

MATHURA PRASHAD AND ANR.

v.

STATE OF MADHYA PRADESH

OCTOBER 4, 1991

[S. RATNAVEL PANDIAN AND M. FATHIMA BEEVI, JJ.]

Constitution of India, 1950—Article 136—Criminal appeal—Concurrent findings of fact—Interference by Supreme Court—Circumstances indicated.

Indian Penal Code, 1860—Sections 302/34—Conviction under—Appreciation of evidence by Supreme Court in appeal—Non-inclusion of appellant's names in the paper wherein deceased wrote the name of assailant and inquest report—Inconsistency of witness—Evidence on appellant's participation—Held guilt of the appellants-accused not proved.

According to the prosecution, when the deceased a petition-writer, was sleeping in a room with his wife (PW.19) on the ill-fated night, he heard someone knocking at the door. The deceased switched on the light and opened the door. The accused (A.1 and A.2) entered his room. They whipped up their knives and gave stab wounds; one on the chest, another on the back while bending. They also slapped and fisted the deceased.

It was further stated that the second appellant (A 5) caught hold of the deceased and banged him against the wall repeatedly. PW 19 tried to save her husband but she was pushed aside. During the course of the occurrence, a gold 'PUTRI' which PW 19 was wearing, was attempted to be snatched away from her.

The eldest daughter of the deceased, PW 1, who was sleeping in a room on the first floor, on hearing the cry, got down and saw the appellants and the other accused leaving her father's room. The appellants while running away took with them a box containing some clothes and other articles belonging to PW 1 and chained the doors in such a way that the other inmates of the house could not reach the spot.

The deceased's son, PW 3, who was sleeping in another room reached the spot. PW 15, a tenant in an adjoining room on hearing the distress cry of PW 19, wanted to come out of his room but he could not do

A so as the house was chained from outside. He came to the spot after the door was opened.

B All the witnesses saw bleeding injuries on the body of the deceased who was unable to speak. PW 3, at the instance of his deceased father brought a pen and a piece of paper on which the injured deceased wrote 'Gulab Chand' and thereafter became unconscious, and he was then taken to the Government hospital where he succumbed to his injuries.

C The two appellants (A4 and A5 before the Trial Court) along with three others were tried u/s. 302 IPC or u/s. 302/149 and u/s. 396, for causing the death of the deceased, accused No. 2 stabbing the deceased with a knife and the rest of the accused assaulting him and for committing the offence of dacoity.

D The Trial Court found the third accused not guilty of any of the charges and acquitted him but convicted others u/s. 302 read with 34 IPC and sentenced each of them to undergo imprisonment for life, and acquitted them of the offence u/s. 396 IPC.

E The High Court confirmed the conviction. The present two appellants (A4, A5) filed the present appeal against the judgment of the High Court through special leave.

The other two accused (A1 and A2) preferred a separate special leave petition, which was dismissed by this Court.

Allowing the appeal of the two accused (A4, A5), this Court,

F HELD: 1. The powers of the Supreme Court under Article 136 of the Constitution are wide but in criminal appeals, this Court does not interfere with the concurrent findings of fact, save in exceptional circumstances. [430 H]

G 2. Within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of the fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings has acted perversely or otherwise improperly. [431 C]

H *Arunachalam v. PSR Sadhanathan*, [1979] 2 SCC 297; *State of*

Madras v. A. Vaidyanatha Iyer, [1958] SCR 580; *Himachal Pradesh Administration v. Om Prakash*, [1972]1 SCC 249, referred to.

3.01 The deceased was a petition writer and so in that capacity he was very well conversant as to how to draft a complaint. He asked for a pen and paper, and wrote the name, 'Gulab Chand', evidently thereby saying that Gulab Chand was the assailant. The deceased had not written any other name except the name of Gulab Chand. Now the explanation given by the prosecution is that the deceased became unconscious after writing this one name Gulab Chand, thereby saying had he not become unconscious, probably he would have written the name of other assailants also. [431 E-F]

3.02. PW 19 the wife of the deceased, was sleeping in the same room in which the deceased was sleeping did not inform either PW 1 or PW 2 the names of the assailants but she gave the names only to PW 3, her son. It transpires from the evidence of PW 19 that after PW 1 went to fetch the rickshaw, PW 3 asked his father as to who had assailed him and that it was only thereafter the injured deceased wrote the name of Gulab Chand on a piece of paper. Before the deceased wrote the name of Gulab Chand on a piece of paper given by his son, PW 3, no one including PW 19 came forward with the names of the assailants. [431 F-G]

3.03. The evidence of PW 2 and 19 indicated that PW 3 was not informed of the names of the assailants before his father (the deceased) wrote the name of Gulab Chand. Till the deceased wrote the name of Gulab Chand on a piece of paper evidently PW 3 did not know as to who the assailant or assailants was/were. [432 F]

3.04. The Courts below have not approached this significant aspect of this salient feature in the proper perspective. [432 G]

3.05. In the inquest report there is a specific averment that the two assailants namely, Gulab Singh (A.2) and Gulab Chand (A.1) stabbed the deceased with knives which case alone fits in with the earlier statements of PWs 2 and 19 as well as the version of the deceased in Exh. P. 50. If really the names of the two appellants had been mentioned by the witnesses, those names also would have been specifically mentioned in Exh. P. 24, the inquest report. [433 B-C]

A 3.06. It is in evidence that both the appellants were present at the scene of occurrence when the police constable came, but none pointed out to the police that these two appellants also participated in the crime. The prosecution has not satisfactorily established the guilt of the two appellants beyond all reasonable doubt. [433 F, 434 B]

B CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 624 of 1979.

From the Judgment and Order dated 27.3.1979 of the Madhya Pradesh High Court in Criminal Appeal No. 498 of 1977.

C Frank Anthony, Sushil Kumar Jain, Ms. Pratibha Jain and R.V. Singh for the Appellants.

U.N. Bachhavat, Uma Nath Singh and J.M. Sood for the Respondent.

D The following Order of the Court was delivered:

These two appellants, namely, Mathura Prashad and Binda Prashad have preferred this appeal questioning the correctness and legality of the judgment rendered in Criminal Appeal No. 498/77 by the High Court of Madhya Pradesh at Jabalpur Bench. These two appellants (A4 and A5 before the Trial Court) along with three others, namely, Gulab Chand and Gulab Singh and Laxman Rao (who were arrayed as accused Nos. 1 to 3) took their trial on the accusation that on the night intervening 5/6.12.75 at about 12.30 a.m. at Sarkanda, Bilaspur within the limits of Bilaspur Police Station, Civil Lines intentionally caused the death of the deceased, Keshav Singh by Gulab Singh stabbing the deceased with a knife and the rest of the people assaulting him and that in the course of the same transaction, they also committed the offence of dacoity. Under the above accusation, they were tried for offences punishable u/s 302 IPC in the alternative u/s 302 IPC read with 149 IPC and also for offence u/s 396 IPC. The Trial Court found the third accused, namely, Laxman Rao not guilty of any of the charges and consequently, acquitted him but convicted these two appellants and accused Nos. 1 and 2 who are not before us u/s 302 read with 34 IPC and sentenced each of them to undergo imprisonment for life. However, the Trial Court acquitted the appellants and the other two accused of the offence u/s 396 IPC.

H On being aggrieved by the judgment of the Trial Court, the convicted accused namely, these two appellants, Gulab Chand and Gulab Singh filed

an appeal before the High Court which for the reasons mentioned in its judgment, dismissed the appeal confirming the conviction recorded by the Trial Court. Challenging this judgment, these two appellants filed their SLP No. 1902/79 and the other two convicted accused, namely, Gulab Chand and Gulab Singh (A1 and A2) filed a separate petition in SLP (Crl.) No. 1435/79. This Court by an order dated 29.10.79 granted leave so far as SLP filed by these two appellants, but dismissed the SLP filed by the first and the second accused namely, Gulab Chand and Gulab Singh. Hence, the present appeal by these two appellants.

The facts of the case which led to the filing of this appeal are well set out in the judgments of the Trial Court and the High Court and hence we think that it is not necessary for us to proliferate the same except to refer to certain salient features relevant for the disposal of this appeal.

The deceased Keshav Singh was a petition writer. He was living in his house at Sarkanda in Bilaspur with his wife Smt. Phatokan Bai (PW 19) and two daughters, namely, Anjani Bai (PW 1) and Shail Kumari (PW 2) and his son, Ram Kumar (PW 3) who was younger to PW 1 and elder to PW 2. There were some tenants in different parts of that house. The accused Gulab Chand occupied a portion of that house as a tenant, but vacated the same about two months before this occurrence due to frequent quarrels between the children and ladies of the families belonging to Gulab Chand and that of the deceased. It is alleged that the wife of Gulab Chand had complained about some alleged misbehaviour of the deceased with her. According to the prosecution, when the deceased was sleeping in a room with his wife on the ill-fated night, he heard someone knocking at the door. On this, the deceased switched on the light and opened the door. This appellant and the other accused entered his room. Gulab Chand and Gulab Singh whipped up their knives and gave stab wounds; one on the chest, another on the back while bending. These two appellants slapped and fisted the deceased. It is further stated that the second appellant herein, namely, Binda Singh caught hold of the deceased and banged him against the wall repeatedly. PW 19 tried to save her husband but she was pushed aside. During the course of the occurrence, a gold 'PUTRI' which PW 19 was wearing, was attempted to be snatched away from her.

PW 1 who was sleeping in a room on the first floor, on hearing the cry, got down and saw these appellants and the other accused leaving her father's room. It is alleged that the appellant while running away took with them a box containing some clothes and other articles belonging to PW 1. According to the prosecution, the appellants had chained the doors in such a way that the other inmates of the house could not reach the spot.

A After the appellants had fled away, PW 1 opened the doors. PW 3 who was sleeping in another room reached the spot. PW 15 was a tenant in an adjoining room and he on hearing the distress cry of PW 19, wanted to come out of his room but he could not do so as the house was chained from outside. Therefore, PW 15 shouted for opening the latches of the door. He came to the spot after the door was opened. One Ramji Dayal who seemed to have played an important role in the prosecution, also reached the spot but he has not been examined by the prosecution as a witness. All the witnesses saw bleeding injuries on the body of Keshav Singh (the deceased herein) who was unable to speak. PW 3, at the instance of his deceased father brought a pen and a piece of paper on which the injured Keshav Singh wrote 'Gulab Chand' and thereafter became unconscious. The injured Keshav Singh was then taken to the Government hospital at Bilaspur where he succumbed to his injuries. The medical officer sent a requisition Ex. P 14 to the police station. PW 19, by then, lodged the first information report Ex. P 43 at about 3.00 a.m. on 6.12.75 before PW 21. PW 21 held inquest and prepared the inquest report Ex. P 24. During the course of the investigation, he has seized Ex. P.50, the paper on which the deceased had written the name 'Gulab Chand' on being produced by PW 3. PW 9, the medical officer who conducted autopsy on the dead body of the deceased, found two stab wounds and one incised wound on the person of the deceased. PW 8, another medical officer examined accused Gulab Singh and found on his person a small incised wound at the base of the index finger on the palmer aspect. After completing the investigation, the charge sheet was laid against all the accused persons.

As aforementioned, the trial court convicted the four accused inclusive of these two appellants which conviction was confirmed by the High Court. Hence, this appeal by these two appellants.

F Of the witnesses examined, PWs 1, 2 and 19 speak about the participation of the appellants in the perpetration of this heinous crime. No doubt both the Courts below have concurrently found that these two appellants and the other two accused 1 and 2 were responsible for causing the death of the deceased and consequently convicted and so, the question would be whether this Court while exercising its jurisdiction under Article 136 of the Constitution of India, will be justified in interfering with the concurrent findings of fact.

H This Court in *Balam Ram v. State of U.P.* [1975] 3 SCC 219 at 227 held, that the powers of the Supreme Court under Article 136 of the Constitution are wide but in criminal appeals, this Court does not interfere with the concurrent findings of fact save in exceptional circumstances. The

scope of interference by this Court under Article 136 of the Constitution of India in a case of concurrent findings of fact arose in *Arunachalam v. PSR Sadhanathan*, [1979] 2 SCC 297 wherein this Court has held that "Article 136 of the Constitution of India invests the Supreme Court with a plenitude of plenary appellate power over all Courts and Tribunals in India. The power is plenary in the sense that there are no words under Article 136 itself qualifying that power. But, the very nature of the power has led the Court to set limits to itself within which to exercise such power. It is now the well established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the Court. But, within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of the fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings had acted "perversely or otherwise improperly". (See *State of Madras v. A. Vaidyanatha Iyer* [1958] SCR 580 and *Himachal Pradesh Administration v. Om Prakash*, [1972] 1 SCC 249. We think that it is not necessary to swell this judgment by citing all the decisions relating to this principle of law.

When the facts and circumstances of the case are scrutinised, in our considered opinion, they do compel this Court to interfere on the ground that the findings of the Courts below suffer from the vice of perversity. It is the admitted case that the deceased was a petition writer — and so in that capacity he was very well conversant as to how to draft a complaint. He asked for a pen and paper, and wrote the name, 'Gulab Chand', evidently thereby saying that Gulab Chand was the assailant. The deceased had not written any other name except the name of Gulab Chand. Now the explanation given by the prosecution is that the deceased became unconscious after writing this one name Gulab Chand, thereby saying had he not become unconscious, probably he would have written the names of other assailants also. But we have to test this evidence in the background of the evidence given by other witnesses namely PWs 1, 2 and 19. PW 19 who is none other than the wife of the deceased, was sleeping in the same room in which the deceased was sleeping and, therefore, she must be the proper and natural witness and her evidence has to be given credence. PW 19 admittedly did not inform either PW 1 or PW 2 the names of the assailants but she gave the names only to PW 3, her son. It transpires from the evidence of PW 19 that after PW 1 went to fetch the rickshaw, PW 3 asked his father as to who had assailed him and that it was only thereafter the injured Keshav Singh wrote the name of Gulab Chand on a piece of paper. The relevant portion of the evidence of PW 19 reads as follows:

A "Then Ram Kumar asked my husband as to who had assaulted and he asked for a pen and paper. Ram Kumar brought a paper and pen and my husband could write on it the name of Gulab Chand."

B In this connection, evidence of PW 2 may also be referred to which is as follows:

C "Then at this stage, my brother asked him as to who had assaulted him. My father asked by a sign of hand for a pen and paper, whereupon my brother brought the pen and paper and gave that to my father. My father wrote on it by his hand; he wrote the name of Gulab Singh and thereafter he became unconscious."

D This clearly indicates that before the deceased wrote the name of Gulab Chand on the paper given by his son, PW 3, no one including PW 19 came forward with the names of the assailants but it is only thereafter, PW 19 gave the names of the assailants. Here also, the prosecution is not consistent because PW 2 says that her father also gave the name of all the assailants to Ram Kumar (PW 3). The relevant part of PW 2's evidence reads thus:

E "Then my mother and father both mentioned the names of the assailants. At that time my brother, Ram Kumar was also there. After Ramji had enquired, my brother also enquired them. My father asked for by a sign of hand for pen and a copy."

F The above extracted pieces of evidence of PWs 2 and 19 indicate that PW 3 was not informed of the names of the assailants before his father (the deceased herein) wrote the name of Gulab Chand. Had PW 3 informed by his mother (PW 19) of the names of the assailants, he might not have asked his father as to who the assailants were. In other words, till the deceased wrote the name of Gulab Chand on a piece of paper evidently PW 3 did not know as to who assailant or assailants was/were.

G It seems that both the Courts below have not approached this significant aspect of this salient feature in the proper perspective. On the other hand, it has conveniently omitted this significant factor from consideration which gives the death-knell to the prosecution case so far as the alleged participation of these two appellants in this brutal crime. In the inquest report Exh. P 24, it is stated that all the relatives of the deceased

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Keshav Singh were examined and the following conclusion was arrived at:

".....the conclusion was reached that the death of deceased Keshav Singh by Gulab Singh, Gulab Chand etc. was due to knife wounds."

This 'etc.' in the present case has no relevance because there is a specific averment that the two assailants namely, Gulab Singh and Gulab Chand stabbed the deceased with knives which case alone fits in with the earlier statements of PWs 2 and 19 as well as the version of the deceased in Exh. P.50. If really the names of these two appellants had been mentioned by the witnesses, those names also would have been specifically mentioned in Exh. P 24. At this juncture, the learned senior counsel appearing on behalf of the State referred to a decision of this Court reported in [1975] 4 SCC 153 *Pedda Narayana v. State of Andhra Pradesh* wherein this Court has held that the question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances, he was assaulted is foreign to the ambit and scope of the proceedings under Section 174. This decision will not be of any help to the prosecution because only two names are mentioned in the inquest report as assailants, leaving the names of these two appellants who are now rightly attempting to take advantage of this conspicuous omission in Exh. P. 24.

Though PW 19 is said to be the author of Exh. P 43, she before the Trial Court does not claim to be the author of the entire averments. She states that the police who recorded the report, asked only her name and her husband's name and nothing further was asked from her and she did state anything more than that. PW 19 further had deposed that she did not give the names of the accused who assaulted, that she did not know whether her husband was then dead or alive, that at Thana (Police Station) she came to know about the death of her husband, that even then she did not mention the names of the assailants, and that before going to the Thana, she did not give the names of any of the assailants to any person.

It is in evidence that both these appellants were present at the scene of occurrence when the police constable came, but none pointed out to the police that these two appellants also participated in the crime. Now the explanation offered by the prosecution is that these two appellants took the constable aside and whispered something and therefore, PW 1 suspecting that the police constable was taking side with the appellants did not come forward with a statement that these two appellants were also the participants in the crime. This explanation seems to have been offered only before the Trial Court. Both the Courts below have conveniently over-

A looked and ignored all the above glaring infirmities appearing in the case and as such the concurrent findings recorded by both the Courts are not proper but perverse.

B After meticulously and scrupulously analysing the evidence, we are left with an impression that the prosecution has not satisfactorily established the guilt of these two appellants beyond all reasonable doubt. Hence, we are unable to agree with the findings of the lower Courts that these two appellants also participated in the crime with the other two accused.

C In the result, the conviction of these two appellants u/s 302 read with 34 IPC and the sentence of imprisonment for life imposed therefor are set aside and both of them are acquitted.

The appeal is thus allowed.

V.P.R.

Appeal allowed.