BALIRAJ SINGH A

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No.333 of 2013)

APRIL 25, 2017 B

[N. V. RAMANA AND PRAFULLA C. PANT, JJ.]

Penal Code, 1860 – s. 302/34 – Murder – Complainant's case that appellant, A1 and A2 attacked the victim with lathis, resulting in his death – Seizure of lathis allegedly used in the crime – Examination of 13 prosecution witnesses – Conviction u/s. 302/34 by the courts below – Held: Contradiction about the time of arrival of the witnesses and their statement, thus credence could not be attached – Circumstances warranted application of due care and caution in appreciating the statements of eyewitnesses because the prime eyewitnesses were related inter-se and to the deceased – Courts below erred in not applying the principle of strict scrutiny in assessing the evidence of eyewitnesses – As regards nature of injury, contradictions between the ocular and medical evidence – Non-examination of Police officer who conducted seizure – Also subsequent improvement by one of the eye-witness – Thus, the prosecution case is doubtful – Accused-appellant cannot be held guilty of the offence – Order of conviction by the courts below set aside – Evidence – Witness.

Criminal jurisprudence – Medical evidence – Significance of – Held: Is only corroborative – It proves that the injuries could have been caused in the manner alleged and nothing more – Defence can make use of the medical evidence to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses.

Allowing the appeal, the Court

HELD: 1.1 There was no peace and harmony between the victim and accused groups as they locked horns with each other over a longstanding dispute dating back 30 years, relating to mutation proceedings of some landed property. [Para 7][256-C-D]

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1.2 Veracity of the statements of two witnesses PW8 and PW9 is doubtful at the threshold itself, as they do not tally with the statement of PW12 who admittedly reached the place of occurrence first. [Para 9][257-A]

1.3 Considering the totality of the prosecution case, it cannot be understood that at the time of such occurrence in a small village, when there was sunlight and PW8 and PW9 along with villagers rushed upon hearing uproar of PW12, no attempt was made by any of the eyewitnesses or villagers to catch hold of the accused. This lacuna in the prosecution case becomes stronger with the fact that in the FIR it was clearly mentioned, as PW8 stated to the complainant that upon hearing hue and cry from the field, PW9, PW12 and other people of village rushed to the field. Though there was no indication in the FIR on PW8 herself rushing to the scene of offence, it is however, apparent that some other people of village rushed to the place of occurrence, but there was none among the villagers who rushed with PWs 8 and 9 as independent eyewitness. [Para 10][257-B-D]

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1.4 It is true that other than PW12-family friend of the deceased, the prosecution has not made any independent witness from the village people who rushed to the place of offence along with PWs 8 and 9 on hearing hue and cry from the field. The circumstances warrant application of due care and caution in appreciating the statements of eyewitnesses because of the fact that the prime eyewitnesses are related inter-se and to the deceased. Hence, the prosecution failed to put a strong case as credence cannot be attached to the statements of PWs 8, 9 and 12. The courts below erred in not applying the principle of strict scrutiny in assessing the evidence of eyewitnesses PWs 8, 9 and 12. [Para 11][257-E-F]

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1.5 The postmortem report was prepared by PW 13-doctor. In his evidence, the doctor confirmed that cause of death was due to excessive hemorrhage form the punctured wound over the right side of neck caused by sharp piercing object and due to punctured major blood vessel, over right side of neck. It is on record that at the instance of the accused-appellant, police recovered *lathi* allegedly used in the offence. However, nowhere it is recorded that the seized *lathi* contained any sharp edges

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with iron coated. Even it was not sent for examination of PW 13 to ascertain whether the fatal injury could be resulted by it. Moreover, the record stated that the blood on the bloodstained cap of deceased seized from the place of occurrence did not tally with that of the deceased. Another glaring deficiency was that Sub-Inspector who conducted the seizure proceedings and prepared the seizure memo was not examined by the prosecution. It is settled proposition in criminal jurisprudence that ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. In this case the nature of injury, contradiction about the time of arrival of the witnesses, contradictions between the ocular and medical evidence, non-examination of Police officer who conducted seizure and subsequent improvement by one of the eye witness casts a serious doubt on the prosecution's case. [Paras 12, 13][257-G-H; 258-B-D]

1.6 The accused-appellant cannot be held guilty of the offence. The conviction against appellant as recorded by the trial court and upheld by the High Court is set aside. [Para 14][258-E]

Solanki Chimanbhai Ukabhai v. State of Gujarat **AIR 1983 SC 484 – referred to.**

Case Law Reference

AIR 1983 SC 484	**referred to**	**Para 13**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.333 of 2013.

From the Judgment and Order dated 12.01.2012 of the High Court of Madhya Pradesh at Jabalpur, in Criminal Appeal No. 533 of 1994.

Chinmoy A. Khaladkar, Praveen Kumar Pandey, C. S. N. Mohan Rao, Advs. for the Appellant.

Pulkit Tare, Arjun Garg, (For Mishra Saurabh), Advs. for the Respondent.

The Judgment of the Court was delivered by

A **N.V. RAMANA, J.** 1. This appeal arises out of impugned Judgment and Order dated 12th January, 2012 passed by a Division Bench of High Court of Madhya Pradesh, Jabalpur in Criminal Appeal No. 533 of 1994 upholding the conviction and sentence passed by the learned trial Court against the appellant herein for the offence punishable under Section 302/34, IPC.

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2. The facts, limited for the purpose of dealing with this appeal, as divulged by the prosecution case are that on 6th January, 1992, Hira Singh Gond (Complainant—PW 7) lodged an FIR at Bahri Police Station, Sidhi District stating that his brother Mangal Singh had gone to the fields to answer nature's call, when Baliraj Singh (A1 & Appellant herein) and C Baijnath Singh (A2) attacked him (Mangal Singh) with *lathis* causing instantaneous death of Mangal Singh. Accordingly police registered Crime No. 5/92 against the accused, body of the deceased was sent for postmortem examination, *lathis* allegedly used in the crime were seized at the instance of the accused and charges were framed against them D under Section 302/34, IPC to which the accused pleaded not guilty and claimed trial.

3. In order to bring home the guilt of the accused, prosecution has examined 13 witnesses, while no one was examined on the defense side. On the basis of statements of eyewitnesses, Ramrati (PW 9— E wife of the deceased), Chameli (PW 8—wife of the complainant and sister-in-law of the deceased), and Lakhan Singh (PW 12—family friend of the deceased), and considering the medical evidence, the trial court came to the conclusion that accused were guilty of committing the murder of Mangal Singh (deceased). Accordingly, the trial Court convicted the accused under Section 302/34, IPC and sentenced them to undergo F imprisonment for life.

4. Aggrieved by the order of the trial court, both the accused filed criminal appeal before the High Court. However, during the pendency of appeal before the High Court, Baijnath Singh (A2) had died, therefore his sentence got abated. The High Court also found the statements of G eyewitnesses to be cogent and trustworthy, therefore concurred with the judgment of the trial Court and dismissed the appeal of the appellant-accused. Hence the present appeal by way of special leave.

5. We have heard learned counsel for the parties at length. The case on behalf of the appellant as advanced by the learned counsel is

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that most of the prosecution witnesses are interested witnesses, particularly the eyewitnesses belong to one family and they had a longstanding grudge against the accused over property dispute between both families, and hence the appellant was falsely implicated in retaliation. The testimonies of Hira Singh (PW 7—brother of the deceased), Chameli (PW8—sister-in-law of the deceased), Ramrati (PW9—wife of the deceased) and Lakhan Singh (PW 12—family friend of the deceased) cannot be relied on as they were inconsistent and lack credibility. Besides they are contrary to the medical evidence. According to the own deposition of Lakhan Singh (PW 12—family friend of the deceased), he used to call the deceased as '*maama*'. He has stated that he arrived first at the place of incident upon hearing hue and cry of the deceased and saw the accused running away from the scene of offence. But, as per the testimonies of Chameli (PW 8—sister-i-law of the deceased) and Ramrati (PW 9—wife of the deceased) who reached the place of occurrence afterwards, the accused were still beating the deceased with *lathis*. Contrary to their statements, Dr. R.K. Dixit (PW 13) who conducted postmortem examination on the body of the deceased opined that the death was caused due to fatal injury by a sharp and pointed object or weapon. Nowhere in their testimony, the eyewitnesses specified that the accused carried sharp edged weapons, attributing the fatal injury to the victim. It is only before the trial Court, Ramrati (PW 9—wife of the deceased) improvised her version and deposed that when she reached the place of occurrence, the accused were beating her husband with *lathis* which were coated with iron. Her statement cannot be made basis for convicting the accused as she is very much an interested witness, more so when there is no specific averment as to who caused the fatal injury on the neck, leading to the death of the victim. It was not appropriate on the part of Courts below to ignore the fact that the eyewitnesses deposed that they saw the accused giving beatings to the victim with sticks while the medical evidence suggests that the cause of death was by a sharp edged weapon. Before substantiating the crime against accused, the courts below failed to scrutinize the prosecution evidence with utmost care when the eyewitnesses are closely related. Only by placing reliance on couched evidence, the trial Court recorded conviction of the accused. The High Court also ignored just principles of law to ensure that the prosecution should prove its case beyond reasonable doubt and in a mechanical way fastened crime with the appellant and committed serious error by upholding conviction.

A 6. Adverting to the above arguments, learned counsel for the State submitted that the ocular testimony of PWs 8 and 9 remained consistent and duly corroborated by the medical evidence. There was no suspicion for false implication of the accused as the eyewitnesses had categorically explained the beatings given by the accused leading to the death of Mangal Singh. There was specific statement by PW 9 (wife of the deceased) B that the sticks with which accused given beatings to the deceased were coated with iron. The Courts below were at no fault in appreciating the direct evidence of eyewitnesses so as to connect the accused with the commission of the crime and the judgment of conviction under Section 302/34, IPC does not call for any interference by this Court.

C 7. In the backdrop of what has been argued by the learned counsel for the parties and in the light of relevant material available on record we may now proceed with our observations. Admittedly there was no peace and harmony between the victim and accused groups as they locked horns with each other over a longstanding dispute dating back 30 D years, relating to mutation proceedings of some landed property. The thrust of the prosecution to prove the charge against the appellant was mainly on the evidence of Chameli (PW 8)—wife of the complainant Hira Singh and sister-in-law of the deceased, Ramrati (PW 9)—wife of the deceased and Lakhan Singh (PW12)—family friend of the deceased, to make an endeavor that in all probability it was the accused who E committed the guilt.

8. We find from the record that PW12—Lakhan Singh was the first person to reach the place of occurrence when an alarm was raised by the victim. In his statement to the police under Section 161, Cr.P.C. it was unambiguously stated in clear terms that when he reached the place F of occurrence, he saw the accused running away from the spot. It was not mentioned in the FIR or in his statement to the police that he witnessed the accused-appellant injuring the victim. It is only in his deposition before Court, with variation to his earlier statement before the police, he narrated that he was present at the spot at the time of commission of G offence and witnessed the accused showering *lathi* blows on the deceased. He admittedly made clear that PWs 8 and 9 reached the place of occurrence afterwards.

9. On the other hand, PW 8 in her statement deposed that she saw accused beating the deceased with *lathis* due to which the deceased H had sustained injuries on head, neck and blood was oozing out from

there and there was sunlight at that time. PW 9 (wife of the deceased) also made the same statement however with some intensity that the *lathis* were coated with iron. Veracity of the statements of these two witnesses is doubtful at the threshold itself, as they do not tally with the statement of PW12 who admittedly reached the place of occurrence first.

10. Considering the totality of the prosecution case, we fail to understand that at the time of such occurrence in a small village, when there was sunlight and PW8 & PW9 along with villagers rushed upon hearing uproar of PW12, no attempt was made by any of the eyewitnesses or villagers to catch hold of the accused. This lacuna in the prosecution case becomes stronger with the fact that in the FIR it was clearly mentioned, as PW8 saying to the complainant that upon hearing hue and cry from the field, PW9, PW12 and other people of village rushed to the field. Though there was no indication in the FIR on PW8 herself rushing to the scene of offence, it is however apparent that some other people of village rushed to the place of occurrence, but there was none among the villagers who rushed with PWs 8 & 9 as independent eyewitness.

11. Thus, it is true that other than PW12—family friend of the deceased, the prosecution has not made any independent witness from the village people who rushed to the place of offence along with PWs 8 & 9 on hearing hue and cry from the field. The circumstances warrant application of due care and caution in appreciating the statements of eyewitnesses because of the fact that the prime eyewitnesses are related inter-se and to the deceased. Hence, the prosecution has failed to put a strong case as we cannot attach credence to the statements of PWs 8, 9 & 12. The courts below erred in not applying the principle of strict scrutiny in assessing the evidences of eyewitnesses (PWs 8, 9 & 12).

12. Further, we find from the postmortem report (Annexure P1) prepared by Dr. R.K. Dixit (PW 13) upon examining the body of deceased, that there was a punctured wound just below the angle of right mandible over the right side of neck 1" x ½" x 3" and on dissection, he found that major artery was punctured and trachea was cut. There was hematoma underlying the whole side of neck and in the opinion of Doctor, the injury was caused by a sharp piercing object. In his evidence, Doctor (PW 13) confirmed that cause of death was due to excessive hemorrhage form the punctured wound over the right side of neck caused by sharp piercing object and due to punctured major blood vessel, over right side of neck.

A 13. It is on record that at the instance of the accused—appellant, police have recovered (Ext.P7) from *arhar* field the *lathi* allegedly used in the offence. However, nowhere it is recorded that the seized *lathi* contained any sharp edges with iron coated. Even it was not sent for examination of Dr. R.K. Dixit (PW 13) to ascertain whether the fatal injury could be resulted by it. Moreover, the record says that the blood on the bloodstained cap of deceased (Ext. P9) seized from the place of occurrence did not tally with that of the deceased. Another glaring deficiency is that Sub-Inspector who conducted the seizure proceedings and prepared the Ext. P7 (seizure memo) has not been examined by the prosecution. It is settled proposition in criminal jurisprudence that ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses.[4] In this case the nature of injury, contradiction about the time of arrival of the witnesses, contradictions between the ocular and medical evidence, non-examination of Police officer who conducted seizure and subsequent improvement by one of the eye witness casts a serious doubt on the prosecution's case.

14. For the foregoing reasons, we cannot hold the accused—appellant guilty of the offence in the present case. The conviction against appellant as recorded by the trial court and upheld by the High Court is therefore set aside and he is acquitted of the charges. He shall be set at liberty forthwith if not required to be detained in connection with any other offence.

15. The appeal stands allowed accordingly.

Nidhi Jain Appeal allowed.