STATE OF M.P. A

v.

LAAKHAN @ LAKHAN

(Criminal Appeal Nos. 177-178 of 2005)

APRIL 21, 2009 B

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

Penal Code,1860:

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Section 302 r/w 34 – Murder – Trial Court convicting the accused relying on the evidence of informant which according to it was cogent and reliable – High Court found the evidence not fully reliable and acquitted the accused – On appeal, Held: No question was raised about the authenticity of the FIR – High Court not justified in directing acquittal – Judgment of High Court set aside and that of trial court restored. D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 177-178 of 2005.

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From the Judgment & Order dated 25.04.2003 of the High Court of Judicature of Madhya Pradesh Jabalpur, Bench Gwalior, in Criminal Appeal Nos. 137 & 248 of 1995.

Vibha Dutta Makhija for the Appellant. F

Sanjeev Malhotra for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is G to the Judgment of a Division Bench of the Madhya Pradesh High Court, Gwalior Bench directing acquittal of the respondent who faced trial along with another named Kalkai who acquitted by learned IVth Additional Sessions Judge, Bhind. The

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A respondent was, however, found guilty of offence punishable under section 302 read with Section 34 Indian Penal Code, 1860 (in short 'IPC'). A nine month old child named Gautam was the victim. Prosecution version in a nutshell is as follows :

B A per F.I.R. (Ex. P/12) on 3.3.1993 Sheeladevi (PW11) with her nine months old son, the deceased, the respondent and one Kalkai had reached Mihona at 7.00 P.M. They proceeded on foot to village Banthari where respondent resided. On the way Kalkai took the child from Sheeladevi (PW-11) and gave him to the respondent. C Kalkai told that respondent would keep Sheeladevi (Pw-11) with him but not the child. Sheeladevi (Pw-11) insisted that child be given back to her. She does not want to live with the respondent. Thereafter, behind Balaji temple in Arhar field Kalkai caught the legs of the deceased child. D Respondent throttled his neck till death of the child. Sheeladevi (PW-11) shouted. Ranjit Singh (PW-12) Rajendra Singh (PW-3), Pradumn Singh (PW-7) and Devi Dayal (PW-4) came from the temple. Respondent and Kalkai were burying the deadbody. Seeing these E witnesses both the respondent and Kalkai filed way. Sheeladevi (Pw-11) rushed to police station Mihone and lidged FIR (Ex. P/12) within 1.5 hours. Investigation was undertaken.

F 2. After investigation charge sheet was filed. Charges were framed. Since the accused persons pleaded innocence, trial was held. The trial court relied on the evidence of the informant. Two other witnesses were examined to prove the complexity of the accused persons. They resiled from the G statement made during investigation. The trial court held version of PW1, the informant, to be cogent and credible and recorded conviction so far as the respondent is concerned. In appeal, the High Court found that the evidence of PW1 was not fully reliable and there was a great difference as regards the time of occurrence. PW11 stated that the occurrence took H

place between 2 to 3 A.M., while the prosecution version was that the same was around 7.00 P.M. The High Court concluded that even an illiterate rustic woman can differentiate between 7.00 P.M. in the evening woman can differentiate between 7.00 P.M. in the evening and 2 to 3 A.M. in the morning. Additionally, it was held that the accused was not caught and was later on arrested. Accordingly acquittal was directed.

3. In support of the appeal, learned counsel for the appellant submitted that the FIR was lodged at 9.00 P.M. So the death could not have taken place between 2 to 3 A.M. The High Court has lost sight of the traumatic experience of a rustic, illiterate woman. She had come a long way seeking shelter from a relative. It is the prosecution version that the accused Laakhan had agreed to keep PW-11 with him. There was a difference as to whether child was to be adopted and maintained by the accused. This appears to be the main cause for which the child was snatched and done to death.

4. Several important factors need to be noted. Firstly there is no dispute regarding lodging of FIR at about 9.00 P.M. The First information report itself noted that the date and time of occurrence was on 3.3.1993 at about 7.30 P.M. when the information was received at the police station and the *D. D.* Number 101 was made at 9.00 P.M. In the recital PW11 has categorically stated that the occurrence took place around 7.30 P.M. The statement recorded in court is to the effect that the first information report was accepted and lodged by her at the time indicated. It has been held by the High Court that the prosecution version vests fundamentally on the evidence of a single witness. Learned counsel for the respondent on the other hand submitted that it is not only the time factor which had weighed with the High Court to direct acquittal. Looking at the scenario *vis-a-vis* the co-accused the High Court has come to conclusion that PW1 was not a wholly reliable witness. There was change of spot of occurrence. It is further submitted that this Court should not interfere with the judgment of acquittal

A which deals with all the relevant aspects.

5. The background in which the incident allegedly took place cannot be lost sight of. Here the evidence of PW1 has to be tested in the light of the background facts. She was running from pillar to post to find a shelter for herself and her child who was nine months old. Some relatives had taken pity on her and had tried to find out a sympathetic person who would give shelter to her and her child. The evidence of PW11 has no deficiency except the time factor. There is no other discrepancy in her evidence to warrant rejection of her evidence. Even the evidence of a solitary witness can be sufficient to record conviction if the same is wholly reliable. No particular number of witnesses is necessary to prove any fact, as statutorily provided in Section 134 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). It is the quality and not the quantity of the evidence that matters. The court cannot take a closed view in such matters. It is to be noted that PW11 was a rustic illiterate lady before whose eyes her only child was killed. There is no particular reason as to why she would falsely implicate the accused. It the accused's version is accepted, she was a total stranger to her. Then the question arises why would such a person falsely implicate the accused. When the factum of death has been recorded in the FIR and the time given is around 7.00 P.M. the question of the incident taking place in the morning hours of the next day does not arise. As is rightly contended by learned counsel for the appellant, there has been no question raised about the authenticity of the FIR. That being so, the High Court was not justified in directing acquittal The judgment of the High Court is accordingly set aside and that of the trial court is restored. The respondent shall surrender to custody forthwith to serve the remainder of sentence.

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6. The appeals are allowed.

G.N. Appeals allowed.