

DR. KRISHNA PAL AND ANR.

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v.

STATE OF U.P.

NOVEMBER 30, 1995

[G.N. RAY AND G.T. NANAVATI, JJ.]

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*Code of Criminal Procedure, 1973—Section 161—Recording of statement—Delay in—Effect of—If fatal to the prosecution's case.*

The appellants had prior animosity with the family of the deceased. It was alleged that the deceased was attacked by the accused appellants with knives in front of the shop of P.W. 6. Altogether sixteen injuries were inflicted on the body of the deceased resulting in his death on the spot. P.W. 1 who was the uncle of the deceased came to the place of occurrence after being informed about the incident and thereafter, he made a statement which was scribed by his relative and FIR was recorded on the basis of the said statement. The FIR mentioned the names of P.W. 2 and P.W. 3 as eye-witnesses but the name of P.W. 6 was not mentioned as an eye witness. During investigation, the statements of P.W. 2 and P.W. 3 was recorded after 3 weeks, whereas that of P.W. 6 was recorded after 56 days. The Trial Court held the appellants guilty of offence under Section 302 IPC read with sections 148 and 149 I.P.C. and the appeal of the accused persons to the High Court was dismissed.

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In the present appeals to this court, the appellants contended that the omission to mention P.W. 6 as an eye witness in the FIR as well as the inordinate and unexplained delay in examining the witnesses raises a strong suspicion against the genuineness of the case.

Dismissing the appeals, this Court

HELD : 1. P.Ws. 2, 3 and 6 have clearly established the prosecution case that the appellants caused the murder of the deceased by inflicting successive knife blows on his person. [27-G]

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2. It is not unlikely that P.W. 1 had not felt the need to specifically enquire from P.W. 6 as to whether he had seen the assailants because it has come out in the evidence that a number of persons were present at the

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A place of occurrence when P.W. 1 reached there and he talked to them including P.W. 6. It is also not unlikely that P.W. 6 also did not feel any necessity to give the names of the assailants because such names had already been given by other eye witnesses present there. [28-B]

3. In the instant case, no explanation has been given by the prosecution as to why the eye witnesses had not been examined shortly after the incident and from the materials on record it appears that there had been inordinate delay in examining the eye witnesses. But simply on that account the convincing and reliable evidences adduced in this case should not be discarded. The Investigating Officer had not been diligent enough but for that reason reliable and clinching evidences adduced in this case by the eye witnesses particularly by P.W. 6 should not be discarded. [28-C-D]

*Karnel Singh v. State of M.P.*, JT [1995] 6 SC 437, referred to.

D *Balakrushna Swain v. State of Orissa*, AIR (1971) SC 804; *Atmaduddin v. State of U.P.*, AIR (1974) SC 1901 and *Ranbir and Anr. v. State of Punjab*, [1973] 2 SCC 444, cited.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 443-44 of 1994 Etc.

E From the Judgment and Order dated 24.3.93 of the Allahabad High Court in Crl. A. No. 3062/79 with Crl. A. No. 3247/79.

M.C. Dhingra for the Appellants in Crl. A. No. 443-44/94.

F P.K. Dey, for Ms. Rani Jethmalani for the Appellants in Crl. No. 445-46/94.

Pramod Swarup for A.S. Pundir for the Respondent.

G The following Order of the Court was delivered :

These appeals are directed against the judgment dated March 24, 1993 passed by the High Court at Allahabad in Criminal Appeal No. 3062/79 and Criminal Appeal No. 3247/79. Both the aforesaid appeals were preferred by the accused-appellants against their conviction and sentence H passed by the learned Ist Additional Sessions Judge, Meerut in Sessions

Trial No. 5/79 under Section 302 read with Section 148 and 149 IPC and convicting the appellants for life imprisonment on the charge of murder and also convicting them under Section 148 IPC. The five appellants, namely, Trikha (A-1) his two sons, Sohanvir (A-2) and Amar Pal (A-3) his brother's son, Krishana Pal (A-4) and Veerpal (A-5) also a relation of Trikha, were prosecuted under Section 302 read with Sections 148 & 149 IPC for causing death of one Amar Pal on October 11, 1978 at about 12.30 P.M.

The prosecution case in short is that the family of the deceased Amar Pal and the family of Trikha had strained relations and there had been litigations between them. On October 11, 1976, when the deceased Amar Pal was suffering from headache he had been to the shop of Dr. Rajveer Singh (PW 6). The said doctor after examining the deceased had given him some medicine but when the deceased came out from the said shop, all the accused persons attacked him with knives and they inflicted sixteen injuries by knife on the deceased resulting his death on the spot. PW. 1 Zile Singh, the uncle of deceased, who was informed about the said incident rushed to the place of occurrence and thereafter he made a statement which was scribed by his relation and the same was sent to the police station which was about nine miles from the place of occurrence. The FIR was recorded at the police station at about 4.15 p.m. on the basis of fardbayan. It may be stated that in the said FIR the names of PW. 2 and 3 were mentioned as eye witness and the name of one Ranbir was also mentioned as an eye witness but the name of PW. 6 Dr. Rajveer Singh was not mentioned. On the basis of the said FIR, the police came to the place of occurrence and inquest of the dead body was made and the body of the deceased was sent for post-mortem examination. The doctor holding the post mortem examination has also been examined in this case.

Accepting that the prosecution case has been established beyond reasonable doubt, the learned Additional Sessions Judge convicted all the accused under Section 302 and Section 148 and 149 IPC and passed consequential sentence as indicated. The accused appellants thereafter preferred the aforesaid appeals before the Allahabad High Court which were dismissed by the Allahabad High Court by the impugned judgment dated March 24, 1993.

Mr. U.R. Lalit, the learned Senior Counsel appearing for the appellants

A Lants in Criminal Appeal No. 443 and 444 of 1994 has submitted that in the instant case, the eye witnesses had not been examined by the police immediately after the incident. On the contrary, there had been an inordinate delay which has not been explained by the prosecution. He has submitted that PW. 2 Ram Saran and PW. 3 Attar Singh were examined almost after three weeks and the other eye witness namely PW. 6 Dr. Rajveer Singh was examined almost after about 56 days of the date of occurrence. Mr. Lalit has submitted that in the instant case, there had been change of investigation officer, and PW. 9 Atma Singh who investigated the case earlier was changed and Sri Prem Singh was given the charge of investigation of the case. It has come out in the evidence that Atma Singh handed over such charge of investigation to Sri Prem Singh only on October 26, 1979. Hence, there had been sufficient time for the said Investigation Officer Attar Singh to examine the eye witnesses. Mr. Lalit has submitted that it has also come out in evidence that the witnesses were available for examination and excepting in one case where the witness has stated that he was absent for about five-six days, there is no material to support that there was any difficulty in examining the said eye witnesses earlier. Mr. Lalit has submitted that such inordinate delay in examining the eye witnesses raises a strong suspicion that during the long span of time before they were examined for the first time by the police, it is quite likely that the witnesses had occasion to consult with others and come out with a false case in support of the prosecution.

Mr. Lalit has also submitted that the doctor holding post mortem examination has noted two lacerated wounds on the person of the deceased and it has been sought to be explained by the prosecution by contending that the deceased had dashed against the wall when attacked by the accused. Such fact, however, was not stated by PW.2 Ram Saran in his examination under Section 161 Criminal Procedure Code. In his deposition, however, the said witness Ram Saran stated that the head of the deceased got dashed against the wall. Mr. Lalit has submitted that such improvement in the deposition was made by Ram Saran after coming to know that in the post mortem report lacerated wounds were noted which could not have been caused by the knife. Mr. Lalit has also submitted that both the eye witnesses PW. 2 and 3 are related to Zile Singh and the family of the deceased. Accordingly, their evidences should be considered with much circumspection. He has also submitted that the other eye witness Ranvir though mentioned in FIR has not been examined and no explana-

tion has been given as to why he has been left out. So far as PW. 6 A Dr. Rajveer Singh is concerned, Mr. Lalit has submitted that the said doctor was examined after 56 days of the date of incident and as aforesaid, no explanation whatsoever for such inordinate delay has been given by the prosecution. Mr. Lalit has also indicated that it transpires from the evidence of Zile Singh that he had talked to Dr. Rajveer Singh about the incident and only after such talk with Dr. Rajveer Singh, the statement constituting the FIR was scribed. Under such circumstances, the name of Dr. Rajveer Singh being the most important eye witness, ought to have been mentioned by the said Zile Singh in the FIR. Non-mentioning of the name of Dr. Rajveer Singh, only indicates that Dr. Rajveer Singh had not seen the occurrence but later on, his name was introduced as an eye witness. B C

Mr. Lalit has submitted that the courts below have placed reliance on the evidence of Dr. Rajveer Singh but for the aforesaid reasons his evidence should not be held to be reliable for basing the conviction on a serious charge of murder. In this connection, Mr. Lalit has referred two decisions of this Court in *Balakrushna Swain v. State of Orissa*, AIR (1971) SC 804 and *Atmaduddin v. State of U.P.*, AIR (1974) SC 1901. In the said decisions, it has been indicated by this Court that the implication of inordinate delay in examining eye witnesses, if not properly explained, should receive proper attention of the court for the purpose of deciding the credibility of the eye witnesses who were examined by the police after inordinate delay. Mr. Lalit has submitted that it has come out in the evidence of Sri Attar Singh that Dr. Rajveer Singh had been standing in front of his shop and he asked the people assembled there to save the deceased. He has submitted that if this evidence is accepted, it is reasonably expected that the name of Dr. Rajveer Singh ought to have been mentioned in the FIR and he should have been examined by the Investigating Officer at the first place. Mr. Lalit has also submitted that PW. 2 also changed the site from where he first heard the noise in connection with the commission of the said offence. About such place, there is contradiction in his statement before the police, under Section 161 Criminal Procedure Code and in his deposition before the Court. Even though isolately such contradiction may not be of much importance but if all the aforesaid facts are taken into consideration in their proper perspective, the prosecution case should not be accepted to have been proved beyond reasonable doubt. If there is any occasion to doubt in the facts and circumstances of the case D E F G H

A that the prosecution case may not be correct, the benefit of such doubt should go to the appellants. He has therefore, submitted that the conviction and sentence passed against the appellants should be set aside by allowing these appeals.

B The learned counsel appearing for the appellant in Criminal Appeal Nos. 445-446 of 1994 has also adopted the aforesaid submissions made by Mr. Lalit. He has further contended that in the Panchnama of the inquest of the deceased, the number of the crime and Section under which the crime had been committed, were not mentioned. Such omission reasonably indicates that the FIR was brought into existence at a later point of time.

C The learned counsel has also submitted that the doctor holding the post-mortem examination has also stated that the death might have occurred even earlier. The learned counsel has also submitted that it has come out in the evidence of Zile Singh that if somebody goes to the shop of Dr. Rajveer Singh from the house of Zile Singh and the deceased, the houses of the accused do not come on the way. He has submitted that there is evidence to the effect that the deceased suddenly suffered from headache and had gone to the shop of Dr. Rajveer. In such circumstances, it is highly unlikely that all the accused could know of his movement and would come to the shop for the assault. He has also submitted that in the site plan prepared by the Investigating Officer, it has not been mentioned as to where the two eye witnesses namely PW. 2 and 3 had been standing. The absence of such location where the said eye witnesses had been standing, according to the learned counsel, only indicates that the said eye witnesses were not present at the place of occurrence but later on they have been introduced as eye witnesses. He has therefore submitted that the case of the prosecution appears to be highly doubtful and no conviction can be based against the appellants and the appeal should be allowed by passing an order of acquittal in their favour.

G Mr. Pramod Swarup, the learned counsel appearing for the State, in all the appeals, has, however, refuted the aforesaid contentions made by the learned counsel for the appellants. He has submitted that although in the instant case, the delay in examining the eye witnesses has not been properly explained because proper materials have not been placed on record, but for such delay the convincing and reliable evidences given by the eye witnesses should not be discarded. In support of such contention,

H Mr. Swarup has referred to a decision of this Court in *Ranbir and Another*

v. *State of Punjab*, [1973] 2 SCC 444. Mr. Swarup has submitted that PW. 2 and 3 are not at all close relations of Zile Singh or the deceased and even if they had some distant relationship with the family of the deceased, there is no material on the record to indicate that they were partisan or had occasions to be partisan and as such they were likely to give false evidence against the appellants charged for murdering the deceased. Mr. Swarup has also submitted that Dr. Rajveer Singh is a respectable witness and is not related to the parties and his evidence is fully reliable and without any inconsistency. Such evidence, therefore, is not liable to be discarded. He has also submitted that his evidence also stands corroborated by the evidences of other two eye witnesses, Ram Saran and Attar Singh. Mr. Swarup has submitted that although Ranbir Singh has not been examined by the prosecution, such non-examination of Ranbir does not affect the prosecution case in any manner whatsoever. He has contended that it is the quality of evidence and not the numerical strength of the witnesses examined in a case that matters. Mr. Swarup has submitted that all the eye witnesses have specifically stated that being attacked by the accused persons, the head of the deceased got dashed against the wall which explains the lacerated injuries noted by the doctor holding that post mortem examination. He has also stated that blood mark was also noted by Investigating Officer on the wall where the head of the deceased got dashed. He has submitted that the post-mortem report reveals that sixteen injuries were caused by the knives on the person of the deceased and such injuries also support the prosecution case that the deceased were attacked by a number of persons and each one of the accused had inflicted injuries on the person of the deceased. Mr. Swarup has submitted that as the evidence adduced by the prosecution in this case did not suffer from any infirmity or inconsistency for which they were liable to be discarded, both the learned Sessions Judge and the High Court had no hesitation in accepting the same and convicting the accused. He has, therefore, submitted that no interference is called for by this Court and the appeals should be dismissed.

After considering the respective submission made by the learned counsel for the parties and also the evidences adduced in the case through which we have been taken, it appears to us that PW. 2, 3 and 6 namely Ram Saran, Attar Singh and Dr. Rajveer Singh have clearly established the prosecution case that the appellants caused the murder of the deceased on October 11, 1978 by inflicting successive knife blows on his person. It appears to us that PW. 1 Zile Singh, the uncle of the deceased, is not eye

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- A witness of the occurrence but having received information, he came to the spot and then dictated the Fardbayan on the basis of the report received by him. It has come out in the evidence that a number of persons were present at the place of occurrence when Zile Singh reached there and he talked to them including Dr. Rajveer Singh. In the aforesaid circumstances, it is not unlikely that Zile Singh had not felt the need to specifically enquire from Dr. Rajveer Singh as to whether he had seen the assailants. It is also not unlikely that Dr. Rajveer Singh also did not feel any necessity to give the names of the assailants because such names had already been given by other eye witnesses present there. In the instant case, no explanation has been given by the prosecution as to why eye witnesses had not been examined shortly after the incident and from the materials on record it appears that there had been inordinate delay in examining the eye witnesses. But simply on that account, the convincing and reliable evidences adduced in this case should not be discarded. The Investigating Officer in his deposition has also admitted that through mistake he omitted to mention the crime No. in the inquest report. It appears to us that the Investigating Officer had not been diligent enough but for that reason we do not feel that reliable and clinching evidences adduced in this case by the eye witnesses particularly by Dr. Rajveer Singh should be discarded. In this connection, we may refer to a recent decision of this Court in *Kamel Singh v. State of M.P.*, Judgment Today (1995) 6 SC 437. In the said decision, it has been indicated by this Court that in a case of defective investigation, it would not be proper to acquit the accused if the case is otherwise established conclusively because in that event it would tantamount to be falling in the hands of an erring Investigating Officer. As we do not find any reason to disbelieve the testimonies given by eye witnesses of this case, we do not find any reason to take a contrary view and to interfere with the impugned judgment. These appeals, therefore, are dismissed.

B.K.M.

Appeals dismissed.