MISHRILAL AND ORS.

v.

STATE OF M.P. AND ORS.

MAY 11, 2005

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

Penal Code, 1860—Sections 302 r/w 149 & 148—Murder—On facts, evidence of the eye-witnesses coupled with the medical evidence satisfactorily proved that the accused-appellants had committed the offence as alleged by the prosecution—Hence no reason to interfere with the conviction and sentence of appellants as recorded by the courts below.

Criminal Trial:

Recalling of witness—Witness examined in-chief and cross-examined fully, could not be recalled and re-examined to deny the evidence he had already given before the Court, even though he had given an inconsistent statement before another Court subsequently.

Witness giving false evidence—Courts should take serious action against such witness.

According to the prosecution, PW1, PW2 and father of PW3 were grazing cattle in their fields, when the four accused-appellants allegedly came there alongwith their accomplices armed with various weapons such as axe and lathi and attacked PW3's father and PW2, leading to the death of the former. Sessions Court relying on the evidence of PW1 to PW3 convicted the appellants under Section 302 r/w Section 149 IPC, and also under Section 148 IPC. High Court too accepted the evidence of PW1 to PW3 and accordingly affirmed the conviction and sentence of the appellants. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. It cannot be accepted that due to paucity of light, the witnesses had no opportunity to identify the assailants for the reason that the incident is alleged to have happened at about 6 O'Clock in the evening and the prosecution case is that deceased as well as PW 1 and PW 2 were

A grazing the cattle in their field at that time and there would not have been much darkness. Moreover, in the cross-examination of PW 1, there is not even a suggestion that there was no light and they were unable to see the incident, though, of course, there was a suggestion to the effect that the witnesses PW 1 and PW 2 must have been standing at a distance.

[261-H; 262-A, B]

B

2. The procedure adopted by the Sessions Judge was not strictly in accordance with law. Once the witness was examined in-chief and cross-examined fully, such witness should not have been recalled and re-examined to deny the evidence he had already given before the court, even C though that witness had given an inconsistent statement before any other court or forum subsequently. A witness could be confronted only with a previous statement made by him. At the time of earlier examination of PW 2, there was no such previous statement and the defence counsel did not confront him with any statement alleged to have been made previously. This witness must have given some other version before the Juvenile Court D for extraneous reasons and he should not have been given a further opportunity at a later stage to completely efface the evidence already given by him under oath. The courts have to follow the procedures strictly and cannot allow a witness to escape the legal action for giving false evidence before the court on mere explanation that he had given it under the E pressure of the police or some other reason. Whenever the witness speaks falsehood in the court, and it is proved satisfactorily, the court should take serious action against such witnesses. [262-F, G, H; 263-A]

3. The plea that there is no evidence to show that appellant no.1 and a co-appellant caused injuries with an axe and that there is no F corresponding incised injury on the head of the deceased and hence the medical evidence is in conflict with the evidence of the eye-witnesses is also not correct as the post-mortem certificate shows that there was an injury on the head of the deceased which must have been caused by appellant no.1. Injury nos. 1 and 3 are on the left fronto-temporo parietal region and mid parietal region. The blunt edge of the axe must have been G used to cause these injuries. [263-D-E]

4. The evidence of the three witnesses, namely PWs1 to 3, coupled with the medical evidence satisfactorily proved that the appellants had committed the offence as alleged by the prosecution. There is, therefore, no reason to interfere with the conviction and sentence entered against H

the appellants. [263-F] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 939 of 2004.

From the Judgment and Order dated 5.8.2003 of the Madhya Pradesh High Court in Crl. A. No. 255 of 1992. B

N.P. Midha, Ms. Rajshri Shivale and Ashok Mathur for the Appellants.

Ms. Vibha Datta Makhija for the Respondents.

The Judgment of the Court was delivered by C

K.G. BALAKRISHNAN, J. The four appellants along with two others were found guilty of the offence punishable under Section 302 read with Section 149 IPC. They were also found guilty of the offence under Section 148 IPC. The appellants preferred an appeal before the High Court and the same was dismissed. Hence, they challenge their conviction and sentence in D this appeal.

The incident giving rise to the present appeal happened on 22.7.1990 at about 6.00 p.m. PW-1 Kammod, PW-2 Mokam Singh and deceased Balmukund were grazing the cattle in their fields. The appellants along with their accomplices came there and attacked Balmukund and PW-2 Mokam E Singh. Appellants Mishrilal and Lallu @ Lalaram were armed with axe and A-3 Kamoda @ Kamod Singh was armed with 'lathi' while A-4 Narayan Singh was armed with a 'Luhangi.' The prosecution case is that all of them caused injuries to deceased Balmukund. PW 1 Kammod later went to the Police Station at Bajranggarh and gave information about the incident. F

On the side of the prosecution, 8 witnesses were examined. PWs 1 to 4 are eye witnesses. The evidence of PW 4 Mathura Lal was not accepted by the Sessions Judge as his name was not mentioned in the F.I. Statement. The Sessions Court relied on the evidence of PW 1 to PW 3. The High Court also accepted the evidence of PW 1 to PW 3. G

We heard the learned Counsel for the appellants and learned Counsel on behalf of the respondents. The learned Counsel for the appellants seriously contended before us that the incident happened after the sunset and these witnesses could not have identified the assailants. It was pointed out that these witnesses were standing at a distance and due to paucity of light, they H

had no opportunity to identify the assailants. We are not inclined to accept this contention, for the reason that the incident is alleged to have happened at about 6'o Clock in the evening and the prosecution case is that deceased Balmukund as well as PW 1 and PW 2 were grazing the cattle in their field at that time and there would not have been much darkness. Moreover, in the cross-examination of PW 1, there is not even a suggestion that there was no light and they were unable to see the incident, though, of course, there was a suggestion to the effect that the witnesses PW 1 and PW 2 must have been standing at a distance.

The learned Counsel for the appellants seriously attacked the evidence of PW 2 Mokam Singh. This witness was examined by the Sessions Judge on 6.2.1991 and cross-examined on the same day by the defence counsel. Thereafter, it seems, that on behalf of the accused persons an application was filed and PW 2 Mokam Singh was recalled. PW-2 was again examined and cross-examined on 31.7.1991. It may be noted that some of the persons who were allegedly involved in this incident were minors and their case was tried by the Juvenile Court. PW 2 Mokam Singh was also examined as a witness in the case before the Juvenile court. In the Juvenile Court, he gave evidence to the effect that he was not aware of the persons who had attacked him and on hearing the voice of the assailants, he assumed that they were some Banjaras. Upon recalling, PW-2 Mokam Singh was confronted with the evidence he had given later before the Juvenile Court on the basis of which the accused persons were acquitted of the charge under Section 307 IPC for having made an attempt on the life of this witness.

In our opinion, the procedure adopted by the Sessions Judge was not strictly in accordance with law. Once the witness was examined in-chief and cross-examined fully, such witness should not have been recalled and re-examined to deny the evidence he had already given before the court, even though that witness had given an inconsistent statement before any other court or forum subsequently. A witness could be confronted only with a previous statement made by him. At the time of examination of PW 2 Mokam Singh on 6.2.1991, there was no such previous statement and the defence counsel did not confront him with any statement alleged to have been made previously. This witness must have given some other version before the Juvenile Court for extraneous reasons and he should not have been given a further opportunity at a later stage to completely efface the evidence already given by him under oath. The courts have to follow the procedures strictly and cannot allow a witness to escape the legal action for giving false evidence

before the court on mere explanation that he had given it under the pressure of the police or some other reason. Whenever the witness speaks falsehood in the court, and it is proved satisfactorily, the court should take a serious action against such witnesses.

PW 2 Mokam Singh, when examined on 6-2-1991, gave evidence to the effect that he and deceased Balmukund were attacked by the appellants herein. PW-3 is the daughter of the deceased Balmukund. She had also given evidence to the effect that these four appellants came to the place of incident and caused injuries to her father Balmukund and PW 2 Mokam Singh. She also deposed that the accused persons were carrying axe, farsa, lathis and some other weapons.

The medical evidence in this case shows that deceased Balmukund had sustained as many as 8 injuries. Except one injury, all others were lacerated injuries. The learned Counsel for the appellants submitted that there is no evidence to show that appellants Mishrilal and Lallu @ Lalaram caused injuries with an axe and that there is no corresponding incised injury on the head of the deceased and hence the medical evidence is in conflict with the evidence of the eye-witnesses. That plea also is not correct as the post-mortem certificate shows that there was an injury on the head of the deceased which must have been caused by the appellant Mishrilal. Injury nos. 1 and 3 are on the left fronto-temporo parietal region and mid parietal region. The blunt edge of the axe must have been used to cause these injuries.

The evidence of the three witnesses, namely PW-1 to PW-3, coupled with the medical evidence satisfactorily proved that the appellants had committed the offence as alleged by the prosecution. There is, therefore, no reason to interfere with the conviction and sentence entered against the appellants. The appeal is without any merits and is dismissed accordingly.

B.B.B. Appeal dismissed.