

SOBARAN SINGH & ORS.

v.

STATE OF M.P.

(Criminal Appeal No.1466 of 2012)

JULY 7, 2014

[T.S. THAKUR, V. GOPALA GOWDA AND
C. NAGAPPAN, JJ.]

PENAL CODE, 1860:

s. 302 r/w s. 34 - Murder - FIR registered 11 months after 'Marg' investigation - Accused named in FIR - Conviction of all the three accused-appellants by trial court -- Affirmed by High Court - Held: Out of five witnesses of occurrence, two including an independent witness did not support prosecution case and they were declared hostile - Two of the remaining witnesses are brothers and uncle of deceased - One of them was not examined in 'Marg' investigation -- Testimonies of the other two are at variance from their statements recorded during 'Marg' investigation - Their testimonies do not inspire confidence and their conduct belies their version - Evidence on record coupled with infirmities in investigation indicate that prosecution has not been able to bring home the guilt of appellants beyond reasonable doubt - Appellants are entitled to benefit of doubt and, as such, are acquitted.

INVESTIGATION:

Infirmities in investigation - Held: In 'Marg' investigation name of culprits not ascertained - A.S.I. who registered 'Marg' intimation, not examined - 'Marg' Intimation Report neither exhibited, nor proved - FIR registered after 11 months and only thereafter during investigation statements of witnesses were recorded who stated to have seen the accused attacking the deceased - IO who conducted part investigation, did not

A *testify in trial - Investigation in the case is slipshod.*

B Appellants A-1 to A-3 were prosecuted for
commission of the offence punishable u/s 302 read with
s. 34 IPC. The prosecution case was that at about 8.00
A.M. on 6.9.1994, on the alarm raised by PW 10, PW 5 and
PW 16 reached the place of occurrences and saw the
victim, namely, the brother of PWs 5 and 16, lying on the
ground and A-3 put his knee on the chest of the victim,
after holding his hands tight and A-1, who was armed
with a 12 bore gun, and A-2 tied his neck with a muffler.
C After noticing the witnesses, the accused fled away. The
victim was taken to the hospital, where he was declared
brought dead. A report was lodged by PW6 and on its
basis 'Marg' investigation was conducted. On 10.8.1995
the FIR was registered. The trial court convicted and
D sentenced the appellants to imprisonment for life u/s 302
read with s. 34 IPC. The High Court affirmed the
conviction and sentence.

E In the instant appeal, it was contended for the
appellants that the Marg Intimation Report showed that
the complainant had only a suspicion against the
accused and he did not state about their involvement in
the crime and the accused were convicted merely on the
evidence of the informant and other eye witnesses, who
F were the family members of the deceased, having enmity
against the accused; that the First Information Report
came to be registered after nearly a year from the date of
occurrence and on deliberation and afterthought, the
statements of the material witnesses were recorded
G falsely implicating the accused; and that there were
embellishment and material contradictions in the
statements of the witnesses and the investigation was
biased and tainted and the prosecution failed to prove the
charge against the accused persons.

H Allowing the appeal, the Court

HELD: 1.1. From the medical evidence it is clear that the deceased died of asphyxia by strangulation. The prosecution case is that accused nos.1 to 3 in furtherance of their common intention committed the murder of the deceased by strangulating him with a muffler (Safee) and to prove the same, they examined PW5, PW6, PW10, PW11 and PW16 as having witnessed the occurrence. PW10 and PW11 did not support the case of the prosecution in full and were treated as hostile. Two among the remaining ocular witnesses are brothers of deceased. [para 8-9] [177-G-H; 178-A-B]

1.2. Immediately after the occurrence, during Marg investigation, PW5 was examined and from the said statement, it is evident that he did not witness the incident. It is also relevant to point out that, after registration of the FIR on 10.8.1995, the statement of PW-5 was recorded by the Investigation Officer, wherein, for the first time, he has stated about having witnessed the occurrence. In the Marg investigation, PW-16 was not examined and he was examined only after registration of the FIR on 10.8.1995, which is almost a year after the occurrence. Though both the witnesses claimed to have seen the occurrence, during which the accused attacked the deceased resulting in his death, they have not lodged a complaint in the police station and had not taken immediate steps for the arrest of the accused. Their testimonies do not inspire confidence and conduct belies their version. [para 11, 12] [178-F-H; 179-A-B]

1.3. Exh.D2 is the statement of PW6 given on 6.9.1994 to the police, wherein, he has stated that around 9.00 a.m. on the occurrence day, his brother PW10 told him at the tube-well that the deceased was lying unconscious near the drain (Nalah) and he and his nephew and PW-11 went to the drain and found the deceased lying unconscious with injuries and there was safee around his neck and

A they took him in a tractor-trolley to the hospital where he was declared dead and he had doubt on accused no.1 and accused no.3 as the dispute was going on with them. About 11 months after the occurrence, the First Information Report came to be registered on 10.8.1995
B and the statement of PW-6 was recorded and in that statement, for the first time, PW-6 has come out with the version that he witnessed the attack made by the accused on the deceased, which resulted in his death. But, he did not state so in his complaint given before the
C police station. On the other hand, he had only expressed his suspicion on accused no.1 and accused no.3 in his complaint and did not whisper about witnessing the occurrence for a period of 11 months. During cross-examination, the said statement was put to PW6 and he
D simply denied it and stated that he informed the police about the accused attacking the deceased. Thus, the testimony of PW6 does not inspire confidence and no credence can be given to it. [para 13-14] [179-G-H; 180-A, B-E]

E 1.4. The complainant PW10 has testified that on 6.9.1994 at 8.00 a.m. he took buffaloes for grazing and saw the accused persons beating his nephew i.e the deceased and he cried and thereafter, PW5, PW6 and PW16 came there and the accused fled away and they
F took injured to the hospital where he was pronounced dead. However, in the cross-examination, PW10 admitted that he was examined by police on the date of occurrence itself, namely 6.9.1994, and the Marg diary statement is Ext. D/2-A. In the said statement he gave a
G different version which is the earliest in point of time wherein, he has not stated about the attack made by the assailants on the deceased. He did not support the prosecution case in full and was declared as hostile. [para 15-16] [180-F-H]

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1.5. PW11 is an independent witness and he was staying in the tube-well of PW10 on 6.9.1994 and according to him, he heard the cry of PW10 and he along with PW5 and PW6 ran there and saw the deceased lying seriously injured and the accused proceeding towards village from Nalah; that they took the injured to the hospital in the tractor-trolley and he was dead by then. This witness was also treated as hostile by the prosecution and his testimony does not help the prosecution case in any way. [para 17] [181-E-F]

2.1. The investigation in this case is slipshod. The Assistant Sub-Inspector of the Police Station, who registered the Marg u/s 174 CrPC was not examined in the trial. No explanation was offered by the prosecution for his non-examination. PW12, who is the station in-charge, has admitted that during Marg enquiry he could not ascertain the names of culprits nor could register the crime. In fact, at the instance of the higher police authority, the FIR came to be registered against the accused on 10.8.1995, after a period of 11 months from the date of occurrence and the statements were recorded on 10.8.1995 and only in those statements, for the first time, PWs 5, 6, 10, 11 and 16 have stated that they saw the accused persons attacking the deceased during the occurrence. The Marg Intimation Report, which was recorded, was neither exhibited nor proved by prosecution in the trial. The Investigation Officer, who conducted part of investigation, did not testify in the trial. The High Court has elaborately dealt with the said omissions in the impugned judgment and proceeded to observe that investigation agency cannot be permitted to conduct investigation in a tainted and biased manner and has concluded that the investigation was defective and tainted, but has held that the defective investigation by itself cannot be a ground for acquittal. The evidence on

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A the record, coupled with the infirmities noticed, has created an impression that the prosecution has not been able to bring home guilt to the appellants beyond reasonable doubt. The High Court even after noticing the infirmities, fell in error in confirming the conviction of the
 B appellants. The reasons given by the High Court do not commend to this Court to sustain the conviction and sentence. They are neither sufficient nor adequate or cogent much less compelling to uphold the impugned
 C judgment. As a result, this Court holds that the case against the appellants has not been proved beyond reasonable doubt and they are entitled to benefit of doubt and, as such, the conviction and sentences imposed on them are set aside. [para 20] [181-G-H; 182-A-H]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1466 of 2012.

From the Judgment and Order dated 16.03.2012 in Criminal Appeal No. 353 of 2004 of the High Court of M.P. Bench at Gwalior.

E J.C. Gupta, Yogesh Tiwari, Dharam Singh, Sanjay K. Agrawal for the Appellants.

C.D. Singh, Darpan Bhuyan, Sakshi Kakkar, Shweta Singh for the Respondent.

F The Judgment of the Court was delivered by

G **C. NAGAPPAN, J.** 1. This appeal is preferred against the judgment dated 16.3.2012 passed by the High Court of Madhya Pradesh Bench at Gwalior in Criminal Appeal No.353 of 2004.

H 2. The appellants herein are accused nos.1 to 3 in the case in Sessions Trial No.8/97, on the file of Additional Sessions Judge, Gohad, District-Bhind (M.P.) and they were tried for the offence punishable under Section 302 read with Section 34 IPC and the Trial Court convicted them for the said

offence and sentenced each one of them to undergo imprisonment for life and to pay a fine of Rs.500/-, in default to undergo Rigorous Imprisonment for one month.

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3. Challenging the conviction and sentence, the accused preferred appeal in Criminal Appeal No.353 of 2004 in the High Court and the same came to be dismissed by the impugned judgment and that is now under challenge in this appeal.

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4. Briefly, the case of the prosecution is as follows :

PW5 Satyendra Singh, PW16 Brijendra Singh and deceased Narendra Singh are sons of PW7 Hanumant Singh. PW6 Uday Singh and PW10 Om Prakash are brothers of PW7 Hanumant Singh. On 6.9.1994 at 8.00 a.m. PW5 Satyendra Singh and PW16 Brijendra Singh had gone to attend call of nature in the drain (Nalah) and they heard the sound of weeping and alarm raised by PW10 Om Prakash and they went there and saw Narendra lying on the ground and accused no.3 Sardar Khan put his knee on his chest after holding his hands tight and accused no.1 Sobaran Singh and accused no.2 Suraj Singh tied his neck with a muffler (Safee) and accused no.1 Sobaran Singh was armed with a 12-bore gun and due to fear, they did not go near Narendra and in the meanwhile, PW6 Uday Singh and PW11 Vishwanath Sharma also rushed to the spot and on seeing them, accused nos.1 to 3 ran away. They found Narendra alive with injuries on the neck, chest and right knee and they carried him to the tube-well and thereafter, put him on the tractor-trolley and drove him to the hospital at Mau where he was declared dead by the Doctor. PW14 Dr. O.P. Tengar conducted the post-mortem at 12.30 p.m. on 6.9.1994 over the body of Narendra and found the following :

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- (i) Abrasion admeasuring 3.0 cm x 1.0 cm on calf muscle of right leg;
- (ii) Abrasion multiple in number size varies from 2.5" to 3.0" in length and linear in width over right side

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A of neck 2" below the ear lobule and 2.2" above the clavicle;

(iii) Abrasion 2 in number size 2.2", 2.0" x linear just over the cricoids cartilage;

B (iv) Contusion 1.5" x 1.0" on the middle sternum.

On dissection of the body, he found contusion on sternum and ecchymosed underneath the contusion (rupture of small capillaries and ventricles) with tracheal rings and cricoids cartilage fractured. Pharynx and larynx were congested. He expressed opinion that death was caused due to strangulation (Asphyxia), 4-6 hours prior to autopsy and issued Exh.P16 post-mortem report. Thereafter, PW6 Uday Singh went to Mau Police Station and lodged a report, which was registered in the shape of Marg, under Section 174 CrPC by Assistant Sub-Inspector of Police Balram Singh. During the investigation of Marg, statements of the witnesses were recorded. On 7.8.1995, PW9 Assistant Sub-Inspector Ram Naresh Singh Kushwah registered a case in Crime No.76/1995 against accused nos.1 to 3 for the alleged offence under Section 302 read with Section 34 IPC and prepared Exh.P13 FIR. During investigation of the case, witnesses were examined and final report was filed. Charge under Section 302 IPC was framed against accused nos.1 to 3 and they were found guilty and were sentenced as narrated above and the appeal preferred by them was dismissed by the High Court. Challenging the same, accused nos.1 to 3 have preferred this appeal.

5. The learned counsel for the appellants contended that the Marg Intimation Report shows that the complainant had only a suspicion against the accused and he has not stated about their involvement in the crime and the accused have been convicted merely on the evidence of the informant and other eye witnesses, who are none else, but the family members of the deceased, having enmity against the accused and the First Information Report came to be registered after nearly a year

from the date of occurrence and on deliberation and A
afterthought, the statements of the material witnesses have
been recorded falsely implicating the accused and there are
embellishment and material contradictions in the statements of
the witnesses and the investigation is biased and tainted and
the prosecution has failed to prove the charge against the B
accused persons and the High Court fell in error while
confirming the conviction imposed by the Trial Court and the
impugned judgment is liable to be set aside.

6. Per contra, the learned counsel for the respondent State C
contended that the courts below, relying on the testimonies of
the ocular witnesses have found the accused guilty of the
offence charged and the conviction and sentence imposed are
sustainable and does not call for any interference.

7. Narendra died of Homicidal violence is sought to be D
proved by testimony of the post-mortem Doctor and opinion of
the Forensic Science Expert. PW14 Dr. O.P. Tengar conducted
autopsy on the body of Narendra and found abrasions multiple
in number with varying size over the right side of the neck and
on dissection of the body, contusion on sternum and E
ecchymosed underneath with tracheal rings and cricoids
cartilage fractured and pharynx and larynx congested. In his
post-mortem report, he has opined that the death was caused
due to strangulation (Asphyxia), 4-6 hours prior to autopsy.

8. PW15 Dr. Ashok Sharma, Junior Forensic Specialist F
has testified that he perused the post-mortem report, the Case
Diary and all the materials collected and was of the view that
there was no scientific basis to disagree with the opinion of the
Autopsy Surgeon. Exh.P18 is the written opinion expressed by
him. Accepting the medical evidence it is clear that Narendra G
died of Asphyxia by strangulation.

9. The prosecution case is that accused nos.1 to 3 in
furtherance of their common intention committed the murder of
Narendra by strangulating him with a muffler (Safee) and to H

A prove the same, they examined PW5 Satyendra Singh, PW6
Uday Singh, PW10 Om Prakash, PW11 Vishwanath Sharma
and PW16 Brijendra Singh as having witnessed the occurrence.
PW10 Om Prakash and PW11 Vishwanath Sharma did not
support the case of the prosecution in full and were treated as
B hostile. Two among the remaining ocular witnesses are brothers
of deceased Narendra.

10. PW5 Satyendra Singh and PW16 Brijendra Singh
have testified that on 6.9.1994 at 8.00 a.m. they had gone to
Nalah to attend call of nature and they heard the sound of
C weeping and the alarm raised by PW10 Om Prakash and went
there and found Narendra lying on the ground and accused no.3
Sardar Khan put his knee on the chest of Narendra and holding
his hands tight and accused no.1 Sobaran Singh and accused
no.2 Suraj Singh pressing the neck of Narendra by tying a
D muffler (Safee) and accused no.1 Sobaran Singh was armed
with a 12-bore gun and due to fear, they did not go near and in
the meanwhile, PW6 Uday Singh and PW11 Vishwanath
Sharma rushed to the spot and on seeing them, the accused
left the place and they took injured Narendra to the hospital at
E Mau in a tractor-trolley, where he was declared dead.

11. Immediately after the occurrence, during Marg
investigation, PW5 Satyendra Singh was examined and in the
said statement, he has stated that he was ploughing his Banjara
F field with tractor on 6.9.1994 and his uncle Om Prakash came
running to his field and informed him about the death of
Narendra and this statement was put to PW5 Satyendra Singh
in the cross-examination and, of course, he has denied the
same. In this context it is also relevant to point out that, after
G registration of the First Information Report on 10.8.1995, the
statement of Satyendra Singh was recorded by the Investigation
Officer, wherein, for the first time, he has stated about having
witnessed the occurrence.

12. In the Marg investigation, Brijendra Singh was not
H examined and he was examined only after registration of the

FIR on 10.8.1995, which is almost a year after the occurrence. A
Though both the above witnesses claimed to have seen the
occurrence, during which the accused attacked Narendra
resulting in his death, they have not lodged a complaint in the
police station and had not taken immediate steps for the arrest
of the accused. Their testimonies do not inspire confidence and B
conduct belies their version.

13. It is the testimony of PW6 Uday Singh that on 6.9.1994
at about 8.00 a.m. he went to the tube-well and met Vishwanath
Sharma and they heard the alarm raised by PW10 Om Prakash
and they rushed there and he saw from a distance that Narendra C
lying on the ground with accused no.3 Sardar Khan armed with
a 12-bore gun sitting on his chest after holding both his hands
tight and accused no.1 Sobaran Singh and accused no.2 Suraj
Singh pressing the neck of Narendra by trying a muffler and D
PW5 Satyendra Singh and PW16 Brijendra Singh also reached
there and on seeing them, all the accused ran away and they
took injured Narendra in the tractor-trolley to the hospital where
he was declared dead by the doctor and he went to police
station and lodged Exh.D1 Complaint. In his complaint PW6
Uday Singh has stated that on the occurrence day around 8.00 E
a.m. he went from his house for grazing the cattle and around
9.00 a.m. his brother Om Prakash told him that Narendra is
lying unconscious at the Har and thereafter, he, PW11
Vishwanath Sharma and PW5 Satyendra Singh went to Har
and saw Narendra lying unconscious on the ground and a safee F
was there around his neck and there were red coloured marks
on the chest and they took him in the tractor to the hospital at
Mau, where he was declared dead and he came to the police
station for filing the report and he has doubt on accused no.1
Sobaran Singh and accused no.3 Sardar Khan. In the Marg G
Investigation, his statement was recorded, in which the same
version has been told by him. As already seen, about 11
months after the occurrence, the First Information Report came
to be registered on 10.8.1995 and the statement of Uday Singh
was recorded and in that statement, for the first time, Uday
Singh has come out with the version that he witnessed the H

A attack made by the accused on Narendra, which resulted in
 death. If really, Uday Singh had seen the attack made by the
 accused persons on Narendra during the occurrence, he must
 have stated so in his complaint given before the police station
 implicating the accused. On the other hand, Uday Singh has
 B only expressed his suspicion on accused no.1 and accused
 no.3 in his complaint and has not whispered about witnessing
 the occurrence for a period of 11 months.

14. Exh.D2 is the statement of PW6 Uday Singh given on
 6.9.1994 to the police, wherein, he has stated that around 9.00
 C a.m. on the occurrence day, his brother PW10 Om Prakash
 told him at the tube-well that Narendra is lying unconscious near
 the drain (Nalah) and he and his nephew Satyendra and
 Vishwanath Sharma went to the drain and found Narendra lying
 unconscious with injuries and there was safee around his neck
 D and they took him in a tractor-trolley to the hospital at Mau where
 he was declared dead and he has doubt on accused no.1
 Sobaran Singh and accused no.3 Sardar Khan as the dispute
 is going on with them. During cross-examination, the said
 statement was put to PW6 Uday Singh and he simply denied
 E it and stated that he informed the police about the accused
 attacking Narendra. In short, the testimony of PW6 Uday Singh
 does not inspire confidence and no credence can be given to
 it.

15. The complainant PW10 Om Prakash has testified that
 F on 6.9.1994 at 8.00 a.m. he took buffaloes for grazing to
 Banjara field and saw the accused persons beating his nephew
 Narendra and he cried and thereafter, PW5 Satyendra Singh,
 PW6 Uday Singh and PW16 Brijendra Singh came there and
 the accused fled away and they took injured Narendra to the
 G hospital at Mau where he was pronounced dead. It is his further
 testimony, in examination-in-chief that he could not see by which
 weapon the accused persons were beating Narendra and due
 to the impairment of vision, he could not say whether the
 signatures found in the spot map and seizure memo were that
 H of his and he was treated as hostile by the prosecution.

16. In the cross-examination, PW10 Om Prakash admitted that he was examined by police on the date of occurrence itself, namely 6.9.1994, and the said Marg diary statement is Exh.D/2-A, and he has stated therein that on the occurrence day in the morning Narendra took buffaloes to Banjara wale Har and after sometime, he went with his buffaloes and saw Narendra lying in the grass with white liquid coming from mouth and nose and he saw at a distance that accused no.2 Suraj Singh with a 12-bore gun, accused no.3 Sardar Khan and another person, who could not be identified, going down by crossing the drain (Nalah) and he ran to the tube-well and informed the same to others and he along with PW5 Satyendra Singh, PW6 Uday Singh and PW11 Vishwanath Sharma went to the occurrence place and found injured Narendra alive and they took him to the hospital at Mau, where he was declared dead and he has doubt on accused nos.1 and 3 about their involvement in the death of Narendra. The above version is the earliest in point of time wherein, he has not stated about the attack made by the assailants on Narendra. Moreover, he did not support the prosecution case in full and was declared as hostile.

17. PW11 Vishwanath Sharma is an independent witness and he was staying in the tube-well of PW10 Om Prakash on 6.9.1994 and according to him, he heard the cry of PW10 Om Prakash and he along with PW5 Satyendra Singh and PW6 Uday Singh ran there and saw Narendra lying seriously injured and saw the accused proceeding towards village from Nalah and they took injured Narendra to the hospital in the tractor-trolley and he was dead by then. This witness was also treated as hostile by the prosecution and his testimony does not help the prosecution case in any way.

18. The investigation in this case is slipshod. Balram Singh, Assistant Sub-Inspector of Mau Police Station, who registered the Marg under Section 174 CrPC was not examined in the trial. No explanation was offered by the prosecution for his non-examination. PW12 Bharat Singh Sikarwar, who is the station in-charge, has admitted that during

A Marg enquiry he could not ascertain the names of culprits nor could register the crime. In fact, at the instance of the higher police authority, the FIR came to be registered against the accused on 10.8.1995, after a period of 11 months from the date of occurrence and the statements were recorded on

B 10.8.1995 and only in those statements, for the first time, PWs 5, 6, 10, 11 and 16 have stated that they saw the accused persons attacking Narendra during the occurrence. The Marg Intimation Report, which was recorded, was neither exhibited nor proved by prosecution in the trial. The Investigation Officer

C Santosh Singh Gaur, who conducted part of investigation did not testify in the trial. The High Court has elaborately dealt with the said omissions in paragraph nos.19 and 25 of the judgment and proceeded to observe that investigation agency cannot be permitted to conduct investigation in a tainted and biased manner and concludes that the investigation was defective and

D tainted and the defective investigation by itself cannot be a ground for acquittal.

19. Our independent analysis of the evidence on the record coupled with the infirmities which we have noticed above has

E created an impression on our minds, that the prosecution has not been able to bring home guilt to the appellants beyond a reasonable doubt. The High Court even after noticing the infirmities, in our opinion, fell in error in confirming the conviction of the appellants. The reasons given by the High Court do not

F commend to us to sustain the conviction and sentence. They are neither sufficient nor adequate or cogent much less compelling to uphold the impugned judgment.

20. As a result of our above discussion, we hold that the

G case against the appellants has not been proved beyond a reasonable doubt and they are entitled to benefit of doubt. Their appeal consequently succeed and is allowed and the conviction and sentence imposed on them are set aside and they shall be set at liberty forthwith, if not required in any other case.