

RANJIT SINGH
v.
STATE OF M. P.

APRIL 03, 2007

[S. B. SINHA AND MARKANDEY KATJU, JJ.]

Penal Code, 1860—Section 302—Conviction under—Sustainability of—Assault by weapons by accused, leading to death of two—FIR lodged within short time—Specific overt acts alleged on part of the accused—Attribution of motive to accused—Prosecution case proved by evidence of witnesses who were family members of deceased—Thus, order of conviction sustainable.

According to the prosecution case, on account of enmity between the parties, at mid night appellant and his father assaulted B with weapons. R, cousin of B who came out to protect B, was also assaulted. Both B and R died on the spot. FIR was lodged. Accused persons were tried for offence under sections 147, 148, 149 and 302 IPC. Trial Court examined the first informant, his wife, S and wife of R as eye witnesses and held that the appellant along with S and J had committed the offence. During pendency of trial, S and J died. Appellant was convicted and sentenced under section 302 IPC. High Court upheld the order. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. There is no reason to differ with the findings of the Trial Judge as also the High Court. The prosecution has been able to prove its case by bringing on record the evidence of at least three eye witnesses, who are the members of the family of the deceased, thus, there is no merit in the instant appeal. [Paras 9 and 10] [763-C-F-G]

2.1. It is evident from the record that FIR was lodged within a very short time by PW-3. Indisputably, in the said FIR, the appellant, amongst others, had been named. Specific overt acts on his part had been alleged. Even the motive had been attributed. Even otherwise, utterances of the appellant, his father and other accused persons on the reason for commission of the crime clearly go to show that the motive for commission of the said offence was that

A against the wishes of appellant with whom 'Sagai' ceremony of S categorically stated even in his examination-in-chief that as his eye-sight had become weak, he could not recognize them. Therefore, his evidence could not be shattered.
[Para 6] [762-E-H]

B 2.2. The evidence of P.W. 4, wife of first informant must be read in its entirety. She had categorically stated that she had heard accused no. 1 uttering the words, 'come out'. Even otherwise, it is evident from her statement as also the statement of P.W.3 that while knocking at the door, accused no. 1 identified him in response whereto only the door was opened. She, in her deposition, clearly stated that she had seen the accused killing B and R, but she added that only after becoming unconscious she did not see anything thereafter. [Para 7 and 8] [763-A-C]

C 2.3. S had not only proved the motive; she gave a detailed account of the entire incident. She knew the appellant from before. She accepted that her 'Sagai' ceremony with appellant had been performed. Except in regard to the time of occurrence, her statement remained unchallenged. The manner in which the two persons had been killed found sufficient support from the post mortem reports. The ante-mortem injuries found on the person of the deceased support the prosecution case. [Para 9] [763-D-F]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1106 of 2006.

From the Judgment and Order dated 24.06.2005 of the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal No. 611 of 2000.

E Javed Mahmud Rao for the Appellant.

F D.K. Singh, Dr. Indra Prakash Singh and C.D. Singh for the Respondent.

The Judgment of the court was delivered by

G S.B. SINHA, J. 1. Delay condoned.

H 2. On 09th October 1994 at about .30 a.m., a First Information Report (FIR) was lodged by one Nagu, father of one of the deceased Bhanwar Lal and the cousin of the second deceased Ram Lal, before the Officer-in-charge of Maksi Police Station in relation to an incident which had taken place at village Merukheri at about 2 or 2.30 a.m. on the said date. The prosecution case appears to be that 'Sagai' ceremony had been performed for marriage of

the appellant herein with Sitabai, P.W.16. However, her father refused to solemnize the said marriage as he had learnt that Ranjit was already married. Sitabai was married to Bhanwarlal. 'Bidai' ceremony took place a few days prior to the date of incident. In the FIR, it was stated by P.W.3-Nagu, that as Sitabai (P.W.16) was not keeping well she slept with his wife Kamlabai and daughter Sultantabai whereas Bhanwar Lal was sleeping in the next room. At about 2 or 2.30 a.m. on the intervening night of 8/9th October 1994, accused no 1. Sidhnath, his son Ranjit, the appellant herein and some other persons knocked at the door of the first informant. On the door being opened, the first informant was asked by the accused in regard to the whereabouts of Bhanwar Lal to which he replied that he was outside the house. Then, they shouted calling Bhanwar Lal and when he came out, he was assaulted with swords and 'pharsi' by the accused persons. Ram Lal, his cousin came out to protect Bhanwar Lal whereupon he was also assaulted with swords and 'pharsi'. As a result of the assault, both of them died on the spot. Accused thereafter fled away. P.W.16 Sitabai, however, stated that apart from Sidhnath and the appellant, a few more persons took part in the incident. Upon conclusion of investigation, altogether six persons were sent for trial for offence under Sections 147, 148, 149 and 302 of the Indian Penal Code. Before the learned Sessions Judge, apart from other witnesses, P.W.3-Nagu, P.W.4-Kamla Bai, P.W.5-Teju Bai (wife of deceased Ram Lal) and P.W.16-Sita Bai (wife of deceased Bhanwar Lal) were examined as eye witnesses. The learned Trial Judge believed the statements of all the eye witnesses. He held the named accused Sidhnath, Ranjit as also Jagdish, i.e., accused nos.1,2 and 4 respectively had committed the offence of murder of deceased Bhanwar Lal and Ram Lal. During the pendency of the trial, Jagdish and Sidhnath died. The learned Trial Judge held at the only surviving accused, viz., the appellant herein, guilty of commission of the offence under Section 302 and sentenced him to undergo rigorous imprisonment for life.

3. An appeal was preferred by the appellant before the High Court. Although the High Court did not place reliance upon the evidence of Teju Bai-P.W.5, agreeing with the findings of the learned Trial Judge, it dismissed the appellant's appeal.

4. Learned counsel appearing on behalf of the appellant, in support of this appeal would, *inter alia*, submit that the High Court committed a manifest error in arriving at its findings inasmuch as it had not considered a large number of discrepancies in the depositions of the so-called eye witnesses. Learned counsel would point out that P.W.3 had not been able to even

A identify the appellant in the court. Our attention was also drawn to the fact that he had even not been able to establish the purported motive behind commission of the offence. It was urged that Kamla Bai, mother of the deceased Bhanwar Lal, on her own showing, became unconscious and thus could not be an eye witness to the occurrence and in that view of the matter, the High Court committed an error in relying upon her deposition. So far as B the evidence of P.W.16 is concerned, learned counsel would submit that if her evidence is to be believed, the occurrence had taken place only at about 12.00 hours which goes against the prosecution case.

C 5. It was furthermore submitted that the prosecution case being based upon the purported recovery of the weapons of assault which had not been believed even by the learned Trial Judge, the High Court should have considered the defence case from that angle and ought to have arrived at a finding that the prosecution has not been able to prove its case beyond all reasonable doubt against the appellant herein. Learned counsel appearing on behalf of the State, on the other hand, would support the judgment. D

E 6. It is evident from the record that the FIR was lodged within a very short time. Occurrence took place in the early hours of the morning. Two persons lost their lives. P.W.3, the first informant had to travel a distance of about 12 Kms for lodging the FIR. He made an oral statement before the officer-in-charge of the concerned Police Station which was recorded in writing. F Indisputably, in the said FIR, the appellant, amongst others, had been named. Specific overt acts on his part had been alleged. Even the motive had been attributed. P.W.3 must have been told about the motive for commission of the said crime by Sita Bai at a later point of time which found place in the FIR. Even otherwise, utterances of the appellant, his father and other accused persons on the reason for commission of the crime clearly go to show that the motive for commission of the said offence was that against the wishes of Ranjit with whom 'Sagai' ceremony of P.W.16 Sitabai had been performed, her father refused to perform her marriage with him. The statements made in the FIR were reiterated by P.W.3 in his deposition before the learned Trial Judge. We do not find that the details of the said incident, which had been G stated by the first informant either in the FIR or in his deposition before the court, were subjected to any cross-examination as such. It is true that although P.W.3 had named Sidhnath and Jagdish, besides the appellant, he could not identify them in the court, he had categorically stated even in his examination-in-chief that as his eye-sight had become weak, he could not recognize them. H Therefore, his evidence could not be shattered.

7. He, therefore, in our opinion, gave sufficient explanation for not being able to identify them in the court. So far as the evidence of P.W.4 is concerned, her evidence must be read in its entirety. She had categorically stated that she had heard accused no.1 Sidhnath uttering the words, 'come out'. Even otherwise, it is evident from her statement as also the statement of P.W.3 that while knocking at the door, accused no.1 identified him in response whereto only the door was opened.

8. She, in her deposition, clearly stated that she had seen the accused killing Bhanwar Lal or Ram Lal, but she added that only after becoming unconscious she did not see anything thereafter.

9. In this view of the matter, we do not see any reason to differ with the findings of the learned Trial Judge as also the High Court in this behalf. As the High Court had not placed any reliance upon the evidence of Teju Bai P.W.5, we need not take into consideration the same. We may, however, notice that P.W.16 Sitabai had not only proved the motive; she gave a detailed account of the entire incident. She knew the appellant from before. She accepted that her 'Sagai' ceremony with Ranjit had been performed. Except in regard to the time of occurrence, her statement remained unchallenged. Only certain suggestions had been thrown to her which she had denied. As a matter of fact, save and except, pointing out the discrepancies in her evidence *vis-à-vis* the prosecution case in regard to the time of occurrence, learned counsel for the appellant had not been able to place before us anything which would lead us to disbelieve her statement. The manner in which the two persons had been killed find sufficient support from the post mortem reports. The ante-mortem injuries found on the person of the deceased as were found by Dr. Kuldip Shrivastava P.W.14 and Dr. D. K. Rathore P.W.7 support the prosecution case.

10. As the prosecution has been able to prove its case by bringing on record the evidence of at least three eye witnesses, who are the members of the family of the deceased, we are of the opinion that there is no merit in this appeal which is dismissed accordingly.

N.J.

Appeal dismissed.