SHIVLAL & ANR. A

v.

STATE OF CHHATTISGARH

(Criminal Appeal No. 610 of 2007)

SEPTEMBER 19, 2011 B

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

PENAL CODE, 1860:

ss. 148, 302 and 302/149 – Fifteen persons accused of C
murdering a co-villager – Held-Trial court recorded a finding that the wife of the deceased, claiming herself to be the eye witness, roped in certain persons in the crime falsely and there were improvements in her statement in court – Disbelieving her statement, trial court acquitted six accused and High Court D
acquitted four more – The witness on whose information 'Dehati Nalish' (not a formal FIR) was recorded, turned hostile – Courts below have not given much credence to the statement of the witness on the basis of whose statement FIR was recorded and who claimed himself to be the eye-witness E
– There were discrepancies in the statements of IO and the Head Constable accompanying him – Further, proceedings at the investigation stage have been conducted without observing the provisions of Cr.P.C. – Besides, copy of FIR was not sent to the Illaqa Magistrate, and there were lapses/ F
suspicion in the investigation as regards recording of FIR, recovery of weapons and inconsistencies in the statements of the witnesses – The accused in their statements u/s s313 Cr.P.C. have stated that they were falsely implicated because of the village factional rivalry – In the circumstances, the G
accused are to acquitted on benefit of doubt – Code of Criminal Procedure, 1973 – ss. 154, 157(1) and 313 – Madhya Pradesh Police Regulations – Regulation 710 – Investigation.

 H

A *INVESTIGATION:*

FIR – Recording of – On the basis of information, a 'Dehati Nalish' (and not a formal FIR) registered – FIR lodged later, but it did not contain signature of the author – Contradictions in statements of IO and the Head Constable accompanying him, about recording of FIR in police station – Recoveries disbelieved by the High Court – Copy of FIR not sent to Illaqua Magistrate – Held: Investigation / proceedings have been conducted without observing the provisions of CrPC – Regulation 710 cannot override the requirement of s.157(1) CrPC – Code of Criminal Procedure, 1973 – s.157 – Madhya Pradesh Police Regulations – Regulation 710 .

The appellants, along with thirteen others, were prosecuted for causing the death of the husband of PW 9. According to the prosecution case, the accused armed with deadly weapons, with a common object of murdering the husband of PW 9, attacked him causing his death on 12.10.1997 when he was proceeding towards a tank along with his wife PW-9 and his grandson for taking bath. The incident occurred in the outskirts of the village. It is stated that PW-9 came back to the village and when she informed PW-1 about the incident, he told her that he himself had witnessed the incident and came back to the village after the incident was over. PW 7 went to the police station and gave oral information of the incident on which the police was said to have registered a complaint ('Dehati Nalish'). The Investigating Officer (PW12) reached the village where PW1 narrated the incident to him. It was on the basis of this information that Case Crime No. 236/97 was mentioned in the complaint (Dehati Nalish) mentioning offences punishable u/ss 147, 148, 149 and 302 IPC. The accused in their statements u/s 313 Cr.P.C., denied their involvement and submitted that they had been falsely

implicated because of the village factional rivalry. The trial court convicted and sentenced six of the accused persons of the offences charged and acquitted nine of all the charges giving them benefit of doubt. On appeal, the High Court acquitted four more accused more of all the charges. It convicted appellant no. 2 u/s 302 and appellant no. 1 u/s 302/149 IPC and sentenced both of them to imprisonment for life.

Allowing the appeal, the Court

HELD: 1.1 In the instant case, admittedly, proceedings/ investigation had been conducted without observing the provisions of the Cr.P.C. PW.9 is the sole eye-witness, however, she being illiterate and rustic village woman, does not have any idea/impression of time and distance. Two other persons, namely, PW.1 and PW.7 also claimed to be the eye-witnesses of the incident. PW.1 has been treated to be the author of the FIR, though no formal FIR has been lodged in respect of the incident. PW.7 turned hostile and it is he, who reached the police station and informed the police about the incident. It is on this information, the police recorded the "Dehati Nalish" and without lodging a formal FIR, proceeded to the place of incident. Admittedly, no copy of the FIR has been sent to the Ilaqa Magistrate, which is mandatory u/ s 157 Cr.P.C. The Investigating Officer (PW.12), has explained that information about the incident was given by PW-7 in the police station, however, no FIR was lodged formally. He immediately rushed to the place of incident apprehending further incidents because of factional rivalry in the village. He has further deposed that on reaching the place of occurrence, PW.1 met him and it was on his statement that the FIR was lodged. However, he admitted that the said document did not contain signature of PW.1. [para 5] [438-C-H]

1.2 Head Constable (PW.13), had deposed just

A contrary to what had been stated by the I.O. (PW.12) as he stated that the FIR was lodged in the police station itself and he went along with the IO in the police jeep. He did not know who was the driver of the jeep, as it was being driven by a private person. He further deposed that B when they reached the place of occurrence, dead body of the victim was lying there and no one else was present there. After reaching the place of occurrence, certain people were called from the village through Chowkidar. Such a factual situation is improbable. Dead body is not C left unattended. [para 6] [438-H; 439-A-B]

1.3 The trial court itself held that PW-9 had enroped certain persons in the crime falsely and disbelieving her statement to that extent, some accused had been acquitted by the trial court. Same remained the position D in appeal as disbelieving her statement, four persons were acquitted by the High Court. The trial court found improvements in her statement in court as she had not stated in her statement u/s 161 Cr.P.C. that the two appellants had caused injuries to her husband with E 'tabbal' and spear. [para 7] [439-C-E]

1.4 PW.1 claimed himself to be the eye-witness who instead of informing any other person, went to the village and when PW.9 met him and told about the incident, he F told PW9 that he had also witnessed the incident. The courts below have not given much credence to his statement. [para 7] [439-E-F]

1.5 The trial court recorded a finding that there were material contradictions/ improvements in the statement of G witnesses. It held that the information given by PW.7 to the police after reaching the police station was an FIR u/ s 154 Cr.P.C. though, the High Court took a contrary view. There has been serious doubt about the recovery of weapons and the High Court has disbelieved the said H recoveries. More so, there was no report of chemical

analysis that the weapons so recovered contained stains of human blood. [para 7] [439-F-G] A

2. Copy of the FIR was not sent to the Magistrate at all as required u/s 157 (1) Cr.P.C. In such a case, the absence of any explanation furnished by the prosecution to that effect, would definitely cast shadow on its case. [Para 10] [442-A-B] B

Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana, **(2011) 7 SCC 421,** *Shiv Ram v. State of U.P.,* **1997 (4) Suppl. SCR 531 =AIR 1998 SC 49; and** *Arun Kumar Sharma v. State of Bihar,* **2009 (14) SCR 1023 = (2010) 1 SCC 108 – referred to** C

3. The instant appeal has come from Chhattisgarh which has been carved out from the State of Madhya Pradesh. It has not been brought to the notice of the Court whether Regulation 710 of the Madhya Pradesh Police Regulations (whereunder copy of the FIR is required to be sent to the District Magistrate and not to the Illaqa Magistrate) is applicable in Chhattisgarh. Even otherwise, this Court has held* that the said Regulation 710 cannot override the statutory requirements u/s 157(1) Cr.P.C. which provide for sending the copy of the FIR to the Illaqa Magistrate. Thus, in such a fact-situation, this Court can simply hold that in spite of the fact that any lapses on the part of the I.O., would not confer any benefit on the accused, the case of the prosecution may be seen with certain suspicion when examined with other contemporaneous circumstances involved in the case. [para 10] [442-B-E] D E F G

State of Madhya Pradesh v. Kalyan Singh* **2011 (9) SCC 569 – referred to

4. In the facts and circumstances of the case, this Court is of the considered opinion that the appellants are H

A **entitled to the benefit of doubt. The judgments and orders of the courts below are set aside and the appellants are acquitted. [para 12] [443-F]**

State by Inspector of Police, Tamil Nadu v. N. Rajamanickam & Ors., **2008 (13) SCR 596 = (2008) 13 SCC 303 – relied on**

Case Law Reference:

(2011) 7 SCC 421	**relied on**	**para 9**
1997 (4) Suppl. SCR 531	**relied on**	**para 9**
2009 (14) SCR 1023	**relied on**	**para 9**
2011 (9) SCC 569	**relied on**	**para 10**
2008 (13) SCR 596	**relied on**	**para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 610 of 2007.

From the Judgment & Order dated 25.08.2006 of the High Court of Chattisgarh at Bilaspur in Crl. A. No. 973 of 2000.

Tanuj Bagga (A.C.) for the Appellants.

Atul Jha, Dharmendra Kumar Singh for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the judgment and order dated 25.8.2006 of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.973 of 2000, wherein the High Court has confirmed the conviction and sentence, so far as the present appellants are concerned, awarded by the Additional Sessions Judge, Bemetara, Durg dated 31.3.2000 in Sessions Trial No.147 of 1999 by which the appellants stood convicted under Section 148 of the Indian Penal Code, 1860 (hereinafter called "IPC") and sentenced to undergo R.I. for two years and pay a fine of

Rs.200/-, in default of payment of fine to further undergo R.I. for one month. Sukhsagar, appellant no.2 stood convicted under Section 302 IPC and Shivlal, appellant no.1 stood convicted under Section 302 read with Section 149 IPC and both were sentenced to undergo imprisonment for life and pay a fine of Rs.500/- each, in default of payment of fine to further undergo R.I. for two months. All the sentences had been directed to run concurrently.

2. Facts and circumstances giving rise to this appeal are:

A. According to the prosecution, the appellants along with 13 other accused persons armed with deadly weapons, with a common object of murdering Shankar Satnami attacked him on 12.10.1997 at about afternoon near the house of Tijwa Sahu when Shankar Satnami, deceased, was proceeding towards a tank for taking bath along with his wife Sukhbai (PW.9) and his grandson Anil, as a result of which he sustained numerous injuries and died on the spot.

B. The incident had occurred in the outskirts of the village. Sukhbai (PW.9) came back to the village and when she informed Beer Singh (PW.1) about the incident, he told her that he himself witnessed the incident and came back to the village after the incident was over. Ramkhilawan (PW.7) went to the Police Station at a very far distance and gave oral information about the incident to the police. Instead of lodging a formal FIR on the basis of oral information by Ramkhilawan (PW.7), the police only registered a complaint (Dehati Nalish). Mr. J.S. Dhurve, I.O. (PW.12) proceeded for the village Dara. After reaching the place of occurrence, he met Beer Singh (PW.1) who narrated the incident to him. It was on the basis of this information Case Crime No. 236/97 was mentioned in the aforesaid complaint (Dehati Nalish) mentioning offences under Sections 147, 148, 149 and 302 IPC.

C. After reaching the place of occurrence, the I.O., Mr. J.S. Dhurve (PW.12) performed the inquest over the body of the

A deceased vide Ex.P-6 in the presence of the witnesses and sent the body for autopsy to Govt. Hospital, Bemetara, where Dr. K.L. Dhruv (PW.14), conducted the post mortem and submitted the report Ex.P-15. Mr. J.S. Dhurve, S.I. (PW.12), prepared the Site plan Ex.P-6 and another Site plan Ex.P.13-
B A was prepared by the Halka Patwari, Tuganram Sahu. The accused were apprehended and at their disclosure statements, blood stained weapons were recovered. Plain soil and blood stained soil was taken into possession from the place of incident. Blood stained underwear, Lungi and pair of slippers
C and a knife were seized from the spot vide Ex.P-29.

D. The weapons used for commission of the offence seized from the accused persons were sent for examination, first to the Doctor who opined that the injuries to the deceased could be caused by the recovered weapons. The said weapons
D were subsequently sent for chemical examination along with plain and blood stained soils. The Forensic Science Laboratory vide its report Ex.P-9 confirmed the presence of blood over all those articles.

E E. After completing investigation, chargesheet was filed against fifteen accused persons in the Court of Judicial Magistrate, First Class, Bemetara, who in turn committed the case to the Court of Sessions Judge, Durg. The Trial Court framed the charges under Sections 147, 148 and 302/149 IPC
F against all the accused persons who abjured their guilt.

F. The prosecution in order to establish the charges against the accused persons, examined 13 witnesses and after completion of their depositions, the court examined all the accused persons under Section 313 of the Code of Criminal
G Procedure, 1973 (hereinafter called "Cr.P.C."), wherein they denied their involvement and submitted that they had falsely been implicated because of the village factional rivalry. The Trial Court vide judgment and order dated 31.3.2000 acquitted nine persons of all the charges giving them benefit of doubt, however,
H convicted and sentenced the remaining six accused persons

including the appellants. A

G. The said six convicts preferred Criminal Appeal No.973 of 2000 in the High Court of Chhattisgarh at Bilaspur wherein the High Court vide impugned judgment and order acquitted four persons, however, upheld the conviction and sentence of the two appellants as awarded by the trial Court. B

Hence, this appeal.

3. Ms. Tanuj Bagga, learned Amicus Curiae appearing for the appellants, has submitted that the dispute arose because of a factional rivalry in the village and unending dispute over the land meant for community use on which Shankar Satnami, deceased, had illegally encroached upon. In the oral complaint made by Ramkhilawan (PW.7), not even a single accused had been named. There had been no eye-witness except Sukhbai (PW.9) whose evidence itself is not worth reliance. The courts below erred in convicting the appellants on the basis of the evidence on which a large numbers of accused had been acquitted. There had been material irregularities in the trial itself as no report as required under Section 157(1) Cr.P.C., has been sent to the Ilaqa Magistrate which was mandatory. The High Court brushed aside all legal submissions advanced on behalf of the appellants. Once the High Court came to the conclusion that recovery of weapons itself was doubtful, the appellants were equally entitled for benefit of doubt. Both the appellants have served for more than 11 years and are still in jail. The appeal deserves to be allowed. C D E F

4. Mr. Atul Jha, learned counsel appearing for the State, has opposed the appeal contending that there are concurrent findings of fact by the two courts which do not require any interference by this Court. In case, the provisions of Section 157(1) Cr.P.C. had not been complied with, it may be treated as a lapse on the part of the Investigating Officer and should not adversely affect the prosecution case. The recovery of weapons had been made on the basis of disclosure statements G H

A made by the appellants and sent for chemical analysis. The courts below have considered the issue elaborately and does not require further consideration by this Court. The appeal lacks merit and is liable to be dismissed.

B 5. We have considered the rival submissions made by learned counsel for both the parties and perused the record.

This is a unique case wherein, admittedly, proceedings/ investigation had been conducted without observing the provisions of the Cr.P.C. Sukhbai (PW.9) is the sole eye-
C witness, however, she being illiterate and rustic village woman, does not have any idea/impression of time and distance. In this case, two other persons, namely, Beer Singh (PW.1) and Ramkhilawan (PW.7) also claimed to be the eye-witnesses of the incident. However, Beer Singh (PW.1) has been treated to
D be the author of the FIR, though no formal FIR has been lodged in respect of the incident. Ramkhilawan (PW.7) turned hostile and it is he, who reached the police station and informed the police about the incident. It is on this information, the police recorded the "Dehati Nalish" and without lodging a formal FIR,
E proceeded to the place of incident. Admittedly, no copy of the FIR has been sent to the Ilaqa Magistrate, which is mandatory under Section 157 Cr.P.C. Mr. J.S. Dhurve, the Investigating Officer (PW.12), has explained that information about the incident was given by Ramkhilawan (PW.7) in the police station,
F however, no FIR was lodged formally. He immediately rushed to the place of incident apprehending further incidents because of factional rivalry in the village. The I.O. (PW.12) has further deposed that on reaching the place of occurrence, Beer Singh (PW.1) met him and it was on his statement, FIR was lodged.
G However, he admitted that the said document did not contain signature of Beer Singh (PW.1).

6. Harpal Singh, Head Constable (PW.13), had deposed just contrary to what had been stated by Mr. J.S. Dhurve (PW.12) as he stated that FIR was lodged in the police station
H itself and he went along with the Investigating Officer in the

police jeep. He did not know who was the driver of the jeep as it was being driven by a private person. He further deposed that when they reached the place of occurrence, dead body of Shankar Satnami, deceased was lying there and *no one else was present there.* After reaching the place of occurrence, certain people were called from the village through Chowkidar. Such a factual situation is improbable. Dead body is not left unattended.

7. The Trial Court itself held that Sukhbai (PW.9) had enroped certain persons in the crime falsely and disbelieving her statement to that extent, some accused had been acquitted by the Trial Court. Same remained the position in appeal as disbelieving her statement, four persons were acquitted by the High Court. The Trial Court found improvements in her statement in court as she had not stated in her statement under Section 161 Cr.P.C. that Sukhsagar and Shivlal, appellants, had caused injuries to her husband Shankar Satnami, deceased with 'tabbal' and spear. Beer Singh (PW.1) claimed himself to be the eye-witness who instead of informing any other person, went to the village and when Sukhbai (PW.9) met him and told about the incident, he told Sukhbai that he had also witnessed the incident. The courts below have not given much relevance to his statement. The Trial Court had recorded a finding that there had been material contradictions/ improvements in the statement of witnesses. The Trial Court held that information given by Ramkhilawan (PW.7) to the police after reaching the police station was an FIR under Section 154 Cr.P.C. though, the High Court had taken a contrary view. There has been serious doubt about the recovery of weapons and the High Court has disbelieved the said recoveries. More so, there was no report of chemical analysis that the weapons so recovered contained stains of human blood.

8. While dealing with the issues, the High Court observed as under:

I. "In the instant case, admittedly the prosecution has

failed to prove that information as mandated under Section 157(1) of the Cr.P.C. was sent to the concerned Magistrate. We have already noted above that from the evidence available on record four persons had immediately gone to the police station to lodge report but no FIR was registered on their report."

II. "Sukhbai (PW.9) has also stated that the incident was witnessed by Mulchand, Khilawan, Dhan Singh and Baburam. None of the independent witnesses has supported the case of the prosecution. However, in her statement before the Court she had added the name of Ganga. She had not made any specific allegations against appellants Hemkumar, Brijlal, Aasan and Ashwani."

III. "PW.1 Beer Singh, PW.? Dharambai and PW.5 Ishwaribai are not the eyewitnesses according to the case of the prosecution. However, PW.1 and PW.2 have claimed themselves to be the eyewitnesses and therefore, the Court below has rightly disbelieved the account given by these two witnesses."

IV. "Thus the evidence on which the conviction is based is the memorandum of arrest of the accused persons and the recovery of weapons of offence on their statements. We find from the evidence on record that only one witness namely Sitaram, PW.10, the witness of memorandum and recovery has been examined and he has stated in his cross examination that he was summoned by the police near the tank and from there the dead body was taken to the school and *his signature was obtained on various papers for two days in the school at a time.* He has also admitted that he had encroached upon the Government land which was grazed by the

villagers and therefore, we are of the considered opinion *that the evidence of memorandum of the accused persons and recovery of the weapon of offence in pursuance of the said memorandum, does not inspire confidence."*

V. "Even otherwise, there is no evidence available on record to establish on record that the seized weapons contained human blood."

(Emphasis added)

9. This Court in *Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana,* (2011) 7 SCC 421, has elaborately dealt with the issue of sending the copy of the FIR to the Illaqa Magistrate with delay and after placing reliance upon a large number of judgments including *Shiv Ram v. State of U.P.,* AIR 1998 SC 49; and *Arun Kumar Sharma v. State of Bihar,* (2010) 1 SCC 108 came to the conclusion that Cr.P.C. provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 Cr.P.C., if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. In a given case, there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to Illaqa Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case.

A 10. In the instant case, copy of the FIR was not sent to the Magistrate at all as required under Section 157 (1) Cr.P.C. In such a case, in absence of any explanation furnished by the prosecution to that effect, would definitely cast shadow on the case of the prosecution. This Court dealt with the issue in B Criminal Appeal No. 1062 of 2003 in *State of Madhya Pradesh v. Kalyan Singh,* decided on 26.6.2008, wherein this Court was informed by the Standing counsel that in Madhya Pradesh, police is not required to send the copy of the FIR to the Illaqa Magistrate, but it is required to be sent to the District Magistrate. C It was so required by the provisions contained in Regulation 710 of the Madhya Pradesh Police Regulations. This Court held that Regulation 710 cannot override the statutory requirements under Section 157(1) Cr.P.C. which provide for sending the copy of the FIR to the Illaqa Magistrate.

D The instant appeal has come from Chhattisgarh which has been carved out from the State of Madhya Pradesh. Learned Standing counsel for the State, is not in a position to throw any light on this issue at all. Thus, in such a fact-situation, we can simply hold that in spite of the fact that any lapses on the part E of the I.O., would not confer any benefit on the accused, the case of the prosecution may be seen with certain suspicion when examined with other contemporaneous circumstances involved in the case.

F 11. In *State by Inspector of Police, Tamil Nadu v. N. Rajamanickam & Ors.,* (2008) 13 SCC 303, this Court dealt with a similar case wherein a lot of lapses had been noted on the part of the prosecution. In the said case, originally 16 persons were named in the chargesheet out of which one had died, one had absconded and the rest 14 persons faced trial. G The Trial Court convicted only six out of them. Those six persons preferred the criminal appeal and the High Court found that there were certain vital factors which rendered the prosecution version improbable. One of the factors noted was delay in dispatch and receipt of the FIR and connected documents in H the court of Magistrate. The factional village rivalry was shown

to be the cause of concern therein also. The High Court found that evidence of some of the prosecution witnesses lacked credibility and credence and, thus, all the persons were acquitted. This Court dismissed the appeal of the State observing as under:

> "Delay in receipt of the FIR and the connected documents in all cases cannot be a factor corroding the credibility of the prosecution version. But that is not the only factor which weighed with the High Court. Added to that, the High Court has noted the artificiality of the evidence of PW 1 and the non-explanation of injuries on the accused persons which were very serious in nature. The combined effect of these factors certainly deserved consideration and, according to us, the High Court has rightly emphasised on them to hold that the prosecution has not been able to establish the accusations. *Singularly, the factors may not have an adverse effect on the prosecution version.* But when a combined effect of the factors noted by the High Court are taken into consideration, the inevitable conclusion is that these are cases where no interference is called for."
>
> (Emphasis added)

12. The case at hand is, by no means different from the case above referred to and in the facts and circumstances of the case, we are of the considered opinion that the appellants are entitled to the benefit of doubt. Appeal stands allowed. The judgments and orders of the courts below dated 31.3.2000 and 25.8.2006 are set aside and the appellants are acquitted. In case the appellants are not wanted in some other case, they be released forthwith.

Before parting with the case, we would like to record our appreciation for Ms. Tanuj Bagga, learned Amicus Curiae, for rendering valuable assistance to the Court in spite of not having the full documents/papers.

R.P. Appeal allowed