MUNNA @ POORAN YADAV

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 1025 of 2006)

NOVEMBER 4, 2008

[D.K. JAIN AND V.S. SIRPURKAR, JJ.]

Penal Code, 1860 – s. 302 – Murder – Prosecution of three accused – Sole eye–witness related to the deceased – Conviction of the appellant–accused u/s, 302 and of the co–accused u/s. 302/34 by trial court – High Court confirming conviction of appellant–accused – Acquittal of co–accused giving them benefit of doubt – On appeal, held: Order of High Court justified – Facts of the case support the prosecution case – The evidence of the eye–witness is reliable and has been appreciated by courts blow with caution – Hence cannot be discarded his being sole eye–witness and related witness – Evidence of the eye–witness also cannot be discarded on the principle of Falsus in uno falsus in omnibus – Appellant–accused is not entitled to parity with the co–accused.

Appellant–accused alongwith two other accused (A2 and A3) was prosecuted for having caused death of one person. Prosecution case was that the accused persons entered the house of the deceased and took him out. A–2 and A–3 caught hold of the hands of the deceased and the appellant–accused fired at him, as a result of which he died on the spot. PW–4 (father of the deceased) was the sole eye–witness to the incident. Trial Court convicted appellant–accused u/s 302 IPC, while acquitted him u/ss. 25 and 27 of Arms Act. A–2 and A–3 were convicted u/s. 302/34 IPC. High Court confirmed the conviction of the appellant accused. However, A–2 and A–3 were acquitted giving them benefit of doubt.

A **In appeal to this Court, appellant contended that the evidence of PW4 should not have been relied upon because he was the sole eye–witness, was a related witness and his evidence was not believed in so far as it related to A–2 and A–3; that the appellant has been**
B **falsely implicated; time of death as given by prosecution is incorrect; that the appellant should also have been acquitted by reason of parity with A2 and A–3; and that as the shock had not been caused by the appellant, the offence would be minor and not u/s. 302 IPC.**

C **Dismissing the appeal, the Court**

HELD: 1.1 This court can and may convict relying on the testimony of a single witness provided he is wholly reliable and that there was no legal impediment in
D **convicting a person on the sole testimony of a single witness. In the instant case, not only was the evidence of PW–4 acceptable but it was also corroborated by his immediate disclosure to P.W.5 and P.W.8. It was, therefore, rightly accepted and acted upon. [Para 18] [291-G-H; 292-**
E **A]**

Kunju Ilias Balachandran v. State of Tamil Nadu, **[2008] 2 SCC 151 and** *Vadivelu Thevar v. State of Madras,* **AIR (1957) SC 614, relied on.**

F **1.2. True, it is that P.W.4 is a relation witness and as such requires a closer scrutiny keeping that factor in mind. The High Court was quite alive to the fact that it was the evidence of a near relation and therefore court had to use caution. Such caution was exercised by the High**
G **Court while appreciating the evidence of PW4 and the High Court was right in accepting his evidence. The court should not only exercise the caution while appreciating such evidence of relation witness but also it should be seen from the judgment. The courts below have not only**
H **exercised caution but it is also apparent from the**

judgments that such caution is in fact exercised. [Para 11] [287-F-H; 288-A]

2. It cannot be said that the death must have occurred much more than 24 hours earlier to the hour of the post mortem i.e. near about 36 hours. The post mortem clearly suggests that the death must have occurred between 24 hours to 36 hours. Therefore, if the death is 24 hours prior to the post mortem with a difference of about 2–3 hours as admitted by the doctor in his cross examination then it is obvious that the death might have occurred in the morning of 01.02.1997 which completely matches the testimony of P.W.4. It is nowhere tried to be brought out in the cross–examination that the death had not occurred 24 hours prior to the post mortem examination or that it had occurred much before that i.e. about 36 hours. No suggestion was put to the doctor nor was the post mortem report assailed in the cross examination on that particular aspect. [Para 9] [286-F-H; 287-A]

3.1. It is not correct to say that by reason of parity, the appellant should also be acquitted. The principle of parity cannot be applied in this case, where it is specifically proved that it was the appellant alone who whipped out the gun and fired at the deceased killing him instantly. Such evidence was not available against the two acquitted accused. [Para 14] [290-F]

Akhil Ali Jehangir Ali Sayyed v. State of Maharashtra, **[2003] 2 SCC 708, distinghished.**

3.2. In the instant case , the substratum of the evidence of P.W. 4 has not been found to be false. Thus there is no need to throw out the prosecution case in its entirety. On the other hand, both the courts below have rightly chosen and relied on prosecution evidence. [Para 15] [291-B]

Bhagirath v. State of Madhya Pradesh, **[1976] 1 SCC 20,**

A **distinguished.**

3.3. The High Court has only exercised a cautious approach in partly rejecting his evidence. High Court realised the fact that when P.W.4 related the incident to other witnesses, he had not mentioned the names of A–3 and A–2 nor had he suggested that they had caught hold of the deceased and thereafter the appellant had shot fire from the fire arm; and that P.W.4 was a sole eye–witness to the incident and as he has not attributed any role to accused nos. 2 and 3, those accused should get the benefit of doubt. It is not as if P.W.4 was totally disbelieved nor was a finding recorded by the courts below that he had falsely implicated the two accused persons. It is one thing to disbelieve the witness and to give benefit of doubt to the accused on the basis of that evidence and it is quite another to hold that the witness had deliberately and falsely implicated the two other accused. The theory of falsus in uno, falsus omnibus has long back ceased to apply in criminal jurisprudence of India. [Para 12] [288-C-E]

4. The doctor has very clearly opined that the shock was the result of the firing by the appellant. In that view, it is not correct to say that since the said shock had not been caused by the appellant, the offence could not be the one under Section 302 IPC but would be a minor offence. [Para 16] [291-C-D]

Case Law Reference :

[2003] 2 SCC 708	**distinguished**	**Para 14**
[1976] 1 SCC 20	**distinguished**	**Para 15**
[2008] 2 SCC 151	**relied on**	**Para 18**
AIR (1957) SC 614	**relied on**	**Para 18**

H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal

No. 1025 of 2006. A

From the Judgment and Order dated 22.9.2005 of the High Court of Madhya Pradesh at Jabalpur in Crl. Appeal No. 3102 of 1998.

S.K. Gambhir, Anil Sharma, V.K. Singh and T.N. Singh for B the Appellant.

Siddhartha Dave and Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by C

V.S. SIRPURKAR, J. 1. The Appellant herein challenges his conviction for an offence under Section 302 for having committed murder of one Chhota S/o Gariba. Initially three accused persons were tried for the offence under Section 302 D read with Section 34 IPC as also under Section 302 simpliciter. They were Munna @ Puran Chamar (Yadav) S/o Khusali Chamar (A–1), Barra @ Radhacharan S/o Kallu Chamar (A–2) and Brijlal S/o Devicharan Chamar (A–3). In addition to the above charge under Section 302, Munna was also tried for an E offence under Sections 25 and 27 of Indian Arms Act. 1st Additional Sessions Judge Chhattarpur, M.P. convicted the appellant under Section 302 Simpliciter and sentenced him to suffer rigorous imprisonment for life while acquitting him from the charges under Sections 25 and 27 of Arms Act whereas F the other two co–accused were convicted for offence under Section 302 read with Section 34 IPC.

2. Two Criminal Appeals came to be filed before the High Court of Madhya Pradesh; one being by the appellant Munna (Accused No. 1) and Brijlal (Accused No.3) while another G appeal came to be filed by Barra @ Radhacharan (Accused No. 2). The High Court allowed the appeal in the case of Accused No. 2 and Accused No. 3 and acquitted them of the charge under Section 302 read with Section 34 IPC. However, the appeal of the present appellant Munna (Accused No.1) was H

dismissed confirming his conviction for an offence under Section 302 IPC. It is this judgment which is in challenge before us.

3. The prosecution story is based on the First Information Report (Ex. P–11) lodged by Gariba (P.W.4), the father of the deceased Chhota on 01.02.1997 to the effect that in the morning, three accused persons came to his house when his son Chhota was sleeping. The appellant then entered the house and took away Chhota to a nearby place – Chamrola (the platform used by the villagers for chit– chatting etc.). It was further alleged that while the two acquitted accused caught hold of Chhota by his hands, the appellant Munna fired at Chhota due to which he fell down and died on the spot. On that basis the investigation started and after the completion of the investigation, all the accused were tried before the 1st Additional Sessions Judge, Chattarpur. On their conviction, all the accused filed appeals before the High Court which resulted in the conviction of the appellant being confirmed.

4. Shri S.K. Gambhir, learned Senior Counsel appearing on behalf of the appellant firstly contended that the High Court was not justified in relying upon the evidence of sole eye witness Gariba (P.W.4) on account of his interest and secondly as his evidence was disbelieved insofar as it related to the original accused no. 2– Barra and accused no. 3 – Brijlal. He further pointed out that the First Information Report in this case was obviously incorrect as the timings of the First Information Report could not match with the oral testimony of Gariba (P.W.4), in that, he submitted that had the incident taken place at about 7 O'clock in the morning and the police station at Jujharnagar being six kilometres away, the First Information Report could not have been lodged at 8.05 O'clock as in fact much time was spent in contacting the other persons who, admittedly, attended the Police Station alongwith P.W.4 – Gariba. The learned senior counsel, therefore, says that the whole prosecution story itself becomes suspect.

5. The learned senior counsel next contended that Chhota himself was a dreaded criminal and, therefore, a number of persons in and around the village were his enemies. The learned counsel argued that it may be that Chhota was found dead outside his house and not knowing as to who had killed Chhota, his father had falsely implicated the three accused persons who had no reason, atleast visible reason to commit murder of Chhota. The learned senior counsel also took us through the post mortem report to suggest that the death had occurred much earlier to the time indicated in the post mortem report. We were taken through the medical evidence more particularly of Dr. S.S. Chourasia (P.W. 2). Lastly, learned senior counsel suggested that the evidences of other witnesses like Ambika Prasad (P.W.1) as also of Sunderlal Vishwakarma (P.W.3), Mstt. Munni Bai (P.W.5) and Rahmat (P.W.8) could not be believed and according to the learned senior counsel both the courts below erred in accepting that evidence.

6. As against this, Shri Siddhartha Dave, learned counsel appearing on behalf of the State supported the conviction and pointed out that there was no reason for Gariba (P.W.4) to falsely implicate the accused. He pointed out that it was quite possible for Gariba to reach the police station at about 8 O'clock in the morning and to lodge the First Information Report. He also pointed out that the medical evidence as well as the post mortem report itself showed that the death had taken place at the time as indicated in post mortem report and thus supports the evidence of the doctor. Lastly, the learned counsel pointed out that the other witnesses were rightly believed by the Sessions Court as well as the High Court as corroborative evidence of Gariba (P.W. 4)

7. It is on this backdrop that we have to consider the correctness of the judgment.

8. The first and the foremost thing is that the homicidal death of Chhota by firing is not disputed. There is practically

A no challenge to the evidence of the Dr. S.S. Chaurasia (P.W.2) who asserted that the deceased had died due to the bullet wound which was slightly below the back side of the neck and the bullet turned towards the right rupturing internal organs and breaking bones of right side ribs stopped below the skin. In B para 9 of his examination in chief, he opined that the death of the deceased was caused due to shock suffered due to firearm injury to him. There is hardly any cross examination of the witness except a feeble suggestion that the injury could not be sustained if the bullet is fired from the sides. One other C suggestion was regarding the timing of injury in which the doctor affirmed that there could be difference of 2–3 hours in the period of injury. The learned counsel for defence argued that in the post mortem report, it was indicated that the timing of injury and death could be about 24 hours to 36 hours earlier D from the time of post mortem. The post mortem was conducted on 02.02.1997, i.e. the next day at 9.00 a.m. From this, the learned counsel argued that if 36 hours have to be counted backwards from 9.00 a.m. on 2.2.1997, then the death of Chhota could not have occurred in the morning but it must be E somewhere at night between 01.02.1997 and 02.02.1997. It was on this basis that the learned counsel tried to develop his theory of false implication as also the wrong timing of filing of F.I.R.

9. This basic premise about the hour of death is wholly F incorrect. The post mortem clearly suggests that the death must have occurred between 24 hours to 36 hours. Therefore, if the death is 24 hours prior to the post mortem with a difference of about 2–3 hours as admitted by the doctor in his cross examination then it is obvious that the death might have G occurred in the morning of 01.02.1997 which completely matches the testimony of Gariba (P.W.4). It is nowhere tried to be brought out in the cross–examination that the death had not occurred 24 hours prior to the post mortem examination or that it had occurred much before that; i.e. about 36 hours. No H

suggestion was put to the doctor nor was the post mortem report assailed in the cross examination on that particular aspect. The learned senior counsel argued that it was the duty of the prosecution to establish the timing of injury and the death and that it had failed to establish the exact hour. We do not agree with this contention in as–much–as the post mortem report specifically states that the death had occurred 24 hours prior to the post mortem was conducted. We, therefore, reject the contention of the learned senior counsel that the death must have occurred much more than 24 hours earlier to the hour of the post mortem near about 36 hours.

10. Once this basic argument is rejected, the rest of the arguments based on this very aspect predominantly must fall and the argument that Chhota was already dead at night and only was found to be shown in the morning has to be rejected.

11. Further, learned senior counsel had developed an argument that the three accused had never come to the house of the deceased nor did the appellant enter the house of the deceased. On seeing the evidence of Gariba (P.W.4), Munni Bai (P.W.5) and Rahmat (P.W.8), there is nothing to disbelieve their evidences. Gariba (P.W.4) specifically deposed that the three accused had come and appellant had actually entered the house. It was tried to suggest by the learned senior counsel that this was not possible since the appellant had never earlier entered the house of Gariba. In our opinion, such a plea is not possible. True, it is that Gariba (P.W.4) is a relation witness and as such requires a closer scrutiny keeping that factor in mind. When we see the judgment of the High Court, it is clear that the High Court was quite alive to the fact that it was the evidence of a near relation and therefore court had to use caution. We are satisfied that such caution was exercised by the High Court while appreciating the evidence of Gariba (P.W.4) and the High Court was right in accepting the evidence of Gariba. The rule of appreciation of a relation witness is now well–settled. The court should not only exercise the caution while appreciating

such evidence, but also it should be seen from the judgment. We do find that the courts below have not only exercised caution but it is also apparent from the judgments that such caution is in fact exercised.

12. The defence counsel tried to suggest that Gariba (P.W.4) had falsely implicated Barra (A–2) and Brijlal (A–3) and that the High Court had in fact disbelieved the evidence of the witness in so far as those two accused are concerned and hence his evidence should be disbelieved even as regards the appellant, we do not agree. The High Court has only exercised a cautious approach in partly rejecting Gariba's evidence. The High Court realised the fact that when Gariba (P.W.4) related the incident to other witnesses, he had not mentioned the names of Brijlal (A–3) and Barra (A–2) nor had he suggested that they had caught hold of the deceased and thereafter Munna (A–1) had shot fire from the fire arm. The High Court also had realized that Gariba (P.W.4) was a sole eye–witness to the incident and as he has not attributed any role to accused nos. 2 and 3, those accused should get the benefit of doubt. We do not attach much importance to this kind of rejection of the evidence of the eye–witness. It is not as if Gariba (P.W.4) was totally disbelieved nor was a finding recorded by the courts below that he had falsely implicated the two accused persons. The High Court merely gave the benefit of doubt to those two accused considering that immediately after the incident, the witness had not stated the above story regarding the role played by the two accused persons to Munni Bai (P.W.5) and Rahmat (P.W.8). It is one thing to disbelieve the witness and to give benefit of doubt to the accused on the basis of that evidence and it is quite another to hold that the witness had deliberately and falsely implicated the two other accused. That did not happen in this case. A criticism would have been justified had the finding been that Gariba (P.W.4) deliberately and falsely implicated the two accused in this case. However, that did not happen. The High Court merely gave the benefit of

doubt to accused nos. 2 and 3 and, therefore, it was quite justifiable to believe the testimony as against the appellant while granting benefit of doubt to accused nos. 2 and 3. Obviously the theory of *falsus in uno, falsus omnibus* has long back ceased to apply in our criminal jurisprudence. We, therefore, do not see anything wrong in the High Court accepting the evidence of P.W.4 against the appellant which evidence was well corroborated by the evidence of Munni Bai (P.W.5) and Rahmat (P.W.8). They were the witnesses who were informed about the role of Munna almost immediately after the incident.

13. Much was tried to be suggested about the time of F.I.R. We have seen the original Hindi First Information Report as also the original Hindi evidence of the witness. The witness has specifically stated that the time was the day–break time, sun was about to rise *(Din Nikalne me·thaa)*. Considering that the witness was not a literate witness and did not know how to read the watch, the mention of 7 O'clock as the time of incident in the First Information Report appears to be the handiwork of the person who recorded the First Information Report. Much importance cannot be given to such insignificant factors. Much was tried to be suggested from the evidence of Gariba (P.W.4) that immediately after the incident, he went to the neighbours, like Ambika Prasad (P.W.1) and Sunderlal Vishwakarma (P.W.3) and substantial time was spent and, therefore, he could not have reached alongwith all those persons to Jujharnagar police station at about 8 O'clock which was six kilometers away. In our considered opinion, such criticism has no merits. Nothing has come in the evidence as to how these persons reached the police station. There is no cross examination to any of these witnesses regarding the time taken from the village to the police station. If that is so, it would not be possible to reject the First Information Report on that flimsy ground alone. Again the distance between the village and the police station which is given in First Information Report is six kilometers approximately. That in our opinion is not such a distance which would not be

A covered within an hour or so. Giving overall consideration to this aspect, we are of the opinion that the First Information Report was a genuine document and was correctly recorded at the time when it was given and there is nothing unusual in the timings of First Information Report. We, therefore, reject the B argument of the defence on that ground.

14. Learned counsel relied on a reported decision in *Akhil Ali Jehangir Ali Sayyed v. State of Maharashtra,* [2003] 2 SCC 708 in support of his contention, that if the two other accused were acquitted on the similar kind of evidence, the appellant C should not have been convicted. The learned senior counsel invited our attention to para 6 which is to the following effect :

> *"6..... As the second accused Jabbar was placed in the same situation as the appellant in this case (if not lesser),* D *Article 21 of the Constitution would not permit us to deny the same benefit to the second accused, notwithstanding the fact that the SLP and the review application filed by him have been dismissed by this Court...."*

We do not think that this court has laid down any such law E that when the two other accused persons are acquitted (by giving benefit of doubt), the third one must be given the same benefit of doubt. Such is not a law laid down. We cannot apply the principle of parity in this case where it is specifically proved that it was the appellant alone who whipped out the gun and F fired at the deceased killing him instantly. Such evidence was not available against the two acquitted accused. We, therefore, reject the argument that by reason of parity, the appellant should also be acquitted.

G 15. The learned counsel also relied on another judgment reported in *Bhagirath v. State of Madhya Pradesh,* [1976] 1 SCC 20 and more particularly the observations in para 18 which are to the following effect :

H *"18... when the substratum of the evidence given by the*

eyewitnesses examined by the prosecution was found to be false, the only prudent course, in the circumstances of this case, left to the court was to throw out by the prosecution case in its entirety against all the accused"

Whereas in the present case, the substratum of the evidence of P.W. 4 has not been found to be false. On the other hand, both the courts below have rightly chosen and relied on prosecution evidence.

16. Lastly, almost by way of a desperate argument, the learned senior counsel tried to argue on the nature of the offence. It was the contention of the learned counsel that doctor had opined that the death had been caused by shock, and since the said shock had not been caused by the appellant, the offence could not be the one under Section 302 IPC but would be a minor offence. We have recorded this contention only for being rejected. The doctor has very clearly opined that the shock was the result of the firing by the appellant. In that view, the argument is rejected.

17. Learned senior counsel also argued that since there was solitary eye–witness, his evidence should have been rejected.

18. Learned counsel appearing on behalf of the State relied on the decision reported in *Kunju Alias Balachandran v. State of Tamil Nadu,* [2008] 2 SCC 151 which deals with the subject of the appreciation of the single eye–witness. This Court following the oftly quoted decision in *Vadivelu Thevar v. State of Madras,* AIR (1957) SC 614 and accepting that decision came to the conclusion that this court can and may convict relying on the testimony of a single witness provided he is wholly reliable and that there was no legal impediment in convicting a person on the sole testimony of a single witness. In the present case, not only was the evidence of PW–4 Gariba acceptable but it was also corroborated by his immediate

A disclosure to P.W.5 and P.W.8. It was, therefore, rightly accepted and acted upon. The contentions of the learned senior counsel for the defence must be rejected. In short, we do not find any merit in the present appeal and it is dismissed.

B 19. It is reported that the appellant was released on bail during the pendency of his appeal. The State shall take immediate steps to arrest him by issuing Non–bailable warrants against him and arrest him for undergoing the rest of the sentence.

C K.K.T. Appeal dismissed.