

A

STATE OF M.P.

v.

RAMESH @ CHHINGE & ORS.  
(Criminal Appeal No. 661 of 2004)

B

FEBRUARY 3, 2009

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.]**

C

*Penal Code, 1860 – s.302 and s.302 r/w s.34 – Conviction by trial court – High Court directing acquittal – Held: High Court did not discuss the eye witnesses' version or even the medical evidence – Matter remitted to High Court for detailed analysis of the relevant evidence and for decision afresh.*

D

**According to the prosecution, the accused-respondents armed with rifles and farsa chased the complainant party while they were proceeding towards the Court on bicycles and caused the murder of PW16's brother by firing gunshots at him and further attempted on the life of PWs 1 and 16. Trial court after framing charges and on analyzing the evidence convicted respondents 1 and 3 u/s.302 IPC and respondents 2 and 4 u/s.302 r/w s.34 IPC. On appeal, the High Court acquitted the respondents. Hence the present appeal.**

E

F

**Allowing the appeal, the Court**

G

**HELD: There were five witnesses examined by the prosecution who claimed to be eye witnesses. PW1 did not support the prosecution version. However PWs. 3 & 16 fully corroborated the prosecution version. The High Court erroneously observed that there was no injury. In fact the evidence clearly established that the Respondent 1 caused farsa injury on the head of the deceased. This was not noticed by the High Court. Apart from the fact**

H

that there was no discussion of the eye witnesses' version, even the medical evidence has not been discussed. The High Court's judgment is clearly unsustainable in view of the deficiencies highlighted above. Normally, this Court would have restored the judgment of the trial court. But in view of the fact that the respondents have not appeared in spite of the notice, the matter is remitted to the High Court for detailed analysis of the relevant evidence and fresh decision on merit afresh. [Para 5] [823-C-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 661 of 2004.

From the final Judgment and Order dated 21.11.2003 of the High Court of Madhya Pradesh, Bench at Gwalior in Crl. Appeal No. 286 of 1996.

Vibha Datta Makhija for the Appellant.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.**

1. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court directing the acquittal of the respondents who faced trial for alleged commission of offences punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') so far as respondents Ramesh(A1)andGurudayal(A3) are concerned and Section 302 read with Section 34 IPC so far as the respondents Kailash (A2) and Pappu (A4) respectively are concerned. Additionally respondent Gurudayal was charged for alleged commission of offence punishable under Section 25(1-B)(a) of the Indian Arms Act, 1959 (in short the 'Arms Act').

2. Prosecution Version in a nutshell are as follows:

On 21.5.1993 at about 9 A.M. near village Kurthara all the

A respondents caused murder of Ramavtar s/o Buddhasingh and attempted on the life of Rajesh alias Raje and Manik Singh. On 21.5.1993 in the morning Manik Singh was required to attend court for hearing at Bhind. For attending the Court he left village Kurthara alongwith his brother Ramavtar, his wife's brother and his uncle-in-law Prahlad and Rajesh proceeding towards Court on bicycles. Prahlad was riding the first cycle and Manik was sitting on the carrier of the cycle behind him. Just behind Prahlad, Rajesh alongwith Ramavtar was following in another bicycle. When they were near the agricultural field of Ramkishan, then Gurudayal armed with .315 bore rifle, Kailash armed with single barrel .12 bore rifle, Pappu Yadav armed with single .12 bore rifle and Ramesh alias Chhinge armed with farsa were chasing them. When they reached near the complainant party Kailash fired from his .12 bore rifle. On hearing the gun shot Ramavtar fell from the bicycle of Rajesh. As he got up, Gurudayal shot at him with .315 bore rifle. The bullet pierced through the body on the right side of chest and Kailash and Pappu Yadav also fired with an intention to cause death, but bullet had not hurt anyone. FIR is said to be lodged at 9.30 A.M. by Man Singh. Spot map (Ex.P-11) was drawn and one empty cartridge of .12 bore rifle and blood stained earth were seized vide Ex.P.13.

Trial court after framing charges and on analyzing the evidence tendered, convicted the appellants.

F Before the High Court it was stated that the incident allegedly took place in the early morning and the time of incident is mentioned as 9 AM. It was submitted that the FIR was prepared with deliberation and there was non-compliance of the requirements of Section 157 of the Code of Criminal Procedure, 1973 (in short the 'Code'). It was pointed out with reference to the evidence of Dr. K.N. Sharma (PW 14) that Prahlad and Manik Singh had identified the dead body and they informed him that they had seen the dead body for the first time at 7.30 A.M. In the post mortem report Exh.P9 the doctor H found that the stomach of the deceased was empty and there

was no digested or semi-digested food in the stomach. The period necessary for digestion and semi digestion food was indicated by the doctor. It was therefore submitted before the High Court that the incident took place around 7.30 AM and the deceased was murdered by some unknown person and because of enmity the accused persons were falsely implicated.

With reference to Exh. P3 it was submitted that the time of preparation of the spot map was earlier mentioned at 10.55 A.M. which was scored out and the time was changed to 9 AM. Additionally it was submitted that when Safina form was prepared at 10.45 A.M. question of preparation of map at 9 AM appears to be doubtful. Time earlier mentioned i.e. 10.55 A.M. was the correct time mentioned in the inquest report. It was pointed out that the FIR was prepared in the police station whereas witnesses have deposed that the complaint was recorded on the spot. Later on FIR was lodged at the police station. In that view of the matter it was submitted that the FIR was suppressed by the prosecution. PW3's evidence was highlighted to show that in para 9 he had deposed that after the fire he ran away from the spot and reported the matter to the station office incharge. He admitted that Manik had not reached the police station before him as he was sitting by the side of the dead body when police reached the spot. This submission was corroborated by the statement of Manik (PW16) who admitted that when Ramavtar was hit by Gurudayal, he remained at the spot till Town Inspector, Cosntable and other police officer reached the spot. He also admitted that 10 to 20 villagers had gathered at the spot but he had not told them about the incident.

Learned counsel appearing for the State before the High Court submitted that there were certain minor corrections which did not corrode the credibility of the prosecution version. The High Court noted that there are material discrepancies in the eye witnesses' version. Considering the overall evidence it has

A been established that deceased died on account of gunshot  
injuries but that the overt act cannot be attributed to Kailash and  
Pappu. Since witnesses had deposed that Ramesh was not  
present at the spot, he was also given benefit of doubt.  
Accordingly, the conviction of Ramesh, Kailash and Pappu was  
B set aside. So far as Gurudayal is concerned with reference to  
the evidence of doctor it was held that the distance from which  
the bullet was fired upon was not known. But he had mentioned  
that the body was identified at 7.30 in the morning, whereas  
the witnesses had deposed that the incident took place when  
C they were proceeding towards the court. PW 4 had deposed  
that the deceased had gone to court after taking meal but the  
post mortem report is contrary to it. In view of this the High Court  
directed acquittal.

D 3. There is no appearance on behalf of the accused in spite  
of service of notice.

E 4. At the outset it must be noticed that the judgment of the  
High Court is fully unreasoned and the only conclusions for  
directing acquittal are contained in paragraphs 7&9 which read  
as follows:

F "7. We have heard the counsel for the parties. It is true that  
there are material discrepancies in the eye witness  
account. Firing by Kailash and Pappu has not injured  
anyone and some witnesses have deposed that Ramesh  
was not present on the spot. Considering the overall  
evidence it was established that the deceased died on  
account of gun shot injury, but act of kailash and Pappu is  
not proved beyond reasonable doubt. Since witnesses  
have deposed that Ramesh was not present on the spot,  
G he is entitled for the benefit of doubt.

H 9. As regards Gurudayal is concerned, in the evidence to  
PW 14 Dr. K.N. Sharma, he was not able to state the  
distance from which the bullet was fired upon the deceased  
but he has mentioned that the body was identified at 7.30

in the morning, whereas witnesses have deposed that the incident took place when they were proceeding towards the court. Wife of Ramavtar (PW4) has deposed that the deceased has gone to the court after having meals, but in the post mortem report, no food was found in the stomach. Therefore time of incident has been changed by the prosecution." A  
B

5. There were five witnesses examined by the prosecution who claimed to be eye witnesses. Rajesh (PW1) did not support the prosecution version. However PWs. 3 & 16 i.e. Prahlad and Manik fully corroborated the prosecution version. The High Court erroneously observed that there was no injury. In fact the evidence clearly established that the Ramesh has caused farsa injury on the head of the deceased. Unfortunately, this was not noticed by the High Court. Apart from the fact that there was no discussion of the eye witnesses' version, even the medical evidence has not been discussed. The farsa injury caused on the head has not been noticed. The FIR was lodged at about 9.30 A.M. The police station undisputedly was about a distance of 6 km. The High Court's judgment is clearly unsustainable in view of the deficiencies highlighted above. Normally, we would have restored the judgment of the trial court. But in view of the fact that the respondents have not appeared in spite of the notice, we remit the matter to the High Court for detailed analysis of the relevant evidence and give fresh decision on merit afresh. C  
D  
E  
F

6. The appeal is allowed to the aforesaid extent.

B.B.B.

Appeal allowed.