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HIGH COURT OF CHHATTISGARH, BILASPUR

CORAM: Hon'ble Shri Rajeev Gupta, C.J. &
Hon'ble Shri Sunil Kumar Sinha, J.

Criminal Appeal No. 448 of 1993

Raju @ Rajesh Manikpuri

Vs.

State of Madhya Pradesh
(Now State of Chhattisgarh)

&

(And connected Acquittal Appeal No. 472 of 2010)

JUDGMENT

For consideration

Sd/-
Sunil Kumar Sinha
Judge

HON'BLE SHRI JUSTICE RAJEEV GUPTA

I agree.

Sd/-
Chief Justice

Post for Judgment : 14/12/2010

Sd/-
Sunil Kumar Sinha
Judge



39

HIGH COURT OF CHHATTISGARH, BILASPUR

**CORAM: Hon'ble Shri Rajeev Gupta, C.J. &
Hon'ble Shri Sunil Kumar Sinha, J.**

Criminal Appeal No. 448 of 1993

APPELLANT

Raju @ Rajesh Manikpuri son of
Shri Radheshyam Manikpuri, aged
about 18 years, Resident of
Shankar Nagar, Durg, District Durg,
M.P. (Now Chhattisgarh)

Versus

RESPONDENT

State of Madhya Pradesh
(Now State of Chhattisgarh)

**(Appeal under Section 374 (2) of The Code of Criminal
Procedure, 1973)**

Appearance:

Mr. V.K. Pandey, Advocate for the appellant.

Mr. Akhil Mishra, Dy. Govt. Advocate for the State/respondent.

And

Acquittal Appeal No. 472 of 2010

APPELLANT

State of M.P.
(Now State of Chhattisgarh)

Versus

RESPONDENTS

- 1 Sudip Agrawal (correct name Sandip
Agrawal), S/o Jagannath, 22 years,
R/o Naya Amapara, Durg
- 2 Khemlal alias Munna Yadav, S/o
Shankarlal Yadav, aged 21 years,
R/o Naya Amapara, Durg
- 3 Dilip Jaiaswal, S/o Kanahiya, aged
20 years, R/o Shankar Nagar, Durg

**(Appeal under Section 378 (1) of The Code of Criminal
Procedure, 1973)**



Appearance:

Mr. Akhil Mishra, Dy. Govt. Advocate for the appellant/State.
Mrs. Fouzia Mirza, Advocate for the respondents.

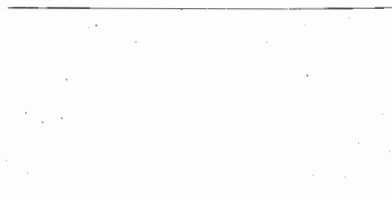
JUDGMENT
(16.12.2010)

Following judgment of the Court was delivered by
Sunil Kumar Sinha, J.

(1) These appeals have been filed against the judgment dated 4.5.93 passed in Sessions Trial No. 261/92 by the Fifth Additional Sessions Judge, Durg. Appellant- Raju @ Rajesh Manikpuri has challenged his conviction u/s 302 IPC, whereas, the State has challenged the acquittal of the 3 accused persons namely Sandip Agrawal, Khemlal @ Munna Yadav & Dilip Jaiswal who have been acquitted of the charges framed u/s 302/34 IPC.

(2) The facts, briefly stated, are as under:-

The case of the prosecution is that on 2.6.92 at about 8.00 p.m., Meera Bai (PW-1) and her son Rajesh (since deceased) were present in their house. Appellant- Raju @ Rajesh Manikpuri came to their house and took the deceased with him. After 5 minutes, the deceased came back in injured condition and fell in the house. Meera Bai (PW-1) asked about the injuries, on which he made oral dying declaration that he was assaulted by appellant/accused Rajesh Manikpuri, Khemlal, Sandip and Dilip. Rajesh Manikpuri assaulted him by knife and the other accused persons were holding him. After such statement, deceased- Rajesh became unconscious. He was taken to the hospital, where the Doctors declared him





dead. A *dehatinalishi* (Ex.-P/1) was recorded in the Hospital at the instance of Meera Bai (PW-1). The further case of the prosecution is that deceased- Rajesh was in love with the sister of appellant- Raju @ Rajesh Manikpuri. This was not acceptable to the appellant. For this reason, the accused persons called the deceased and assaulted him.

Though Isha Bai (PW-11) was cited as an eye-witness to the incident, but she did not support the case of the prosecution. Therefore, the case of the prosecution was based on two sets of evidence. First, Meera Bai (PW-1) and Babulal (PW-7) saw that appellant- Raju @ Rajesh Manikpuri had taken the deceased with him, therefore, the deceased was lastly seen in the company of appellant- Raju @ Rajesh Manikpuri; second, the deceased made oral dying declaration before his mother- Meera Bai (PW-1) and Babulal (PW-7).

The learned Sessions Judge found that it was not established that the 3 acquitted accused persons had also participated in crime in question. Therefore, they were acquitted of the charges framed against them. However the Sessions Judge relied on the testimony of Meera Bai (PW-1) and held that appellant- Raju @ Rajesh Manikpuri had taken the deceased from their house and thereafter he had assaulted the deceased by knife.

(3) Mr. V.K. Pandey, learned counsel appearing on behalf of appellant- Raju @ Rajesh Manikpuri submitted that the testimony of Meera Bai (PW-1) was not reliable; it was not established that the deceased was taken by appellant- Raju @ Rajesh Manikpuri; therefore, the conviction of the appellant cannot be sustained.





42

(4) Mrs. Fouzia Mirza, learned counsel appearing on behalf of the acquitted accused persons, submitted that there was absolutely no evidence to show that the above accused persons were involved in the said incident, therefore, their acquittal was fully justified.

(5) On the other hand, Mr. Akhil Agrawal, learned Dy. Govt. Advocate appearing on the behalf of the State, supporting the conviction of appellant- Raju @ Rajesh Manikpuri, submitted that, in fact, there is ample evidence on record to show that all the 4 accused persons were involved in commission of the aforesaid offence, therefore, the acquittal of the 3 accused persons was unjustified.

(6) We have heard the learned counsel for the parties and have also perused the records of the sessions case.

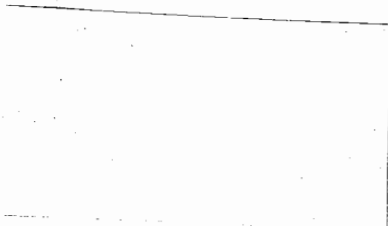
(7) Meera Bai (PW-1) deposed that on the fateful night at about 8.00 p.m., she was sitting in the courtyard of her house along with her tenant- Babulal (PW-7) and deceased- Rajesh. Appellant- Raju @ Rajesh Manikpuri came there to call Rajesh. He took her son Rajesh with him. Thereafter Rajesh came back in injured condition and told that Sandip, Dilip, Raju and another boy have assaulted him. He had received injuries on his face, chest and hands. He became unconscious. He was taken to the hospital in a *Rickshaw*, where he was declared dead. She deposed that she knows



appellant- Raju @ Rajesh Manikpuri because he used to visit her house.

(8) Babulal (PW-7) was tenant in the house of deceased Rajesh. He was a Constable in the Excise Department. He deposed that on the fateful night a boy came there to call deceased- Rajesh. Meera Bai (PW-1) asked him as to who is calling ? on which, the boy replied that Rajesh Manikpuri is calling the deceased. Deceased- Rajesh went along with the said boy. After 3-4 minutes, he returned back in injured condition. His mother asked as to who assaulted him ? on which Rajesh replied that 3 persons caught him and Raju assaulted him by knife. Babulal (PW-7) did not depose that deceased- Rajesh told the names of 3 persons to his mother. The learned Sessions Judge, appreciated the evidence of Meera Bai (PW-1) and Babulal (PW-7), and acquitted 3 accused persons by not believing the testimony of Meera Bai (PW-1) for the 3 acquitted accused persons.

(9) Isha Bai (PW-11) also did not disclose the name of any accused, including that of Rajesh Manikpuri. However she only stated that 2-3 boys ran away after assaulting deceased- Rajesh. She could not see as to who were they. According to Babulal (PW-7), appellant Rajesh Manikpuri had not come to call the deceased. He was some other boy and he told the mother of the deceased that Raju @ Rajesh Manikpuri is calling the deceased. His above





34

evidence has two impacts. Firstly, it destroys the theory of last seen with appellant- Raju @ Rajesh Manikpuri; and secondly that Meera Bai (PW-1) is making a false statement that the deceased was taken by appellant- Rajesh Manikpuri. It is on this account, the evidence of Meera Bai (PW-1) was not held reliable for the acquitted accused persons and even after taking their names by Meera Bai (PW-1) that deceased- Rajesh made dying declaration mentioning the names of these 3 accused persons also, was not believed by the Sessions Court. In the facts and circumstances of the case, particularly in light of the evidence of Meera Bai (PW-1) and Babulal (PW-7), we do not find any infirmity in the finding recorded by the Sessions Court that it was not established beyond all reasonable doubts that the 3 acquitted accused persons were involved in crime in question.

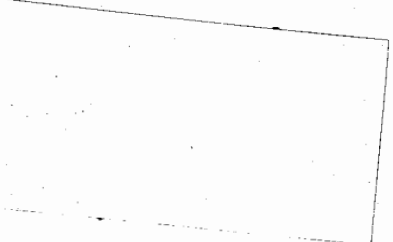
(10) So far as conviction of appellant- Raju @ Rajesh Manikpuri is concerned, we find that it is solely based on the oral dying declaration made before Meera Bai (PW-1). Meera Bai (PW-1) deposed that her son deceased- Rajesh was called by appellant- Raju @ Rajesh Manikpuri, whereas Babulal (PW-7) deposed that some other boy came to the house of the deceased and he took the deceased with him and he told the mother of the deceased that Raju @ Rajesh Manikpuri has called the deceased. As we have already stated, this makes clear that the deceased was not taken by appellant Raju @ Rajesh Manikpuri and the evidence of last seen becomes doubtful. Meera Bai (PW-1) deposed that the deceased





(45)

told the names of all the 4 accused persons in his oral dying declaration, whereas, Babulal (PW-7) deposed that the deceased told the name of Raju @ Rajesh Manikpuri alone. The Sessions Judge did not rely on the testimony of Meera Bai (PW-1) so far as acquitted accused persons are concerned. However taking into consideration the evidence of Meera Bai (PW-1) and Babulal (PW-7), appellant- Raju @ Rajesh Manikpuri has been held liable for conviction u/s 302 IPC. We do not find this approach of the Sessions Court to be correct. In fact, if it was held that deceased- Rajesh was not taken by appellant- Raju @ Rajesh Manikpuri and the deceased did not disclose the names of 3 acquitted accused persons, then the evidence of Meera Bai (PW-1) becomes partly unreliable. We must note that Meera Bai (PW-1) is the mother of the deceased. Her evidence was to be scrutinized with great care and caution. The history is that deceased Rajesh was in love with sister of appellant- Raju @ Rajesh Manikpuri and this was not acceptable to the appellant. In this background, the relations between the two families were not cordial. Therefore, we are of the considered view that it was not safe to rest the conviction of appellant- Raju @ Rajesh on the sole testimony of Meera Bai (PW-1) relating to the oral dying declaration allegedly made by the deceased, as she was held to be unreliable for the 3 accused persons by the Sessions Court.





(11) Besides the above, we find that the deceased had received 3 incised injuries, out of which injury No.1 was on the left side of the chest and the weapon used (knife) had penetrated into right ventricle of the heart. Meera Bai (PW-1) has also admitted in her cross-examination that deceased- Rajesh was becoming unconscious and his voice was not stable. We have our own doubts that after receiving such severe injury, whether the deceased would be in a position to state the names of the assailants. This also creates a doubt on the solitary evidence of oral dying declaration for which Meera Bai (PW-1) has been held to be unreliable for 3 accused persons.

(12) For the foregoing reasons, the conviction of appellant- Raju @ Rajesh Manikpuri does not appear to be based on clinching, cogent and reliable evidence and the same deserves to be set-aside.

(13) Accordingly, Criminal Appeal No. 448/1993 is allowed. The conviction and sentence awarded to appellant- Raju @ Rajesh Manikpuri u/s 302 IPC are set-aside. He is acquitted of the charges framed against him. It is stated that the appellant is on bail. His bail bonds are cancelled and surety stands discharged.

(14) Acquittal Appeal No. 472/2010 filed by the State is dismissed.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge