

[2011] 3 S.C.R. 471

PRAHALAD PATEL

v.

STATE OF MADHYA PRADESH
(Criminal Appeal No. 1209 of 2007)

MARCH 2, 2011

[P. SATHASIVAM AND H.L. GOKHALE, JJ.]

PENAL CODE, 1860:

s.302 – Murder – Conviction by trial court - Upheld by High Court – HELD: The prosecution has proved that on a petty issue, the accused had a grudge against the victim, and on the date of incident, in presence of the eye-witness caused fatal injuries by axe to the victim – The prosecution by way of medical evidence, the evidence of eye-witness and other witnesses, seizure of the axe at the instance of the accused, and the FSL report has proved its case against the accused beyond doubt – There is no ground for interference with the judgments of courts below – Constitution of India, 1950 - Article 136.

CONSTITUTION OF INDIA, 1950:

Article 136 – Appeal against judgment of High Court upholding conviction of accused as recorded by trial court – HELD: It is settled law that when the trial court and the appellate court, on appreciation of evidence, by relying on acceptable materials, arrived at a conclusion, in the absence of perversity in such a conclusion, interference by Supreme Court exercising jurisdiction under Article 136 is not warranted – Penal Code, 1860 – s.302.

The accused - appellant was prosecuted for causing the death of the brother of PWs.2 and 7. The prosecution case was that over a petty issue of forbearing the

A accused from throwing grass on the path, he bore a grudge against the brother of PWs 2 and 7. On the date of incident when the victim was breaking stones in the mine, the accused went there with an axe and caused several axe injuries to the victim, who ultimately died in the hospital in an unconscious stage. The incident was witnessed by PW 1, the fellow worker in the mine, who informed victim's brother and also lodged the FIR. The trial court convicted the accused of the offence punishable u/s 302 IPC and sentenced him to imprisonment for life. The High Court upheld the conviction and the sentence. Aggrieved, the accused filed the appeal.

Dismissing the appeal, the Court

D HELD: 1.1 The evidence of eye-witness PW-1 and his statement (Ext. P-1), the statement of the doctor (PW-16) and his report (Ext. P-21) clearly prove that the death of victim was homicidal. It is true that in the medical examination report (Ext. P-10), prepared by the doctor E (PW-9), all the injuries mentioned in the autopsy report have not been noted. However, as rightly observed by the High Court, sometimes some injuries may not be visible after passage of time. This Court also verified both the reports and found that the said discrepancy is not material to the prosecution case. [para 4-5] [476-G; 477-F-H]

G 1.2 The prosecution mainly relied on the evidence of PW-1, the eye-witness to the incident, who also narrated the earlier incident about throwing bushes on the pathway and the altercation between the accused and the deceased and also the fact that he accompanied the deceased to the mine. There is no reason to disbelieve his version. Apart from this, it was PW-1 who took the injured to the hospital and made a complaint in the Police H Station. Besides, the prosecution has also examined PW-

2 and PW-7-two brothers of the deceased. Both of them, in their evidence, have affirmed that PW-1 had come to their house and informed them that the accused assaulted their brother with an axe. They further narrated that the victim was rushed to the Hospital and on the way, PW-1 made a complaint to the police. Though, PWs 2 and 7 are brothers of the deceased, relationship is not a factor to affect credibility of a witness. Their evidence fully corroborates with the evidence of PW-1 about the manner of occurrence and he witnessed the same. [para 6] [478-A-E]

Israr vs. State of U.P. 2004 (6) Suppl. SCR 695 = (2005) 9 SCC 616 and *S. Sudershan Reddy vs. State of A.P.*, (2006) 10 SCC 163 = AIR 2006 SC 2716 – relied on.

1.3 The doctor (PW-16) has observed that the death was due to the injuries sustained. The weapon of offence, namely, axe, was seized at the instance of the accused. The report from the Forensic Science Laboratory (Ext. P-17) shows that the blood found on the axe was human blood. [para 7] [478-F-G]

2. It is settled law that when the trial court and the appellate court, on proper appreciation of evidence by relying on acceptable materials, arrived at a conclusion, in the absence of perversity in such a conclusion, interference by this Court exercising jurisdiction under Article 136 of the Constitution is not warranted. Considering the evidence of PW-1 and additional testimony of PWs 2 and 7 coupled with doctors' evidence and seizure of the weapon and the FSL report, it is held that the prosecution has proved its case beyond doubt against the accused and the same was rightly considered by the Sessions Judge and affirmed by the Division Bench of the High Court. There is no legal ground for interference. [para 8] [478-H; 479-A-B]

A Case Law Reference:

2004 (6) Suppl. SCR 695 relied on para 6
(2006) 10 SCC 163 relied on para 6

**B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1209 of 2007.**

From the Judgment & Order dated 14.03.2005 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 774 of 1996.

C D.B. Goswami, Dr. Sushil Balwada for the Appellant.

Siddhartha Dave, Jemtiben A.O., Vibha Datta Mahija for the Respondent.

D The Judgment of the Court was delivered by

E P. SATHASIVAM, J. 1. This appeal is directed against the final judgment and order dated 14.03.2005 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 774 of 1996 whereby the Division Bench of the High Court upheld the judgment dated 26.02.1996 passed by the learned Sessions Judge, Sagar, in Sessions Case No. 196 of 1995 convicting the appellant herein under Section 302 of the Indian Penal Code (in short 'the IPC') and sentenced him to undergo imprisonment for life and fine of Rs.1,000/-, in default, to further undergo rigorous imprisonment for three months.

F 2. Brief Facts:

G (a) In Village Chandpur, the accused Prahalad Patel, while cultivating his land had thrown bushes on the path. Daulat-the deceased objected to it and told the accused not to throw the bushes on the path, because of this, there was an altercation between the deceased and the accused. Due to this incident, the accused developed a grudge against the deceased. On

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01.02.1995, at around 12 hours, when the deceased was breaking stones in the mine and one Nanhebbhai (PW-1) was collecting it nearby, at that time, accused Prahalad Patel came there with an axe and inflicted several injuries to the deceased by hitting him at his right leg, left hand, left shoulder and on back of his head, due to which, he fell down on the earth and blood started oozing out. One Gudda-brother of the accused was also present in the mine but, out of fear, Nanhebbhai (PW-1) and Gudda did not try to save the deceased. Thereafter, Nanhebbhai (PW-1) rushed to the house of Daulat and narrated the whole incident to his brother and mother. They went to the mine and brought Daulat. He was taken to Police Station Rahli but by that time he became unconscious. The report of the incident (Ex. P-1) was lodged by Nanhebbhai (PW-1) in the Police Station. Thereafter, Daulat was sent for medical examination to the hospital at Rahli. Dr. Gupta (PW-9) examined him and issued a report (Ex.P-10) mentioning various injuries. On the advise of the doctor, in an unconscious condition, he was taken to Medical College Hospital at Jabalpur for further treatment. During treatment, he succumbed to injuries. The dead body was sent for post-mortem and Dr. A.K.Jain (PW-16) conducted the post-mortem and prepared a report (Ex. P-21). According to him, the cause of death was due to cut and other injuries.

(b) During investigation, police prepared a spot map and seized the blood stained sand and simple sand from the place of incident. The accused was taken into custody and the axe was recovered at his instance. On completion of investigation, charge sheet was filed against the accused under Section 302 IPC.

(c) The accused denied having committed any offence and stated that he had enmity with Nanhebbhai (PW-1) because there is a case pending against the brother of Nanhebbhai for causing injuries to his father and, therefore, he falsely implicated him.

(d) The Sessions Judge, on consideration of the materials,

A by judgment dated 26.02.1996, accepted the prosecution's case and found the accused guilty for the offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life and a fine of Rs.1,000/-.

B (e) Being aggrieved by the order of the Sessions Judge, the accused preferred an appeal before the High Court of Madhya Pradesh at Jabalpur. The Division Bench of the High Court, by its impugned judgment dated 14.03.2005, upheld the conclusion arrived at by the Sessions Judge and confirmed the conviction and sentence of the accused.

C (f) Questioning the same, the accused had filed the above appeal before this Court after obtaining special leave

D 3. Heard Mr. D.B. Goswami, learned counsel for the accused/appellant and Mr. Siddhartha Dave, learned counsel for the respondent-State.

E 4. There is no dispute that there was an altercation between the accused and the deceased on a petty issue and the accused nurtured grudge against the deceased. On 01.02.1995, when the deceased was working in the mine, the accused inflicted several injuries to the deceased with an axe. Immediately after the occurrence, Nanhebbhai (PW-1), who was working in the same mine informed his family members about the incident and they took the injured to the Police Station and (PW-1) made a statement about the incident which has been marked as (Ex. P-1). When the deceased was taken to Medical College Hospital at Jabalpur, Dr. A.K. Jain (PW-16) certified that he succumbed to his injuries. The evidence of eye-witness (PW-1) and his report (Ex. P-1), the statement of Dr. A.K. Jain (PW-16) and his report (Ex. P-21) clearly prove that the death of Daulat was homicidal.

H 5. Learned counsel appearing for the appellant contended that there was discrepancy in the number of injuries as recorded by Dr. Gupta (PW-9) and by Dr. A.K. Jain (PW-16). It is true

that the doctor who conducted the autopsy found as many as eight injuries which are as follows:-

- (i) Repaired wound present over back of right shoulder top 4" long.
- (ii) Incised wound back of neck at the level of C7 T1 1x½x½.
- (iii) Repaired wound over the back of skull left side of occiput 1" long transversely.
- (iv) Repaired wound present over the Cervico-temporal region left side vertical 3" long.
- (v) Chop wound present over left eye brow region cutting the skin muscle and underlying bone 2"x1"x1".
- (vi) Chop wound on the upper part left to forearm near elbow cutting the ulna and lower part of humerus bone 4" x2" x bone deep.
- (vii) Repaired wound present over the right knee and
- (viii) Multiple small abrasion present over the face below the left eye and chin."

It is equally true that in (Ex. P-10), medical examination report prepared by Dr. Gupta (PW-9), all the above-mentioned injuries have not been noted. However, as rightly observed by the High Court, sometimes some injuries may not be visible after passage of time. In fact, this suggestion was not put to the doctors concerned. Whatever may be, as analyzed and concluded by the High Court, cause of death in this case was cranio cerebral injuries which have been found by both the doctors insofar as fatal injuries are concerned and, for this, there is no discrepancy between the two reports. We also verified both the reports and we are satisfied that the said discrepancy is not material to the prosecution case.

A 6. The prosecution mainly relied on the evidence of (PW-1), eye-witness to the incident. (PW-1) also narrated the earlier incident about throwing bushes on the path-way to the agricultural field and the altercation between the accused and the deceased and also of the fact that he accompanied the deceased to the mine, there is no reason to disbelieve his version. Apart from this, it was (PW-1) who took the injured to the hospital and made a complaint in the Police Station. In addition to the same, the prosecution has also examined Kallu (PW-2)-brother of the deceased and (PW-7)-another brother of the deceased. Both of them, in their evidence, have affirmed that (PW-1) had come to their house and informed them that Prahalad Patel-the accused assaulted Daulat with an axe. They further narrated that Daulat was rushed to the Hospital and on the way, (PW-1) made a complaint to the police. The evidence of (PW-1) and the corroborative statements of PWs 2 and 7 support the prosecution case. Though, PWs 2 and 7 are brothers of the deceased, relationship is not a factor to affect credibility of a witness. In a series of decisions, this court has accepted the above principle [vide *Israr vs. State of U.P.* (2005) 9 SCC 616 and *S. Sudershan Reddy vs. State of A.P.*, (2006) 10 SCC 163 = AIR 2006 SC 2716]. Their evidence fully corroborates with the evidence of (PW-1) about the manner of occurrence and he witnessed the same.

F 7. We have already noted that Dr. A.K. Jain (PW-16) has observed that the death was due to the injuries sustained. The weapon of offence, namely, axe was seized at the instance of the accused. The report from the Forensic Science Laboratory (Ex. P-17) shows that the blood found on the axe was human blood.

G 8. It is settled law that when the trial Court and the appellate Court, on proper appreciation of evidence by relying on acceptable materials, arrived at a conclusion, in the absence of perversity in such a conclusion, interference by this Court exercising jurisdiction under Article 136 of the Constitution is

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not warranted. Considering the evidence of (PW-1) and additional testimony of PWs 2 and 7 coupled with doctors' evidence and seizure of the weapon and the FSL report, we hold that the prosecution has proved its case beyond doubt against the accused and the same was rightly considered by the Sessions Judge and affirmed by the Division Bench of the High Court. We do not find any legal ground for interference. A B

9. Consequently, the appeal fails and the same is dismissed.

R.P.

Appeal dismissed.