

STATE OF MADHYA PRADESH
v.
CHAMRU @ BHAGWANDAS ETC. ETC.

JUNE 19, 2007

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

Penal Code, 1860—ss. 302, 307 and 324—Prosecution for charges under the provisions—Three child eye-witnesses—Identification of the accused in T.I Parade—Accused shown to two of the witnesses prior to TI Parade—Conviction by Trial Court relying on the version of eye-witnesses and TI Parade—Death sentence to one accused and life imprisonment to co-accused—High Court acquitting the accused—On appeal, held: Acquittal was justified—Evidence of PWs and TI Parade are not credible.

The appellants-accused were charged for a quadruple murder. According to prosecution, due to previous enmity over some land, the accused assaulted the deceased persons and PWs. 3 and 7 while they were sleeping. The incident was seen by 3 child witnesses i.e. PWs, 3, 7 and 8. The accused was identified by the three witnesses in Test Identification Parade. Trial Court relying on the identification, convicted both the accused persons u/s 302, 307 and 324 r/w s, 34. Accused 'C' was sentenced to death while the co-accused to life imprisonment. High Court, holding that Test Identification Parade was farce as the accused was known to the children and he was shown to the children before the T I Parade, and disbelieving the evidence of PW-3, acquitted the accused of all the charges. Hence the present appeal.

Dismissed the appeal, the Court

HELD : The judgment of the acquittal passed by the High Court does not suffer from any infirmity. It is not merely a case of non-mention of the names. Undisputedly, the photographs of accused 'C' were shown to two of the child witnesses before the Test Identification Parade. That took away the effect of the Test Identification Parade. PW-3, who was not shown the photographs, a bare perusal of her evidence in court shows that she was not a credible witness and was tutored. She has categorically stated that she knew the accused by name. Her evidence also shows that she was tutored. Most of her

A statements in court were exaggerations and embellishments. Secondly, most of the vital facts were not stated during investigation. It is of significance to note that in her evidence, she stated that PW-8 was also assaulted by the assailants. This is clearly contrary to the prosecution version. All other witnesses, who claimed to be eye-witnesses, have categorically stated that PW-8 had managed to go away and had seen the occurrence from behind the screen.

B That was also the version of PW-8. That being so, the version of PW-3 that she was also attacked, is clearly a vulnerable point so far as the prosecution care is connected. [Paras 10, 11 and 12] [1060-C-D; 1059-G-H; 1060-B-C]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 743-744 of 2002.

From the Final Order and Judgment and dated 18.07.2001 of High Court of Madhya Pradesh at Jabalpur in Criminal Reference No. 1 of 2000, CrI. Appeal No. 628 of 2000 and 629 of 2000.

D R.P. Gupta, Sunny Chowdhary (for C.D. Singh) for the Appellant.

The Judgment of the Court was delivered by

E **DR. ARIJIT PASAYAT, J.** 1. Challenge in these appeals is to the judgment rendered by a Division Bench of the Madhya Pradesh High Court, Jabalpur directing acquittal of the respondents. The Trial Court had found the accused Chamru guilty of offences punishable under Sections 302, 307 and 324 of the Indian Penal Code, 1860 (in short 'the IPC'). He was awarded death penalty for the quadruple murders. Accused Geetabai was awarded life imprisonment for offence punishable under Section 302 read with Section 34 IPC along with sentence of fine. They were both sentenced to ten years' rigorous imprisonment and three years' rigorous imprisonment on the other two heads of charge along with various sums of fine. Both accused challenged their conviction and sentence and filed appeals. The Trial Court made a reference to Section 366 of the Criminal Procedure Code, 1973 (in short 'the Code') for confirmation of the death sentence. The High Court found the prosecution version to be not cogent and credible and directed acquittal.

F It may be noted that there was a gruesome murder of four persons. Two of them were minors. Though the High Court was conscious of this fact, yet, it found the evidence of the witnesses to be not credible and cogent and, patently unreliable and, therefore, directed acquittal.

H 2. The prosecution version in a nutshell is as follows:

Sometime prior to this incident, deceased Ramkishan and his wife deceased Anita were given three acres of land by the latter's father Sevaklal (PW-5). Since then Ramkishan lived in the farmhouse along with his wife and four minor children, namely, eldest son Kapil, aged about 12 years, daughter Keerti, Son Bantu and the youngest child Preeti, aged about 7 years. This land was earlier cultivated by Gendalal, the father-in-law of Sevaklal (P.W.5) and after the death of Gendalal, his sons Mangdu and his wife accused Geetabai continued in possession. These fields were later taken back from Mangdu by Sevaklal and out of it, 3 acres were given to his daughter deceased Anita and one acre was given to Gendalal's widow, who sold it off for her daughter's marriage. This had enraged Geetabai and her husband who used to abuse Anita and her husband Ramkishan. After her husband's death Geetabai had developed friendly relations with accused Chamru, and the two of them perpetrated this dastardly crime in furtherance of their common intention.

3. Both accused Chamru and Geetabai went to the house of Ramkishan at the dead of night and Chamru hacked Ramkishan, his wife and children one by one while they were sleeping in their courtyard. Two of the children namely, Keerti (P.W.3) and Bantu (P.W.7) were badly injured, but they could be saved after prolonged hospitalisation. These two children, and Ramkishan's niece Indu Patel (PW-8) who was on a visit to his place, are said to have witnessed the crime.

4. The first information report (Ex.P-4) was lodged next morning by village Patel Bhupatsingh (P.W.2). This set the investigation in motion. Dr. A.K. Yadu (P.W.9) performed the autopsy and Ex.P/17-A to Ex.P-20-A are the postmortem reports. He testified that all these persons died a homicidal death.

5. On completion of investigation, charge-sheet was filed and the accused faced trial. The Trial Court placed reliance on the identification made by Keerti, PW-3, Bantu, PW-7 and Indu, PW-8 for the purpose of recording conviction. All the three were child witnesses. It was claimed by the prosecution at the Test Identification Parade (in short 'the T.I. Parade') that they had identified the accused Chamru. Finding their evidence to be cogent and credible, the Trial Court recorded the conviction and sentenced the accused, as noted above.

6. In support of the appeal before the High Court, it was highlighted by learned counsel appearing for the accused persons that the Test Identification

A Parade was nothing but a farce. The accused was shown to the witnesses before the T.I. Parade and this was accepted by the witnesses. Additionally, the evidence of PW-3 was not worthy of acceptance because of apparent contradictions. Learned counsel for the State supported the conviction and stated that when four persons, including two children have lost their lives, such technicalities should not stand on the way of convicting them.

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7. The High Court considered the evidence and noted that the accused was not a stranger to the children. In fact, they admitted that he had worked at their father's house in connection with the construction of a room. They also admitted that they had known him as "Pathar Fodne Wala". In spite of this, there was no mention about identity of the accused in the statements made during investigation. In addition, if they knew the accused, there was no question of any Test Identification Parade. The High Court recorded the following findings after analyzing the evidence:

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"We have carefully gone through the evidence and documents on record and we must say that the arguments advanced by the learned defence counsel cannot be said to be without substance. We accept the evidence of Indu (P.W.8) that she had dodged the assailant and somehow escaped into the kitchen. We are also prepared to accept her testimony that she had dodged the assailant and somehow escaped into the kitchen. We are also prepared to accept her testimony that she had seen the assault from her place of hiding. But that she had recognised the assailant to be this accused Chamru is a difficult pill to swallow. There is much force in the argument that if she had really recognized the accused that night, she would not have hesitated in disclosing it to the villagers and to the police when they arrived on the scene. She would not have told the village Patel that some stranger had attacked these people.

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The same criticism applies to Keerti (P.W.3) and Bantu (P.W.7). Bantu in fact was assaulted while he was asleep. He admitted this in para 11 of his cross examination. He woke up after the blow on his neck, but pretended to be asleep even after the attack on him. He must have been taken as dead to have been spared by the assailant after a single blow. Bantu was a child aged about 7 years. He must have been too dazed and frightened to be able to understand what was happening. It appears to us to be highly unlikely that he recognized the person who was hacking his near and dear ones one after the other. We are unable to accept his claim that he had

recognized Chamru that night. Had this been true, he would have told the Village Patel and others that the "Pathar Fodne Wala" had committed the crime. The fact that he did not do so goes to show that he could not recognize the assailant that night.

This significant omission appears in the statement Ex.D.3 made by Keerti (P.W.3) also before the Police. She says that accused Chamru was very well known to her by face whom she knew as the "Pathar Fodne Wala" who had worked for her father. Then what prevented her from disclosing his identity to the witnesses and the police when they arrived on the spot?

We also agree with the contention of the learned defence counsel that the identification proceedings held by S.D.M. Shri Patel (P.W.1) were only a farce. Both Bantu (P.W.7) and Indu (P.W.8) admitted in cross-examination that the Police had shown them the photograph of Chamru. This would render the entire proceedings as useless. And conviction cannot be based on such evidence".

8. Though it was pointed out by the prosecution that there were blood stains on the clothes, the High Court found that they were so small that they were not found sufficient in relation to Serological examination. The High Court noted with anguish that there was cold blooded murder of four persons including two children; but the deficient manner in which the investigation was carried out, left much to be desired.

9. In support of the appeal, learned counsel for the appellant-State submitted that the approach of the High Court was erroneous. Merely because the child witnesses, who were over-powered by the grief of seeing four murders before their own eyes, made omission to state the name of the assailants that should not have been treated as vital. Defective investigation cannot be a ground to discard credible evidence.

10. We find that it is not merely a case of non-mention of the names. Undisputedly, the photographs of accused Chamru were shown to two of the child witnesses before the Test Identification Parade. That took away the effect of the Test Identification Parade. Learned counsel for the appellant has referred to the evidence of PW-3 to contend that the she was not shown the photographs. Even a bare perusal of her evidence in court shows that she was not a credible witness and was tutored. She has categorically stated that she knew the accused by name. As noted above, her evidence also shows

A that she was tutored. For example, the voltage of the bulb which was supposed to be lighted at a distance of about 200 yards was stated to have been seen by her. Most of her statements in court were exaggerations and embellishments. Secondly, most of the vital facts were not stated during investigation.

B 11. It is of significance to note that in her evidence, she stated that Indu, PW-8 was also assaulted by the assailants. This is clearly contrary to the prosecution version. All other witnesses, who claimed to be eye-witnesses, have categorically stated that PW-8 had managed to go away and had seen the occurrence from behind the screen. That was also the version of Indu
C (PW-8). That being so, the version of PW-3 that she was also attacked, is clearly a vulnerable point so far as the prosecution case is concerned.

12. In the ultimate analysis, the judgment of the acquittal passed by the High Court does not suffer from any infirmity to warrant interference. The appeals are, accordingly, dismissed.

D K.K.T.

Appeals dismissed.