

VINOD CHATURVEDI ETC. ETC.

v.

STATE OF MADHYA PRADESH

March 5, 1984

[S. MURTAZA FAZAL ALI AND RANGANATH MISRA, JJ.]

Appeal against acquittal under section 386 of the Criminal Procedure Code, 1973—Conviction by reversal of the verdict of acquittal relying on the evidence of the same witnesses, who are close relatives of the deceased and who in the earlier trial categorically implicated some other five persons—Appreciation of evidence—Whether the High Court was correct in relying on the said eye witnesses—Evidence Act, section 3—Admissibility of Ex. P. 1 and Ex. P. 9, the two letters as corroborative evidence—Penal Code, sections 148, 300, 362 and 367—Conviction Under Applicability of section 148 when the state counsel conceded that the charge u/s 148 did not relate to charge of abduction, but to murder taking place later.

On the basis of the investigation made on a First Information Report that one Brindaban the deceased son of PW 1 was kidnapped in a jeep from village Budha to the village Rampura where he was done to death, five persons were put on trial in Sessions Trial No. 107 of 1973, but they were acquitted by Judgment dated 29.1.1974. The trial court held that the investigation was defective and the real accused had not been brought on trial. After a lapse of three years in 1977 a fresh investigation was undertaken and it resulted in the prosecution of the present appellants in the Court of Sessions as killers of Brindaban. Prosecution examined seven eye-witnesses. The Trial Court assessed the evidence in a fair way and was not prepared to rely on it and therefore directed acquittal of the appellants. In the State appeal against acquittal, the High Court heavily relying upon two documents—The first being Ex. P. 1 a letter sent by PW 1 Sunderlal to the Superintendent of Police on 29.4.1973 and the second being Ex. P. 9 a confidential letter of the Superintendent of Police to the Deputy Inspector General of the Department—found support for the prosecution case as corroborative evidence with the ocular evidence, and reversed the acquittal, by convicting the appellants under section 148 and 367 IPC. Hence the appeals by special leave.

Allowing the appeals, the Court

HELD: 1. When in the first trial on the charge of murder and abduction the prosecution had alleged that the deceased had been murdered by a set of five persons different from the present appellants and let in evidence of three eye-witnesses being PWs. 1, 3 and 24 of the Second Trial and who are admittedly close relations of deceased to the effect that those five accused

A persons and no others including the appellants were responsible for the death of the deceased, acceptance of the evidence of the very same three eye witnesses in the second trial conducted after a lapse of three years implicating the present appellants as murderers will be highly improper. The fact that these alleged eye-witnesses were prepared to implicate the five persons who were acquitted on the earlier occasion and the present appellants on the subsequent occasions in a serious charge like murder is indicative of the fact that no credence can be given to the evidence of these witnesses and they were willing to lend their oath to any story that the prosecution advanced. Therefore, in an appeal against acquittal the High Court in whose hands there has been a reversal of the acquittal ought not to have found the remaining evidence to be good basis for conviction of the appellants. [96H; 97A-D]

C 2. The High Court fell into error in relying on the letter of PW 1 Sunderlal to the Superintendent of Police dated 29.4.1973 which is subsequent to the commencement of the investigation of the basis on the First Information Report. Such a letter written by PW 1 who stood in the place of the prosecutor would not at all be admissible in evidence. [97E-F]

D *Kali Ram v. State of Himachal Pradesh.* [1974] 1 SCR 722 ; followed.

E 3. To rely on the contents of the letter Ex. P. 9 written by the Superintendent of police to his superior officer, without examining the writer of the letter and without affording an opportunity to the defence to cross-examine the writer, is totally misconceived. The document was not available to be relied upon for any purpose and the High Court in the instant case was wrong in seeking support from it by way of corroboration of the oral evidence. [97G-H]

4. In view of the express words in the definition of "abduction" in Section 362 of the I.P.C., the offence of abduction against the accused has not been fully proved, since the name of Vinod the leader of the party has not been mentioned at all during the investigation and even according to the majority of witnesses, on the persuasion of the accused (appellants) he went inside his house and came properly dressed and to accompany the group to village Rampura. [98C-D]

G 5. The appellants were not liable to be convicted under section 367 of the Penal Code because from the non acceptance by the High Court of the story of murder of the deceased by the appellants and non recording a finding that the grievous hurt leading to death was caused by them, it will be clear that the act of picking of the deceased from his village was unconnected with what happened later. [98F-G]

H 6. The charge under section 148 I.P.C. has been conceded by the counsel for the State to relate to what followed at Rampura and is not connected with the accusation of abduction. The common object as stated by the prosecution would not be available for sustaining the conviction under section 148 I.P.C. in that background. [98G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos. 192-193 of 1983

Appeals by Special leave from the Judgment and Order dated the 31st January, 1983 of the Madhya Pradesh High Court in Criminal Appeal No. 732 of 1980.

A.N. Mulla and *S.K. Gambhir*, for the Appellant in C.A. 192 of 1983.

Rajendar Singh and *A.K. Mahajan* for the Appellants in C.A. 193 of 1983.

A.K. Sanghi for the Respondent in both the Appeals.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. These appeals by special leave are directed against the judgment of the High Court of Madhya Pradesh reversing the order of acquittal passed by the learned trial Judge. Criminal Appeal No. 192 of 1983 is by Vinod Chaturvedi while the other is by five of the co-accused. All of them had been charged for offences punishable under Sections 148, 364 and 302/149 of the Indian Penal Code and were acquitted by the Additional Sessions Judge. The State of Madhya Pradesh carried an appeal being Criminal Appeal No. 732 of 1980 to the High Court assailing the acquittal and the High Court allowed the appeal and while maintaining the acquittal under Section 302/149 of the Indian Penal Code, convicted the appellants for offences punishable under Sections 148 and 367 of the Penal Code and directed each of them to be sentenced 3 years rigorous imprisonment for each of the offences with a further direction that the two sentences would run concurrently.

According to the prosecution on 27th April, 1973, around 4 p.m. the appellants kidnapped Brindaban, the deceased son of P.W. 1, from village Budha and took him in a jeep to Rampura about one kilometre away on the pretext that a pending dispute between Brindaban and some villagers of Rampura would be settled amicably. It was further alleged that later in the evening Brindaban was done to death by being given several blows by blunt and deadly weapons pursuant to the common object of the appellants of killing him. The dead body was brought to village Budha on the following day. Investigation as taken up on the

A basis of the first information report and as a result thereof five persons were put on trial in session trial No. 107 of 1973 but they were acquitted by the learned trial Judge by judgment dated 29.1.74. The trial court came to hold that the investigation was defective and the real accused persons had not been brought to trial. B Nothing appears to have been done in the matter until 1977 when a fresh investigation was undertaken and it resulted in prosecution of the appellants in the court of session as killers of Brindaban.

C Prosecution examined seven eye-witnesses being P.W. 1 Sunderlal, father of the deceased; P.W. 2 Nathu, a co-villager and claimed to be a servant of P.W. 1 by the defence; P.W. 3 Kalua, a nephew of the deceased; P.W. 23 Jhallu, a brother of the deceased, P.W. 24, Nanhaibai wife of the deceased, and P.Ws. 13 and 14, two outsiders who have been declared hostile by the prosecution. D The trial court assessed the evidence in a fair way and was not prepared to rely upon it. Accordingly he disbelieved the prosecution case and directed acquittal of the accused persons. The High Court did not come to the conclusion on the basis of the ocular evidence that the same was acceptable and on the basis thereof a conviction could be recorded, but heavily relied on two documents—the first being Exhibit P-1, a letter sent by P.W. 1 E Sunderlal to the Superintendent of Police dated 29.4.73 and the second, being Exhibit P-9 a confidential letter of the Superintendent of Police to the Deputy Inspector General of the Department. The High Court found support for the prosecution case from these two letters and accepting the position that their contents corroborated the oral evidence of the witnesses proceeded to reverse the F acquittal. It, however, did not accept the prosecution case relating to the charge of murder. Thus, while sustaining the acquittal in respect of the charge of murder the court convicted the appellants under Sections 148 and 367 of the I.P.C.

G The peculiar features of this case are that the prosecution had alleged that Brindaban had been murdered by a set of five persons different from the present appellants and had made them face a regular trial. Three most material witnesses being P.Ws. 1, 3 and 24 of the present trial who are close relations of deceased H Brindaban had then testified before the Court that those five accused persons and no others including the appellants were responsible for the death of Brindaban. After the acquittal in 1974 nothing happened in the matter for three years and suddenly

on the same old allegations in the hands of the police, fresh investigation was undertaken and the present set of accused persons were arrayed as murderers of Brindaban. Those three eye-witnesses who on the earlier occasion had deposed that five named assailants were the murderers of the Brindaban changed their version and now spoke that the present appellants were the murderers. The fact that these alleged eye-witnesses were prepared to implicate the five persons who were acquitted on the earlier occasion and the present appellants on the subsequent occasion in a serious charge like murder is indicative of the fact that no credence can be given to the evidence of these witnesses and they were willing to lend their oath to any story that the prosecution advanced. Once the evidence of P.Ws. 1, 3 and 24 is brushed aside on that ground, the residue by itself would not be adequate to support the charge. We have grave doubts whether the High Court in whose hands there has been a reversal of the acquittal would have found the remaining evidence to be good basis for the conviction:

The High Court fell into a clear error in relying on the two letters marked as Exhibit P-1 and Exhibit P-9. Exhibit P-1 was a letter of P.W. 1, Sunderlal to the Superintendent of Police. Admittedly by 29.4.73 when this letter said to have been written, investigation had started on the basis of the first information report and therefore, a letter written by P.W. 1 who stood in the place of the prosecutor would not at all be admissible in evidence. No detailed reasons are warranted for this conclusion as the position is clearly covered by a decision of this Court in the case of *Kali Rām v. State of Himachal Pradesh*¹, Learned counsel for the State did not refute this conclusion.

So far as the other document is concerned, as already indicated by us, it is a letter written by the Superintendent of Police to this administrative superior. The writer of the letter has not been examined as a witness. No opportunity has been given to the defence to cross-examine the writer. To rely on the contents of that letter in such circumstances is totally misconceived. The document was not available to be relied upon for any purpose and the High Court clearly went wrong in seeking support from it by way of corroboration of the oral evidence.

A There are several other unsatisfactory features in the prosecution case which the trial had taken note of but strangely enough those did not commend themselves to the High Court even for consideration. Vinod had not been named as the leader of the party which came to village Budha to pick up Brindaban in the statements given during investigation by several witnesses. These witnesses had been confronted as required by law and apart from pleading either innocence or helplessness, no other answer was given. Some witnesses had deposed that Vinod the main architect of the incident came armed with a gun while others claimed that he was armed with a lathi. There is considerable divergence in the evidence as to whether Brindaban came into the jeep of his own accord or had been forcibly put into it. Most of the witnesses have stated that on being persuaded by the accused persons and Vinod, in particular, he went inside his house and came properly dressed to accompany the group to village Rampura. In that event, it cannot be said that Brindaban was abducted by the accused persons. This is so in view of the definition of 'abduction' in Section 362 of the Code where it has been said:

"Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person".

E The High Court has convicted the appellants for the offence punishable under Section 367 of the Penal Code which could be possible if there is abduction with a view to subjecting the abducted person to grievous hurt or slavery etc. The High Court did not accept the story of murder of Brindaban by the appellants nor did it record a finding that the grievous hurt leading to death was caused by the appellants. The resultant position from it should have been that the act of picking of Brindaban from his village was unconnected with what happened to Brindaban later. From it should have followed that the appellants were not liable to be convicted under Section 367 of the Penal Code.

G The charge under Section 148, I.P.C. has been conceded by the counsel for the State to relate to what followed at Rampura and is not connected with the accusation of abduction. The common object as stated by the prosecution would not be available for sustaining the conviction under Section 148, I.P.C. in that background.

There are many other aspects with reference to which the trial court had found fault with the prosecution case. While we

accept the submission advanced for the State that we should not reassess the whole evidence with reference to minor details, we are satisfied that the prosecution had failed to establish the charges and the High Court without a proper appraisal of the materials and without meeting the findings reached by the trial court reversed the acquittal.

We accordingly allow the appeals, set aside the judgment of conviction recorded by the High Court by reversing the acquittal of the trial court and while restoring the judgment of the trial court, we direct that the appellants are acquitted of both the charges and the sentences of imprisonment are set aside. Each of the appellants is discharged from his bail-bond.

S.R.

Appeal allowed.