

SH. MANI RAM AND ORS.
v.
THE STATE OF UTTAR PRADESH

MAY 13, 1994

[R.M. SAHAI, FAIZAN UDDIN AND B.L. HANSARIA, JJ.]

Indian Penal Code, 1860 : Sections 147, 148, 149 and 302.

Murder—Prosecution—Examination of interested witness—Withholding of independent witnesses—Conviction based on solitary interested witness—Held invalid.

Indian Evidence Act, 1872 :

Murder—Evidence of prosecution witness—Inconsistency with medical evidence—Unless satisfactorily explained discredits not only evidence but also entire prosecution case.

In a murder trial the brother of the deceased deposed that on the date of occurrence when he along with his brother was returning to his village after marketing the appellants armed with pistols and lathis, emerged from a sugarcane field and surrounded them. On being challenged by one of the appellants, his brother started running whereupon two of the appellants fired at him from behind while he was running and rest of the appellants assaulted him with lathis which resulted in his death. He also deposed that his cries for help attracted the attention of three persons belonging to his village who reached the spot and saw the occurrence. But these persons who were independent witnesses were not examined by the prosecution. Moreover, the testimony of the brother of deceased was inconsistent with medical evidence which revealed that there was no gun shot injury either on the back or anywhere behind the shoulder of the deceased.

Relying on the solitary evidence of the deceased's brother the trial court convicted the appellants holding that his testimony was reliable and free from all taints. On appeal, the High Court affirmed the conviction.

In appeal to this Court, it was contended on behalf of the appellants that the findings of the two Courts below suffer from serious infirmity and

A the conviction of the appellants could not be sustained because the testimony of the brother of the deceased who was an interested witness was not only inconsistent with medical evidence but also was without any corroboration from independent source.

B Allowing the appeal, this Court

HELD : 1. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case.

[69-D-E]

C 2. In the present case the evidence of the solitary witness is wholly inconsistent with the medical evidence, because no injury was found on the back or back portion of the shoulder of the deceased to lend support to his evidence. Therefore, it is unsafe to accept him as an eye witness to the occurrence and base the conviction on his evidence. [69-E; F]

D 3. Where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and, therefore, it is difficult to convict the accused on the basis of such evidence. [69-C-D]

E 4. None of the independent witnesses, who arrived at the place of occurrence just at the moment when the assault was being made on the deceased, has been examined by the prosecution. The prosecution withheld the independent witnesses and had only chosen to examine the interested witness who is the real brother of the deceased. There is no other evidence to support the prosecution case. Consequently the conviction of the appellants is set aside. [68-E; 68-F; 69-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 238 of 1993.

G From the Judgment and Order dated 18.5.92 of the Allahabad High Court in Crl. A. No. 2063 of 1979.

M.S. Ganesh and Ms. S. Janani for the Appellants.

H Anis Ahmed Khan and A.S. Pundir for the Respondents.

The Judgment of the Court was delivered by

FAIZAN UDDIN, J. The appellants Mani Ram, Agya Ram, Ramjiyawan, Kewal, Sant Ram, Siyaram and Janjali were charged and tried under Sections 147, 148 and 302/149 of the Penal Code for committing the murder of one Basdeo at about 4.00 PM on 27.1.1978. The learned IVth Additional Sessions Judge, Basti in Sessions Trial No. 195/78 convicted the appellants Mani Ram and Agya Ram Under Sections 148 and 302 read with Section 149 of the Penal Code and sentenced them to undergo rigorous imprisonment for two years and life imprisonment respectively while the remaining appellants, namely, Ramjiyawan, Kewal, Santram, Siyaram and Janjali were convicted under Section 147 and 302 read with Section 149 of the Penal Code and each one of them was sentenced to undergo rigorous imprisonment for one year and life imprisonment respectively. All the sentences were directed to run concurrently. These sentences and convictions awarded to the appellants have been affirmed by the High Court of Allahabad in appeal against which this appeal by special leave has been directed.

The prosecution case as it emerges from the FIR Ext. Ka-2 lodged by the informant Prabhoo Nath, PW 2 on 27.1.1978 at 6.25 pm in the Police Station, Sadar Bazar Basti (UP) is that the appellants and deceased Basdeo, informant Prabhoo Nath, PW 2 brother of the deceased and their father Bali were on enimical terms as there were criminal and civil cases pending between them since before the occurrence. It is said that on 27.1.1978 at about 1.00 P.M. deceased Basdeo alongwith his brother Prabhoo, PW 2 had gone from their village Bighia to Gotwa Bazar for marketing and while they were returning back to their village at about 4.00 P.M. and had reached near the Government tubewell in village Kuri, all the appellants suddenly emerged from a sugarcane field and surrounded them. Appellants Mani Ram and Agya Ram are said to be armed with country made pistols while rest of the appellants were armed with lathis. It is said that on the exortation of appellants Sant Ram to kill them and not to let them escape, the appellants Mani Ram and Agya Ram opened fire at Basdeo with their country made pistols and the rest of the appellants assaulted him with lathies. The cries of the informant for help attracted the attention of Ram Pher, Bhurkul and Ram Ajore, all belonging to the village of the informant and who were also coming behind them, who rushed at the spot and saw the occurrence. Thereafter the appellants made their escape good from the place of occurrence. Informant Prabhoo Nath, PW

A 2 the brother of Basdeo who was accompanying him at the time of occurrence could not dare to come forward at the rescue of his brother Basdeo due to the fear that he may also be shot at by the appellants. Prabhoo Nath took injured Basdeo to the Police Station on a rickshaw where he lodged the FIR Ext. Ka-1 regarding the occurrence.

B Injured Basdeo was sent to the Civil Hospital, Basti where he was medically examined by Dr. Chaturvedi who found injuries on his person as per injury report Ext. Ka-5. However Basdeo died in the hospital same evening at 7.15 PM. Dr. S.G. Kekariwal PW 1, performed the autopsy over his dead body and as per his post- mortem report Ext. Ka-1 found the following injuries on his person :—

- C
1. Contusion 10 cm x 8 cm face left side, just infront of left lobe.
 2. Contusion 5 cm x 1.5 cm chin front c underlying fracture of mandible front, 3 cm wide part of whole mendible front was separate from rest of mendible (in three pieces).
- D
3. Lacerated wound 3 cm x 1 cm bone deep scalp left side parallel to midline, 9 cm above left ear.
 4. Lacerated wound 4 cm x 0.5 cm x bone deep scalp left side 2.5 cm above & parallel to injury No. 3.
- E
5. Lacerated wound 3 cm x 0.5 cm x bone deep scalp rt. side 10 cm above rt. ear.
- F
6. Lacerated wound 3 cm x 1 cm x bone deep, back of (ocipital region) 10 cm behind the left ear.
 7. Multiple gun shot wounds (50 in number) in area of 17 cm x 13 cm on each rt. shoulder & upper arm front & 1st part largest paper torn X muscles deep & smallest 0.2 cm x 0.2 cm x superficial: irregular blackening tatcoing searching present. (Emphasis supplied)
- G
8. Abrasion 2 cm x 2 cm, chest rt. side 5 cm superolateral neeple.
 9. Abrasion 4 cm x 3.5 cm back of et. forearm 18 cm above wrist jt.
- H

10. Contusions (4 in number) in area of 10 cm x 6 cm on the back of forearm and wrist crossing each other c underlying fracture of rt. radius bone 2 cm above wrist jt. A
11. Abraded contusion 9 cm x 8 cm back of rt. hand.
12. Contusion c abrasion 8 cm x 5 cm left arm lower part, oblique back & outer part just above elbow. B
13. Contusion multiple (6 in number) in area of 17 cm x 1 cm left from back & outer part crossing each other.
14. Multiple contusions in one of 14 cm x 11 cm back of left hand & wrist jt. C
15. Lacerated wound 2 cm x 0.5 cm x bone deep left leg front 20 cm below knee jt.
16. Abrasion 2 cm x 0.5 cm left leg front 8 cm below knee. D
17. Contusion 10 cm x paper torn front & lower part of left leg including on paper torn c underlying fracture of left leg lower part, Both bones paper torn.
18. Multiple Contusions (5) in area of 11 cm x 8 cm rt. leg x paper torn. E
19. Abrasions 2 cm x 0.3 cm rt. leg front, 14 cm above ankle jt. paper torn.

According to the evidence of Dr. Tekriwal, PW 1, injury No. 7 alone was caused by a fire-arm and the remaining injuries were caused by hard and blunt objects like lathi. Ext. Ka-1 is the post-mortem report prepared and signed by him. In the opinion of the doctor the death of the deceased was due to the injuries on his head as well as due to the unconsciousness of the victim. F

At the trial all the appellants adjured their guilt and pleaded that they were falsely implicated due to enmity. G

The learned trial Judge recorded the conviction of the appellants on the solitary evidence of Prabhoo Nath, PW 2, the brother of the deceased H

- A by holding that his testimony was reliable and free from all taints. The High Court also on perusal of the testimony of Prabhoo Nath, PW came to the conclusion that his evidence is free from contradiction and he being a reliable witness to the occurrence, conviction of the appellants can be based on his sole testimony.
- B Learned counsel appearing for the appellants strenuously urged that Prabhoo Nath, PW 2 is none else but the real brother of the deceased and, therefore, he is a highly interested witness and as such his sole testimony should not be accepted in convicting the appellants without any corroboration from independent source. He also submitted that the evidence of the solitary eye witness Prabhoo Nath is not consistent with the medical evidence which fact by itself is sufficient to hold that he is not an eye witness to the incident but a got up witness which fact has been ignored by both the Courts below and, therefore, the findings of the two Courts below suffer from serious infirmity and the conviction of the appellants could not be sustained. On a close scrutiny of the evidence of Prabhoo Nath, PW 2 and the evidence of Dr. Tekriwal, PW1, we find that there is great force in the aforesaid submissions.
- C
- D

It clearly turns out from the evidence of Prabhoo Nath, PW 2 that Ram Pher, Bhurkul and Ram Ajore of his village had also arrived at the place of occurrence just at the moment when the assault was being made on his brother deceased Basdeo but none of these independent witnesses have been examined by the prosecution. Prabhoo Nath, however, stated that the witnesses Ajore could not appear as a witness in this case because a criminal case against him was going on. He also deposed that Ram Pher and Bhurkul also could not appear as witnesses due to fear and having been paid for not appearing as a witness. This statement of Prabhoo Nath, PW 2 is only speculative as according to his own statement he did not meet any of these witnesses nor this information was based on any source whatsoever. It is thus clear that the prosecution withheld the independent witnesses and had only chosen to examine the interested witness Prabhoo Nath, PW2, who is the real brother of the deceased.

- G Apart from the above facts it may be pointed out that Prabhoo Nath, PW2 admitted in cross-examination that soon after the appellants emerged from the sugarcane field and when the appellant Santram challenged Basdeo, he started running and at that point of time the appellant Mani Ram was standing at a distance of 60-70 yards towards east-west and the appellant Agya Ram who was standing at distance of about 4-5 Ft. from
- H

Mani Ram chased Basdeo and both of them fired at him from their kattas while the deceased was running. This statement clearly goes to show that the deceased was fired at from behind when he was running and the appellants Mani Ram and Agya Ram were chasing him. That being so the bullet or pallet injuries should have been caused on his back or at least somewhere behind his shoulder but as stated earlier according to the medical evidence and the post-mortem report injury No. 7 was caused by a fire-arm. A perusal of injury No. 7 will distinctly go to show that there were multiple gun shot wounds on a area 17 x 13 cms right shoulder and front of upper arm and outer part but there was no injury either on the back or anywhere behind the shoulder. There is no other gun shot injury except injury No. 7. Neither the doctor who first examined the injured Basdeo nor the doctor who performed the post-mortem found any injury on the back or back portion of the shoulder to lent support to the evidence of the sole eye witness Prabhoo Nath. It is well settled by long series of decisions of this Court that where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case. In the present case as noticed above the evidence of the solitary witness Prabhoo Nath is wholly inconsistent with the medical evidence and, therefore, it is difficult to accept him as an eye witness to the occurrence and therefore it would not be safe to base the conviction on the solitary evidence of such a witness. There is no other evidence to support the prosecution case. Consequently the conviction of the appellants deserve to be set aside.

In the result the appeal succeeds and is hereby allowed. The conviction of the appellants Mani Ram and Agya Ram under Sections 148 and 302/149 of the Penal Code with sentences thereunder is set aside. The conviction of the appellants Ramjiyawan, Kewal, Santram, Siyaram and Janjali under Section 147 and 302/149 with sentences thereunder is also set aside and all the appellants are acquitted of the offences charge with. If the appellants are not required in any other offence they shall be released forthwith.