Accordingly, trial Court's judgment was set aside and acquittal was directed.

G 7. In support of the appeal, learned counsel for the State submitted that the extra judicial confession had been rightly relied upon by the Trial Court and the High Court should not have discarded the evidentiary value of the extra judicial confession. Similarly, the axe was recovered at the instance of the accused and, therefore, the High Court's conclusions are erroneous.

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8. It is to be noted that the First Information Report was lodged much after the so-called extra judicial confession was made. Evidence on record shows that the body of Kandhai was lying exposed in the jungle and his lathi and Khomari were lying close-by. In the FIR (Exh P-1), there was no reference to the so-called confession by the accused. Informant Bhaiyalal's explanation that he may have forgotten to disclose this fact to the police while lodging the FIR, is totally improbable and wholly unacceptable. If in fact there was any confession as claimed that would have been the first thing to be mentioned and not that there was suspicion of the accused being the assailant. Raghvendra Singh Baghel, PW-12 had admitted that the body of Chherkoo was lying about 100 paces from the dead body of Kandhai. The High Court rightly noticed that no disclosure was necessary for locating the dead body. The axe and the khomari were also lying close-by and even a casual search would have revealed the dead bodies and the articles. The Chemical Examiner in his report Ex.P-37 had found that the axe was stained with human blood. Curiously, the blood group was not ascertained. It was, therefore, not possible to conclude that the axe was used for killing the two deceased persons.

9. Above being the nature of evidence of prosecution witnesses, the High Court was perfectly justified in finding the prosecution version vulnerable, and the evidence scanty to fasten the guilt on the accused in a case where the prosecution version rests on circumstantial evidence.

10. There is no scope for interference in this appeal which is, accordingly, dismissed.

R.P.

Appeal dismissed.