

RAMBILAS AND ORS.
v.
STATE OF MADHYA PRADESH

OCTOBER 3, 1997

[M.M. PUNCHHI AND S.P. KURDUKAR, JJ.]

Indian Penal Code, 1860—Section 302—Accused prosecuted for murder of a notorious character—Prosecution case based on evidence of four eye witnesses—Occurrence allegedly in late evening—Festival being celebrated in village where villagers dance and drink through out the night—Eye witnesses claimed having been woken up with noise of beating with sticks and went towards place of occurrence—During cross examination admitted not to have seen actual assault on deceased by appellants—Father of deceased informed and FIR lodged only next morning—Dead body discovered later at instance of accused—Held—Courts below erred in convicting accused—Evidence of eye witnesses identical including omissions, contradictions and improvements—Evidence not corroborated by medical evidence—Evidence of eye witnesses improbable and unbelievable—Evidence indicates blind murder—Absence of motive for eye witnesses to implicate accused does not by itself make evidence credible—Mere recovery of incriminating articles at the instance of accused cannot form basis of conviction.

Constitution of India, 1950—Article 136—Jurisdiction—Held—Ordinarily Supreme Court does not interfere with findings of facts or re-appreciate evidence—However in the instant case well known principles of appreciation of evidence totally ignored by Courts below—concurrent findings of courts below reversed—Conviction set aside.

The Appellants were accused under Section 302 and 201 IPC for murder of deceased, a notorious person, addicted to liquor and a womanizer. At the relevant time, deceased was staying with accused, A-5 with whose wife he had eloped for a short period. According to prosecution case, occurrence took place late in the evening when a festival was being celebrated in the village on which occasion villagers dance and drink during the night. At about 10.30 p.m. some villagers, namely four eyewitnesses, woke up because of noise of *marpeet* with sticks and went towards place of occurrence. They saw the actual

A *marpeet* and were told by the appellants that the deceased had been killed, but they were threatened from going near the place of *marpeet* and returned since they were unarmed. They claimed that they alongwith other villagers had returned to the place of occurrence subsequently and inspite of searching through out the night, they did not see the accused or the body of the deceased.

B They informed the father of deceased about the incident only the next morning and an FIR was lodged. During interrogation, statement of A-2 led to discovery of dead body from a tank. Disclosure statement of other accused led to recovery of other incriminating articles.

C The Session Court and the High Court held all the appellants to be guilty and convicted them under Sections 302 and 20 IPC for life on first count and two years RI on second count. The present appeals were filed by the convicts through jail.

Allowing the Appeals, the Court

D HELD : 1.1. Supreme Court would ordinarily not to interfere with finding of fact, based on appreciation of evidence by courts below. However, in the instant case, since the courts below have mechanically read evidence of eye witnesses and totally ignored well known principle of appreciation of evidence, the concurrent judgments of courts below and the convictions of appellants cannot be sustained. [409-B]

E 1.2. The courts below have committed an error while convicting the Appellant under Section 302 and 201 IPC. They have failed to read the evidence of the witnesses in a proper perspective and have erred in accepting their evidence as credible and truthful. [410-F]

F 2.1. The evidence of the four main eye witnesses is identical, including the omissions, contradictions and the improvements. A comparison of their evidence indicates that they repeated what was taught. Even the talk between the four eye witnesses and the appellants was identical. Their evidence is improbable. [409-C]

G 2.2. The claim of the four eye witnesses that they had gone to the place of occurrence is totally unbelievable. In spite of a festival being celebrated, the witnesses claimed to have been woken up by the noise of *marpeet* by sticks. During cross-examination they admitted that they did not see the actual assault by the Appellants. [409-D-E]

H Also, they did not inform the father of the deceased that night and

neither did they lodge an FIR until the next morning. [410-B]

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Their evidence is contrary to medical evidence inasmuch as, if all five appellants had simultaneously attacked the deceased, there ought to have many more injuries on the body of the deceased. [410-C]

2.3. The evidence of the eye witnesses, which was the basis of conviction of the appellants, indicates that in all probability it was a blind murder. It is probable that someone other than the appellants assaulted the deceased since it is shown that the deceased was a notorious character with many enemies. [410-D]

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3. Though there was no motive for the eye witnesses to implicate the appellants, that by itself is not proof that their evidence is trustworthy. [410-E]

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4. Assuming corroborative evidence, viz, recovery of incriminating articles at instance of appellants, to be true, it cannot form the basis of conviction in this case. [410-G]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 325-29 of 1996.

From the Judgment and Order dated 23.8.93 of the Madhya Pradesh High Court in Crl. A. Nos. 962-966 of 1986.

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N.M. Popli (A.C.) for the Appellants.

Anoop Chaudhary, Sakesh Kumar and Uma Nath Singh for the Respondents.

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The Judgment of the Court was delivered by

S.P. KURDUKAR, J. The High Court as well as the Session Court by their concurrent judgments held the appellants in all these criminal appeals guilty of committing the murder of one Deosharan @ Devsaran s/o Bigen and convicted them under Sections 302 and 201 IPC and sentenced each one of them to suffer imprisonment for life on first count and two years' RI on second count. Substantive sentences were ordered to run concurrently. These appeals have been filed by the appellants (convicts) through jail.

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(2) Deosharan (since deceased) hailed from village Chirmari and at the relevant time he was staying at the house of Rambilas @ Vilas (A-5). Deosharan

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- A was said to be a notorious person and was addicted to liquor and womanizer too. He was said to have married four times and had even eloped with the wife of A-5 for a short period and after returning started living with A-5 only. It was alleged that there was a dispute between Deosharan and his father Bigen (P.W. 1) on one hand and Samarsai (Bigen's nephew) on the other. The occurrence took place on 30.5.1985 and on that day "Ganga Dashara" a festival was being celebrated in the said area. The occurrence in question took place late in the evening at about 10.30 p.m. On this festival occasion villagers drink and dance during the night. It is alleged by the prosecution that at about 10.30 p.m. some of the villagers heard the noise of sticks during *marpeet* and because of this noise the prosecution witnesses, namely, Devsai (P.W. 2), Sitaram (P.W. 3), Sukhnath (P.W. 5), Suddhooram (P.W. 6) and one Ramdin woke up from the sleep and went in the direction of Pondi Bathan Dad from where the noise of *marpeet* was coming. These eye witnesses claimed to have seen the actual assault caused by the appellants on Deosharan. All these eye witnesses requested the appellants to spare Deosharan but however, the appellants prohibited them from going near the place where *marpeet* was going on and threatened them saying that if they feel their lives are precious, go away from the said place. These eye witnesses further claimed that the appellants told them that they had finished Deosharan. The eye witnesses who were unarmed returned to the village and broke the news and also went to the house of Sarpanch to apprise him about the incident.
- E The witnesses and some other villagers thereafter went to the place of occurrence but they did not see the appellants as well as the dead body of Deosharan. After returning to the village next day morning these eye witnesses contacted Bigen (P.W. 1) and informed him about the incident. The FIR was accordingly lodged. During interrogation Bahadur (A-2) made a statement which led to the discovery of the dead body which had been thrown into the tank. The dead body of Deosharan was fished out and after holding the autopsy on the dead body it was sent for post mortem examination. The other accused persons were also arrested during investigation. After completing the necessary investigation a charge-sheet came to be filed against the appellants under Sections 302 and 201 IPC.
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- G (3) The appellants denied to have committed any offence and pleaded that they are innocent and have been falsely implicated in the present crime.
- (4) At the trial prosecution examined as many as 13 witnesses of whom P.W. 2, P.W. 3, P.W. 5 and P.W. 6 claimed to be the eye witnesses. The memorandum of disclosure statements of various accused persons prepared under Section 27 of the Evidence Act during investigation and the recoveries
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of various incriminating articles made pursuant thereto were also relied upon to bring home the guilt of the accused. A

(5) We have very carefully gone through the judgments of both the Courts below and with respect we find that notwithstanding the concurrent judgments thereof we are unable to sustain the convictions of the appellants on any count. It is well settled that this Court would be slow to interfere with the findings of facts recorded by the courts below which are based on appreciation of evidence but we are of the considered view that the Sessions Court as well as the High Court have mechanically read the evidence of eye witnesses and totally ignored the well known principle of appreciation of evidence. We have very carefully gone through the evidence of P.W. 2, P.W. 3, P.W. 5 and P.W. 6 who claimed to be the eye witnesses. If we compare the evidence of these eye witnesses it is immediately noticed that their evidence is just like a parrot, telling about what is taught. Even the omissions, contradictions and improvements are identical. The claim of these eye witnesses is totally unbelievable when they testified that they had gone to the place of occurrence. The distance between their houses and the place of occurrence is said to be one furlong. It was night time and the only light available was that of the Moon. B
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A festival "Ganga Dashara" was being celebrated in the village and these witnesses claimed that they heard the noise of *marpeet* by sticks and, therefore, they woke up. During the cross-examination they tried to explain by saying that they were not fully asleep and, therefore, could hear the noise of *marpeet*. They claimed that they had not consumed any liquor. Their further claim was that when they went to the place of occurrence they all had earlier met at a place which was in front of the house of Sukhnath (P.W. 5). The claim of Sukhnath was that he overheard the talk between other eye-witnesses and, therefore, he came out and went along with them to the place of occurrence. The claim made by these eye witnesses in their examination-in-chief was that they had actually seen the assault on Deosharan by the appellants but during cross-examination they admitted that they did not see the actual assault as they were prevented from going to the place of occurrence by the appellants. The talk between the appellants and these four eye witnesses was again absolutely identical without adding a word 'less' or 'more'. In addition to the above, the salient feature of their evidence is that after some time they again went to the place of occurrence but they could not see the appellants as well as the dead body. They searched for the appellants during the whole night. This claim of these eye witnesses is difficult to be accepted E
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A because according to them, they had already been threatened by saying that if they make any noise they would meet the same fate like Deosharan. The assertion of these witnesses that they had gone to the place of occurrence during that night appeared to us a cock and bull story. Another circumstance weighed with us is that despite such a ghastly attack on Deosharan, none of them ever thought of going to the father of Deosharan to inform him about the incident. They also did not go to the police station during the same night to lodge the First Information Report. Further more the story of these eye witnesses as regards the assault on Deosharan is also not corroborated from the medical evidence. Dr. S.S. Pankera (P.W. 4) had noticed three external injuries on the head and many small injuries on the whole chest, backside and both feet, knees and below knees. Dr. S.S. Pankare further opined that the dead body was mutilated and there was a fracture on occipital portion and blood clot was present inside the skull. One has to only test this evidence on the touchstone of probability that when five appellants were simultaneously attacking Deosharan with the sticks in their hands, of which the noise was heard from the distance of one furlong, there ought to have been many more injuries on the dead body of Deosharan. After going through the evidence of these four star witnesses who constituted a backbone of the prosecution story, we are of the considered view that in all probabilities it was a blind murder.

E (6) It is no doubt true that there was no motive for these eye witnesses to implicate the appellants in the present crime. That by itself would not lend any full proof assurance that their evidence is credible and trustworthy. It has also come on the record that because of notorious character of Deosharan he had many enemies in and around the village and if that be so the probability of somebody also other than the appellants being the assailant cannot be ruled out. The courts below, in our opinion, had failed to read the evidence of these eye witnesses in a proper perspective and had fallen into error in accepting their evidence as credible and truthful.

G (7) Coming to the other corroborative evidence, viz., recovery of certain incriminating articles at the instance of the appellants under Section 27 of the Evidence Act, assuming it to be true, the same cannot form the basis of conviction in the present case. In our considered view the Sessions Court as well as the High Court had committed an error while convicting the appellants under Sections 302 and 201 IPC and consequently both the judgments are required to be upset.

H (8) For the reasons recorded here in above we allow Criminal Appeal

No. 325-29/96 filed by the appellants. The judgments and orders of conviction **A**
passed against the appellants by the courts below are quashed and set aside
and the appellants are acquitted of all the charges. The appellants who are
in jail be released forthwith if not required in any other case.

S.K.

Appeals allowed.