SURENDRA PASWAN A

v.

STATE OF JHARKHAND

NOVEMBER 28, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.] B

Criminal Trial:

Eye witnesses had seen bullet fired by the accused on the deceased—Later on, a bullet was found embodied in the dead body of the deceased— C *Bullet not sent for chemical examination—Whether fatal to the prosecution case—Held, no—When the evidence given by the eyewitnesses are credible, cogent and trustworthy, merely because the bullet was not sent for ballistic examination, it would not outweigh the testimonial worth of the eyewitness.*

Minor injuries on the body of the accused in the same occurrence— D *Medical evidence not brought before the court—Whether fatal—No—It is not an invariable rule that the prosecution has to explain the injuries sustained by the accused—When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt it becomes hardly necessary for the pros-* E *ecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused.*

The deceased and accused were in the same trade union. Deceased joined another union. When deceased and his son PW-4 had gone to F **take tea near the shop of PW-5, PW-1 and PW-2 were also sitting near the shop. Suddenly the four accused persons came from the side of the road. A3 came towards PW-4 and the deceased and directed that the deceased should be assaulted. On hearing this, the Appellant took out a pistol from his waist and fired at the deceased. Bullet hit the left eye of the deceased as a result of which he fell on the ground. He was taken** G **to hospital where he was declared dead.**

Placing reliance on the evidence of the eyewitnesses, the trial court convicted the accused persons. Appeal was filed before the High Court. A-1 died during the pendency of the appeal, A-2 and A-3 were H

A given benefit of doubt and were acquitted. However the conviction of Appellant was confirmed by the High Court. Hence the appeal.

It was contended by the Appellant that though the prosecution case was that one bullet was fired, the investigating officer during the B course of evidence had stated that he recovered a pallet; that the bullet which was found embodied on the body of the deceased was extracted by the doctor who had handed it over to police and the same was not sent for chemical examination; the injuries on the accused were not explained by the prosecution and the investigation was perfunctory as the medical report of the Appellant was not even collected and seized C bullet was not sent for ballistic examination which was fatal to the prosecution case.

It was contended by the State that three eyewitnesses specifically deposed regarding the place of occurrence, the manner of assault and D gave detailed description of the entire scenario; that the Trial Court as well as the High Court had found the evidence credible, cogent and trustworthy; that merely because the bullet was not sent for chemical examination, it would not be a factor which would outweigh the testimonial worth of the eyewitnesses.

E

Dismissing the Appeal, the Court

HELD : 1. Non-explanation of injuries by the prosecution would not affect the prosecution case where injuries sustained by the accused F were minor or superficial or where the evidence was so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of the prosecution to explain the injuries. Prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put question to the prosecution witness regarding G the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witness to explain any injury on the person of an accused. Obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. When the prosecution comes with a definite H case that the offence has been committed by the accused and proves

it beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances the injuries have been inflicted on the person of the accused. It is not so when the injuries are simple or superficial in nature. In the case at hand, trifle and superficial injuries on accused are of little assistance to them to throw doubt on the veracity of prosecution case. [328-E-H; 329-A, B]

1.2. Non-explanation of injuries may assume greater importance where the defence gives a version, which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence and consequently the whole case. [328-C-D]

Mohan Rai and Bharat Rai v. *The State of Bihar,* [1968] 3 SCR 525; *Lakshmi Singh & Ors.* v. *State of Bihar,* [1976] 4 SCC 394 and *Vijayee Singh Ors.* v. *State of U.P.,* AIR (1990) SC 1459, relied on.

Sukhwant Singh v. *State of Punjab,* AIR (1995) SC 1601; *Ramlagan Singh* v. *State of Bihar,* AIR (1972) SC 2593 and *Hare Krishan Singh & Ors.* v. *State of Bihar,* AIR (1988) SC 863, referred to.

2. So far as the non-seizure of blood from the cot is concerned, the investigating officer had stated that he found blood stained earth at the place of occurrence and had seized it. Merely because it was not sent for chemical examination, it may be a defect in the investigation but does not corrode the evidentiary value of the eyewitnesses. The investigating officer did not find presence of the blood on the cot. The trial court and the High Court had analyzed this aspect. It has been found that after receiving the bullet injury, the deceased leaned forward and whatever blood was profusing spilled over to the earth. [329-C-D]

3. The prosecution case will not fail only because the bullet having been not sent for chemical examination. [329-E]

Sukhwant Singh v. *State of Punjab,* AIR (1995) SC 1601, distinguished.

4. It has to be noted that there was not even a suggestion to any of the prosecution witness that the injuries were sustained by the accused appellant in the manner indicated by him, as stated for the first time in the statement under Section 313 Cr.P.C. [329-G]

5. So far as the confusion relating to bullet and pallet is concerned the same has been clarified by the doctor's evidence in his examination who had categorically stated that there was only one injury on the body of the deceased and no other injury was found anywhere on the person of the deceased. Therefore, the question of the deceased having received any injury by a pallet stated to have been recovered by the investigating officer is not established. The investigating officer had clarified that the bullet embodied was given to the police officials by the doctor, which was initially not produced as it was in the Mikhana but subsequently the witness was recalled and it was produced in court. [329-H; 330-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 20 of 2003.

From the Judgment and Order dated 22.4.2002 of the Jharkhand High Court at Ranchi in Crl. A. No. 112 of 1996 (R).

A. Sharan, Mrs. Poonam Sinha, Samir Ali Khan and Irshad Ahmad for the Appellant.

Anil Kumar Jha for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. One Barhan Das (hereinafter referred to as the deceased) paid price for changing his loyalty from one trade union to another and Surendra (hereinafter referred to as the 'accused') was said to be instrumental in taking away his life. Four persons faced trial for alleged commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short the 'IPC'). The trial Court convicted them accordingly. The matter was carried in appeal before the Jharkhand High Court which by the impugned order dismissed the appeal filed by the accused appellant and held that accusations under Section 302 IPC have been made out against him who was accused No. 4 before the

trial Court. Kedar Dusadh (A-1) died during the pendency of the appeal before the High Court. Chandrika Das (A-2) and Krishna Kumar (A-3) were given the benefit of doubt and their acquittal was directed.

Prosecution version as unfolded during trial is as follows:

At about 9.30 a.m. on 1.8.1995 the deceased and his son Satyendra Das (PW-4) had gone to take tea near the shop of one Siyaram (PW-5). Hira Sao (PW-1) and Ravindra Sao (PW-2) were also sitting near the shop. Suddenly, the four accused persons came from the side of the road. Accused Krishna Kumar came towards the informant (PW-4) and the deceased and directed that the deceased should be assaulted. On hearing this, accused appellant Surendra took out a pistol from his waist and fired at the deceased. The bullet hit left eye of the deceased. After such firing all the four accused persons fled away. On receiving the bullet injury, deceased fell down and became unconscious. The informant with the help of others took him to nearby hospital where he was declared dead. According to the information given at the police station on which investigation was started, the four accused persons were working in the Katras Colliery. The deceased was a labour leader. Since he left the union to which the accused persons belonged and joined another union, this has caused annoyance to the accused persons and because of this, the murder was committed. After completion of investigation charge sheet was placed. The accused persons pleaded false implication.

Placing reliance on the evidence of the eye-witnesses, the trial Court convicted the accused persons and the conviction was maintained by the High Court so far as only the accused appellant is concerned. The High Court's judgment is under challenge in this appeal.

Learned counsel for the appellant submitted that the information given by the informant cannot be treated as a first information report as the police officials had already received information about the incident. Therefore, the statement made was hit by provisions of Section 162 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). The place of occurrence has been changed as no blood was seized from the cot where the deceased was purportedly sitting at the time of attack. The so-called eye witnesses had stated that blood had spilled over to the cot. Though the prosecution case is that one bullet was fired, the investigating officer at

certain stages in his statement in Court has stated that he recovered a pellet. Bullet and pellet are different things. The prosecution has suppressed the actual scenario and this is evident from the different types of ammunition deposed about. The bullet which was found embodied on the body of the deceased was extracted by the doctor who had handed it over to the police officials. The same was not sent for chemical examination. Therefore, the conviction cannot be maintained. Additionally, the investigating officer had accepted that the accused appellant was found at a distance of about 50 feet from the place of occurrence in an injured and unconscious stage which necessitated his admission to hospital. The injuries on the accused were not explained by the prosecution and the investigation was perfunctory as is evident from the accepted fact that the medical report of the accused-appellant was not even collected and seized bullet was not sent for ballistic examination. Strong reliance was placed on the decision of this Court in *Sukhwant Singh* v. *State of Punjab*, AIR (1995) SC 1601 to contend that same was fatal to the prosecution case. In the statement under Section 313 of the Cr.P.C. the accused appellant had taken a definite stand that a shot was fired by the deceased which did not hit him and the deceased and Satyendra Das, Munna Das, Hira Sao and Ravindra Sao assaulted him and made him senseless. The injuries were of serious nature. The defence version was more probable and therefore the conviction should be set aside was the plea.

In response, learned counsel for the State submitted that three eye-witnesses specifically deposed regarding the place of occurrence, the manner of assault and gave detailed description of the entire scenario. The trial Court and the High Court have analysed their evidence and found to be credible, cogent and trustworthy. That being the position, there is no scope for interference in this appeal. Further, there was a confusion between bullet and pellet which has been clarified by the investigating officer. Merely because the bullet which was extracted by the doctor was not sent for chemical examination, it would not be a factor which would outweigh the testimonial worth of the eye-witnesses. The injuries have not been established by the accused to have been sustained in course of the incident as per the prosecution version. There was not even any suggestion about the defence version to any of the prosecution witnesses and for the first time while giving statement under Section 313 Cr.P.C. the plea has been taken.

We shall first deal with the question regarding non-explanation of injuries on the accused. Issue is if there is no such explanation what would be its effect? We are not prepared to agree with the learned counsel for the defence that in each and every case where prosecution fails to explain the injuries found on some of the accused, the prosecution case should automatically be rejected, without any further probe. In *Mohar Rai and Bharath Rai* v. *The State of Bihar,* [1968] 3 SCR 525, it was observed:

> "...In our judgment, the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants."

In another important case *Lakshmi Singh and Ors.* v. *State of Bihar,* [1976] 4 SCC 394, after referring to the ratio laid down in *Mohar Rai's* case (supra), this Court observed:

> "Where the prosecution fails to explain the injuries on the accused, two results follow:
>
> (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants."

It was further observed that:

> "In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:
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> (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
>
> (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable;

A (3) that in case there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

B In *Mohar Rai's* case (supra) it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate not wholly true. Likewise in *Lakshmi Singh's* case (supra) it is observed that any non-explanation of the injuries on the accused by the C prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries are not D explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case. Much depends on the facts and circumstances of each case. These aspects were highlighted by this Court in *Vijayee Singh and Ors.* v. *State of U.P.*, AIR (1990) SC 1459.

E Non-explanation of injuries by the prosecution will not affect prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it out-weighs the effect of the omission on the part of prosecution to explain the injuries. As observed by this Court in *Ramlagan Singh* v. *State of Bihar,* F AIR (1972) SC 2593 prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In *Hare* G *Krishna Singh and Ors.* v. *State of Bihar,* AIR (1988) SC 863, it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. H If the witnesses examined on behalf of the prosecution are believed by the

Court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifle and superficial injuries on accused are of little assistance to them to throw doubt on veracity of prosecution case.

So far as the non seizure of blood from the cot is concerned, the investigating officer has stated that he found blood stained earth at the place of occurrence and had seized it. Merely because it was not sent for chemical examination, it may be a defect in the investigation but does not corrode the evidentiary value of the eye-witnesses. The investigating officer did not find presence of blood on the cot. The trial Court and the High Court have analysed this aspect. It has been found that after receiving the bullet injury the deceased leaned forward and whatever blood was profusing spilled over to the earth.

So far as the effect of the bullet being not sent for chemical examination, it has to be noted that *Sukhwant Singh's* case (supra) is not an authority for the proposition as submitted that whenever a bullet is not sent for chemical examination the prosecution has to fail. In that case one of the factors which weighed with this Court for not finding the accused guilty was the prosecution's failure to send the weapon and the bullet for ballistic examination. In the instant case, the weapon was not seized. That makes a significant factual difference between *Sukhwant Singh's* case (supra) and the present case.

It has to be noted that there was not even a suggestion to any of the prosecution witnesses that the injuries were sustained by the accused-appellant in the manner indicated by him, as stated for the first time in the statement under Section 313 Cr.P.C.

So far as the confusion relating to bullet and pellet is concerned, the same has been clarified by the doctor's evidence. In his examination the doctor (PW-3) has categorically stated that there was only one injury on

A the body of the deceased and no other injury was found anywhere on the person of the deceased. Therefore, the question of the deceased having received any injury by a pellet stated to have been recovered by the investigating officer is not established. The investigating officer has clarified that the bullet embodied was given to the police officials by the B doctor which was initially not produced as it was in the Malkhana but subsequently the witness was recalled and it was produced in Court.

Though it may not be having any determinative value, certain suggestions given to the witnesses make interesting reading. A question was put to PW-4 in cross examination which reads as follows:

C

"x x x x x

It is not correct that Hira, Ravindra did not run to catch the accused persons, rather they themselves ran away".

D

This in a way probabilises the prosecution version and does not in any way establish the defence version as is indicated for the first time in the statement under Section 313 Cr.P.C. and has pleaded before this Court to be a ground for doubting the veracity of the prosecution version.

E The well reasoned judgments of the trial Court and the High Court do not need any interference. The appeal is without any merit and is dismissed.

R.K.S. Appeal dismissed.