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CHETU & ANR.

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No.132 of 2007)

DECEMBER 18, 2008

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[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

PENAL CODE, 1860:

ss. 302 and 342 – Wrongful confinement and murder – C *Close relative of accused found dead in his house – Portion of house burnt – FIR against accused, father and sons, that during an altercation they, armed with an axe and 'lathies' assaulted the victim and locked him in the house – Police recovered his dead body from the house – Conviction by trial* D *court affirmed by High Court – Jail appeal by accused sons – HELD: All 'panch' witnesses and informant were declared hostile – Contents of FIR not proved – Eye witnesses relied upon by courts did not state to have seen actual incident – Prosecution version not supported by medical evidence –* E *Despite clear discrepancies in evidence of so-called eye-witnesses, High Court committed serious error in holding that as the defence case could not be established, prosecution must be held to have proved its case – Judgment of High Court set aside – Accused-appellants acquitted.*

F **The appellants and their father were prosecuted for commission of offences punishable u/ss 436, 302 and 342 IPC on the allegations that on an altercation having taken place between the informant's father on the one side and three accused on the other, the latter armed with 'lathis' and axe assaulted the former and locked him in a room;** G **that the portion of the house in which the informant (PW-3) and his father were living was set on fire by the father of the appellants as a result of which the house was burnt. PW-3 was said to have lodged the FIR whereupon the police procured the key from the mother of the**

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appellants and recovered the dead body of the father of PW-3. The trial court convicted and sentenced the accused u/ss 302 and 342 IPC. The High Court having dismissed the appeal, the jail appeal of the appellants was filed.

Allowing the appeal, the Court

HELD:1.1. PW-3, the informant, in his evidence before the trial court denied and disputed that he had made any statement in the first information report, the manner in which the deceased was said to have been assaulted by the accused. This witness was declared hostile. The Public Prosecutor in his cross-examination although proved signature of PW-3 on the first information report but the contents therein were not proved. [Para 9 and 10] [1042-G-H; 1043-A]

1.2. PW-6 on whose evidence the trial court relied, did not see the actual occurrence. Evidence of this witness could not have been relied upon because, firstly, he did not see the occurrence and, secondly, there was no reason as to why the police did not record his statement. Enmity between him and the accused was also proved. PW-7, like PW-6, was also ill and had been staying in his house. He has stated to have seen the accused taking the dead body of the deceased into their house. After seeing this, he hid himself in his room. Both these witnesses did not disclose about their being a witness of the occurrence to any body. [Para 11 and 12] [1043-G-H; 1044-A-C]

1.3. As per the medical evidence, a large number of injuries were found on the person of the deceased, but there was no injury on the vital part of the body. No injury was found which could have been caused by any hard and blunt substance. A pointed wound was found which could not have been caused either by lathi or axe which are said to have been used for the commission of crime. Most of the wounds were bluish. All panch witnesses were declared hostile. [Para 13] [1044-E-F]

A **1.4. The accused and the deceased being closely related had a common boundary between their houses which are situated side by side. It is wholly unlikely that they would put fire to their own house. [Para 14] [1044-G-H; 1045-A]**

B **1.5. The approach of the trial court as also the High Court cannot be appreciated. Despite the clear discrepancies in the evidence of so-called eye-witnesses, the High Court committed a serious error in holding that as the defence could not prove its case, the prosecution** C **must be held to have proved its case. The judgment of the High Court, therefore, is set aside and the appellants are directed to be set at liberty. [Para 15] [1045-A-B]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.132 of 2007.

D From the Judgment and final Order dated 23.3.2006 of the High Court of Madhya Pradesh, Bench at Gwalior in Crl. Appeal No. 504 of 1997.

Chanchal Kumar Ganguli for the Appellants.

Aishwarya Bhati, C.D. Singh, Vairagya Vardhan Dubey, E Aditya Singh and Upasana Nath for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1.This Jail Appeal by appellants Chetu and Lalu, sons of Chintu, is directed against a judgment and order F dated 23.3.2006 passed by a Division Bench of the Madhya Pradesh High Court whereby and whereunder an appeal preferred against the judgment of conviction and sentence dated 19.9.1997 passed by the First Additional Sessions Judge, Ashok Nagar, District Guna convicting them as also their father Chintu under Section 302 and 342 of the Indian Penal G Code and sentencing them to undergo imprisonment for life and a fine of Rs.3,000/-, was affirmed.

2. The deceased Godha was father of Prakash (PW3). The accused Chintu was his uncle.

H The prosecution case in brief is that when the complainant

Prakash came back to his house from Ashok Nagar, an altercation took place between Godha (the deceased) on the one hand and Chintu, Chetu and Lalu on the other. Chintu was armed with an axe and the appellants herein were armed with lathis. They began to assault Godha. They put him in a room and locked him from outside. The portion of the house in which Prakash and his father were living was set on fire by Chintu as a result whereof the house was burnt. On enquiry from Jot Singh (PW11) and Navela (PW7), Alfo (PW8) wife of Chintu disclosed that he had been put inside the room.

3. The First Information was lodged by Prakash on 29.9.1991 before the Assistant Sub-Inspector, Ashok Nagar Police Station. On the basis of the said purported information, the said Shri Mahesh Singh Shukla (PW12) procured the key from the wife of Chintu and recovered the dead body. On completion of the investigation, a charge sheet was filed. The case was committed to the Court of Sessions.

Whereas the charges framed against accused No.1 were under Sections 436/302 and 342 of the Indian Penal Code, the charges framed against accused Nos.2 and 3 were under Sections436/34/302 and 342 of the Indian Penal Code.

4. The prosecution, in support of its case, examined 12 witnesses. All material witnesses including the first informant – Prakash turned hostile. His sister Lakshmibai was examined as a defence witness.

5. The learned Sessions Judge principally relying on the evidence of Lalliram (PW5) and Natha (PW6), and the other materials brought on record by the prosecution including the evidence of Dr. Natwar Singh (PW9) and the Investigating Officer (PW12) recorded a judgment of conviction and sentence.

6. An appeal preferred thereagainst has been dismissed by the High Court by reason of the impugned judgment, inter alia, opining :

"From the evidence on record, it is clear that the deceased sustained several injuries with deadly weapon. Due to

these injuries, some of them were fatal, he died in the night before any medical aid. It also appears that the body was recovered from the room of appellants and its key was in the possession of Alphobai, wife of appellant Chintu. According to postmortem report, 19 injuries were found on the deceased."

7. As regards the witnesses who were declared hostile including PW3 and the panch witnesses being Hartoom Singh (PW1), Rumal Singh (PW2) and Bribhan Singh (PW4) as also Alfobai (PW8), Prakash (PW3) and Jot Singh (PW11), it was held :

"Regarding hostile witness it is settled law that in case of hostile witness the whole testimony cannot be discarded and we can gather truth out of false. Deceased and appellants were closely related with complainant Prakash and his sister Laxmibai (DW1) who was residing with appellant Chintu. Therefore, due to natural love and affection they did not come with open mouth. Considering the ocular evidence available in the case and supported by medical evidence and looking to the circumstances of the case, we have no doubt in our mind that on the date of incident appellants inflicted injuries to the deceased by deadly weapons and injuries were fatal which caused the death of Godha (deceased)."

8. The High Court held that it was a clear case of murder which came within the purview of the clause 'thirdly' of Section 300 of the Indian Penal Code as the prosecution has proved that accused caused injury to the deceased which was sufficient to case death in the ordinary course of nature. The deceased was also wrongfully confined by them.

9. PW3, Prakash, the First Informant, in his evidence stated that the deceased reached the village in a drunken state. He was in an injured condition. According to him, as some hooligans were following him, it was he who had locked him in the room thinking that they would not be able to find him out. The hooligans, however, came to his house and put it on fire. He was declared hostile.

10. The learned Public Prosecutor in his cross-examination although proved his signature on the First Information but the contents therein were not proved. He denied and disputed that he had made any statement to the effect that after his father came, he had asked Dadji Chintu to transfer his portion of land in his name. He also denied to have made the statement in the First Information Report, the manner in which the deceased was said to have been assaulted by the accused. The prosecution, as noticed hereinbefore, inter alia, relied upon the evidence of one Natha who in his cross-examination stated as under:

> "I know all the accused who are present in the court. Four years ago, there was a fighting between Godha and Chetu, Chintu and Lallu in front of my door. It was about 9 p.m. Chetu and Lallu pulled away Godha in their house. After that screams of Chintu, Chetu and Lallu, who are heard. I was ill at that time. In the morning villagers inform that Godha was dead."

11. He, therefore, did not see the actual occurrence. In his cross-examination, he stated that he did not remember as to whether the night was dark or bright. According to him he had only heard the screams from his house. He did not hear any conversation between the deceased and accused persons. He did not interrupt them. He did not tell them anything. Nobody also told him anything about the incident. Acording to him, the Investigating Officer did not record his statement. He did not see any person in the village. He did not go to the police and the police had not recorded any statement till the date of his examination before the Court. He denied to have made any statement before the police. He accepted that accused persons had encroached his lands although the accused promised to give back his land, they did not fulfill the promise. Evidence of this witness, therefore, could not have been relied upon for more than one reason. Firstly, because he did not see the occurrence; secondly because there was no reason as to why the police did not record his statement. Enmity between him and the appellant was also proved.

12. Navela (PW7), in his deposition, stated that at about

A 9 pm, he heard a noise of quarrel through 'Kharanja'. Having heard the sound of lathis, he came out and saw that Chintu, Chetu and Lallu were taking the dead body of Godha into their house. After seeing this, he hid himself in his room (paur). Accused persons put the dead body of Godha in the house and B started abusing the neighbours. He saw fire at Godha's house. He did not know where the accused persons had gone. In his cross examination, he stated that he has no enmity with the accused persons for the last eight to ten years and that there is no groupism in their village.

C PW7, in his statement, categorically stated that he had not disclosed about his being a witness to the occurrence to anybody. According to him, he was asked by the Police Officer to give statement 'as per record' in his own words. He was asked by them to which they answered in the affirmative. He, like PW6, was also ill and had been staying in his house.

D 13. Dr. Natwar Singh found a large number of injuries on the person of the deceased – four injuries were found on left leg, three on the left hand, three on the right leg and eight on the right forehand. There was no injury on the vital part of the body. No injury was found which could have been caused by E any hard and blunt substance. A pointed wound was found which could have been caused either by lathi or axe which are said to be used for the commission of crime. Most of the wounds were bluish. Autopsy of the dead body took place on 30.9.1991.

F We have noticed hereinbefore that all panch witnesses were declared hostile. The veracity of the entire prosecution case should have been considered by the learned Trial Judge as also the High Court, keeping in view the aforesaid backdrop of events.

G 14. Another aspect of the matter must be borne in mind. The accused and the deceased being closely related had a common boundary between their houses which are situated side by side. It is wholly unlikely that they would put fire to their own house.

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15. The approach of the learned Sessions Judge as also the High Court cannot be appreciated. Despite the clear discrepancies in the evidence of so called eye-witnesses which we have noticed hereinbefore, the High Court, in our opinion, committed a serious error in holding that as the defence could not prove its case, the prosecution must be held to have proved its case. The impugned judgment, therefore, cannot be sustained. It is set aside accordingly.

16. The appeal is allowed. Appellants are directed to be set at liberty unless wanted in connection with any other case.

R.P. Appeal allowed.