

STATE OF MADHYA PRADESH

v.
BASODI

AUGUST 1, 2007

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

Penal Code, 1860—s.302—Conviction by Trial Court—Set aside by High Court—Appeal against the acquittal—Held: Extra-judicial confession purportedly made by accused not believable—Prosecution version lacked credibility—No explanation offered for delay in lodging FIR—Acquittal order passed by High Court consequently upheld—Arms Act, 1959—s.27.

Respondent was charge-sheeted for committing the murder of his nephew. Respondent had allegedly fired at the deceased from his muzzle loading gun in the aftermath of a land dispute. On the memorandum of Respondent, the muzzle loading gun was purportedly recovered and seized. Trial Court disbelieved the claim of recovery of gun, however, held that the extra judicial confession by Respondent before PWs 1, 3 and 8 was clearly acceptable and accordingly convicted him under s.302 IPC and s.27 of the Arms Act, 1959. High Court held that the evidence relating to extra judicial confession could not be believed and acquitted the Respondent. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. From the evidence of PW-8 it appears that the accused purportedly came and told him about having shot his nephew i.e. the deceased. He advised the accused to go to the Kotwar of Almod. Ram Prasad (PW-3) is the son of Village Kotwar. PW-1 stated that when the accused was being taken by him, PW-3 and PW-8 to the Police Station, the accused again confessed having killed the deceased. [Para 6] [756-B]

1.2. According to the version of PW-3 the distance between the place of occurrence and his house is about 10 K.M. and it takes about two hours to reach his place. He has stated that the accused reached him at about 4.00 p.m. According to the FIR and the version of PW-1 and PW-8, the occurrence took place at 4.00 p.m. and thereafter PW-8 had advised the accused to go to

A the Kotwar of Almod. This statement, therefore, is contradictory in the sense that if accused had made any confession before PW-3 at about 4.00 p.m. after travelling the distance from the house of PW-8, the incidence could not have taken place at about 4.00 p.m. as claimed by PW-1 and PW-3.

[Para 6] [756-C-D]

B 2. No explanation whatsoever has been offered for the delayed presentation of the FIR. It was the specific stand of the prosecution that PWs. 1, 3 and 8 had taken the accused with them to the police station where the gun was seized from the accused. This version gets totally discredited in view of what the police official (PW-10) stated. According to him, the statement of the accused was recorded when he was found after search and the accused was not before him when the FIR was lodged. Nothing more need be stated to show that the so called extra-judicial confession is a myth and the prosecution version lacks credibility and has been rightly discarded by the High Court. The order of acquittal passed by the High Court does not suffer from any infirmity to warrant interference. [Para 6] [756-E-G]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 50 of 2002.

From the Judgment & Order 13.07.1998 of the High Court of M.P.at Jabalpur in Criminal Appeal No. 700 of 1988

E Vibha Dutta Makhija for the Appellant.

Abinash Coomar for the Respondent.

The Judgement of the Court was delivered by

F **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Madhya Pradesh High Court at Jabalpur directing acquittal of the respondent (hereinafter referred to as the 'accused') by setting aside the judgment of learned Second Additional Sessions Judge, Chhindwara who had convicted the accused-respondent for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 27 of the Arms Act, 1959 (in short the 'Arms Act'). Life imprisonment and five years rigorous imprisonment respectively were awarded. Accused was charged for having committed the murder of his nephew Mangalu (hereinafter referred to as the 'deceased').

2. Background facts in a nutshell are as under:

H On 19.8.1987 in the afternoon the deceased had gone to his field

Kodakodi for ploughing. The respondent who happened to be uncle of deceased dissuaded the deceased from ploughing the field. But the deceased continued to plough the field. The respondent fired at the deceased from his muzzle loading gun. The deceased after sustaining the injury fell on the ground. The respondent rushed to his village and narrated about the incident to Ramprasad (PW-3), Maresha (PW-8) and other villagers that he had shot the deceased, whereupon the complainant Jangalu (PW-1) and his father Bhagan Singh (PW-5), Doulot (PW-6) and Maresha (PW-8) went to the field and saw the deceased lying injured. When the deceased was being brought to his house he died on the way. The complainant Jangalu along with others went to the police station and lodged FIR (Ex.P-10) on 21-8-1987 and investigation proceeded. On the memorandum of the respondent (Ex.P-4) muzzle loading gun was recovered and seized vide Ex.P-5. The police also seized blood stained clothes of the respondent and sent the seized articles to the FSL, Sagar for chemical examination and report.

After receipt of the report of the chemical examiner (Ex.P-11) and completing the investigation, charge-sheet was submitted. The cognizance of the offence was accordingly taken and the case was committed to the Court of sessions for trial.

The prosecution examined in all ten witnesses at the trial.

The defence was of false implication on account of the family feud to the land dispute.

The trial Court disbelieved the claim of recovery of gun. It, however, held that the extra-judicial confession before complainant Jangalu (PW-1), Ramprasad (PW-3) and Maresha (PW-8) was clearly acceptable and accordingly convicted the accused as afore-stated.

3. Being aggrieved, the accused preferred an appeal before the High Court. Primary stand before the High Court was that the so called extra judicial confession was not believable. The prosecution version is totally inconsistent. No explanation has been offered for the delay in lodging the First Information Report. The High Court found that the evidence relating to extra judicial confession is clearly unacceptable and accordingly directed acquittal as noted above.

4. In support of the appeal, learned counsel for the appellant-State submitted that the High Court has not indicated any basis or reason for discarding the extra judicial confession.

A 5. Learned counsel for the accused-respondent supported the judgment of acquittal.

6. It is to be noted that the occurrence took place on 19.8.1987 at about 4.00 p.m. The FIR was lodged on 21.8.1987. From the evidence of PW-8 it appears that the accused purportedly came and told him about having shot his nephew i.e. the deceased. He advised the accused to go to the Kotwar of Almod. Ram Prasad (PW-3) is the son of Village Kotwar. PW-1 also stated that when the accused was being taken by him, PW-3 and PW-8 to the Police Station, the accused again confessed having killed the deceased. According to the version of PW-3 the distance between the place of occurrence and his house is about 10 K.M. and it takes about two hours to reach his place. He has stated that the accused reached him at about 4.00 p.m. According to the FIR and the version of PW-1 and PW-8, the occurrence took place at 4.00 p.m. and thereafter PW-8 had advised the accused to go to the Kotwar of Almod. This statement, therefore, is contradictory in the sense that if accused had made any confession before PW-3 at about 4.00 p.m. after travelling the distance from the house of PW-8, the incidence could not have taken place at about 4.00 p.m. as claimed by PW-1 and PW-3. According to PW-3's evidence the accused was not carrying weapon i.e. the gun with him when he had gone to the house of PW-3. PW-3 claimed that he brought accused with him to the village where PW-1, PW-8 and others were present. He then asked the accused to go home and next day they started for the police station. Admittedly, the FIR was lodged on 21.8.1987 at about 1.00 p.m. No explanation whatsoever has been offered for the delayed presentation of the FIR. It was the specific stand of the prosecution that PWs. 1, 3 and 8 had taken the accused with them to the police station where the gun was seized from the accused. This version gets totally discredited in view of what the police official (PW-10) stated. According to him, the statement of the accused was recorded when he was found after search and the accused was not before him when the FIR was lodged. He alongwith some other persons reached Varud village, the place of occurrence on 22.8.1987. The accused was found after covering the village on 24.8.1987. Nothing more need be stated to show that the so called extra-judicial confession is a myth and the prosecution version lacks credibility and has been rightly discarded by the High Court. The order of acquittal passed by the High Court does not suffer from any infirmity to warrant interference.

7. The appeal is accordingly dismissed.

B.B.B.

Appeal dismissed.

H