



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1771 OF 2009

VIJAY AND ANR.

APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH

RESPONDENT(S)

**WITH
CRIMINAL APPEAL NO.286 OF 2010**

J U D G M E N T

B.R. GAVAI, J.

1. Both these appeals challenge the judgment and order dated 16th September 2008, passed by the Division Bench of the High Court of Madhya Pradesh at Indore in Criminal Appeal No. 666 of 1999, thereby dismissing the appeal filed by the Accused/Appellants, namely Vijay s/o Nirbhay Singh, Babbu @ Nandkishore s/o Ramesh and Mahesh s/o Mohan Singh and upholding the order of conviction and sentence dated 19th April 1999, as recorded by the learned 1st Additional Sessions Judge, Indore, M.P. (hereinafter referred to as “the learned Trial Court”)

in Sessions Case No. 459 of 1998 in respect of the appellants herein.

2. Shorn of details, the facts leading to the present appeals are as under:

2.1 On 2nd August 1998, Narendra Singh Bais (PW-12), posted at the Police Out Post, Vijay Nagar, under Police Station, MIG., was informed that a person had been done to death by stabbing and causing cut wounds in Meghdoot Garden and Prem Narain (PW-5) had given a *Dehati* Report with regards to the said incident. In the said Report, he had stated that he was a resident of Ramnagar and about 03 months before the date of the aforesaid incident, his elder son, Jagdish (the brother of the deceased) was beaten by the Accused/Appellants Babbu @ Nandkishore, Vijay, Naresh, and Deepak and a Report to that extent was also lodged at P.S. Hiranagar, and ever since the said incident, the accused persons were harboring enmity against the brother of the deceased. On the date of the incident, the younger son of PW-5, i.e., Dharmendra (deceased) had gone for a walk in the Meghdoot Garden and had not returned by 8.30 PM; when PW-5 went to look for him in the said garden, he saw that the

Accused/Appellants Babbu, Vijay and Mahesh were stabbing the deceased with knives. When he shouted for help, the accused persons fled away; following which, he found a large number of injuries that had been caused to the deceased which resulted in his death.

2.2 The prosecution case, in a nutshell, is that, on the said information given by PW-5, PW-12 recorded a *Dehati Nalishi* at the Police Choki and a report was accordingly sent to P.S. MIG for registration of offences punishable under Sections 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and after recording the said information, a First Information Report (“FIR” for short) vide Crime No. 493 of 1998 was registered. It was further the case of the prosecution that, Sayyed Azhar Ali Warsi (PW-9), who was working as the Town Inspector, on receiving the aforesaid information on wireless, proceeded to the place of the incident. When he reached the place of occurrence, he saw the dead body of the deceased and accordingly prepared the Inquest Memo and the Spot Map. He also seized the blood-stained and plain earth along with a white colour shirt and forwarded the dead body of the deceased to the Hospital for post-mortem

examination. Dr. P.S. Thakur (PW-11), who performed the autopsy gave a report, which stated that 31 injuries were found on the body of the deceased out of which 08 injuries were stab wounds and the rest were incised wounds.

2.3 The Accused/Appellants were arrested and the clothes along with the murder weapons were seized at their instance. The seized articles were sent to the Forensic Science Laboratory for analysis and a report was accordingly received.

2.4 After the investigation, a chargesheet came to be filed in the Court of learned Judicial Magistrate First Class, Indore which committed the case to the learned Sessions Court which forwarded the same to the learned Trial Court for conducting the trial and deciding over the matter.

2.5 Charges came to be framed by the learned Trial Court for the offences punishable under Sections 302/34 of the IPC. The accused pleaded not guilty and claimed to be tried.

2.6 The prosecution examined 12 witnesses to bring home the guilt of the accused. Their defense was that they were falsely implicated on account of earlier enmity. After the trial, the learned Trial Court found that the prosecution had proved the case

against the accused/appellants beyond reasonable doubt and accordingly convicted them for offences punishable under Sections 302/34 IPC and sentenced them to undergo life imprisonment along with fine.

2.7 Being aggrieved thereby, the Accused/Appellants preferred an appeal before the High Court. The High Court by the impugned judgment and order affirmed the order of conviction and sentence of the Accused/Appellants awarded by the learned Trial Court. Hence, the present appeals.

3. We have heard Shri Sushil Kumar Jain, learned Senior Counsel, and Mr. Pradeep Aggarwal, learned counsel for the appellants, and Ms. Rukhmini Bobde, learned counsel for the respondent-State of Madhya Pradesh.

4. Shri Sushil Kumar Jain submits that the conviction is based solely on the testimony of Prem Narain (PW-5), the father of the deceased. He submits that his testimony is full of contradictions. It is, therefore, submitted that the conviction, which was solely based on the testimony of such a witness, is not sustainable in law.

5. Per contra, Ms. Rukhmini Bobde submits that, merely

because the conviction was based on the sole testimony of PW-5 cannot be a ground to interfere with. She submits that the learned Trial Court and the High Court have concurrently found the testimony of PW-5 to be reliable and as such, no interference is warranted in the present appeals.

6. Since it is not disputed that the death of the deceased is homicidal, it is not necessary to refer to the medical evidence.

7. Apart from Prem Narain (PW-5), who is the father of the deceased, Virender Sahu (PW-4) and Jagdish (PW-8), who are the brothers of the deceased, were also examined as eye-witnesses. However, testimonies of Virender Sahu (PW-4) and Jagdish (PW-8) have been disbelieved by both the learned Trial Court as well as the High Court.

8. Kamal Singh (PW-1) and Kalidas (PW-2), who were Police Constables, posted at the Meghdoot Garden where the incident was alleged to have taken place, have not supported the prosecution case. Dildar Singh (PW-3), the Kulfi Vendor, has also not supported the prosecution case. The guard Ram Kishor Singh (PW-6), posted at the Meghdoot Garden, who had informed about the dead body, has also not supported the prosecution case and

has turned hostile. The rest of the witnesses are either Investigating Officer (I.O.) or other Police officers conducting the investigation.

9. As such, it is only the testimony of Prem Narain (PW-5), the father of the deceased, which is required to be taken into consideration.

10. No doubt, that the conviction can be based on the evidence of a solitary witness. However, for resting the conviction on the basis of such testimony, the evidence of such a witness has to be found to be wholly trustworthy, reliable, and cogent. It is further to be noted that Prem Narain (PW-5) has admitted to the previous enmity between his family on the one hand and the accused persons on the other hand. As held by this Court in a catena of judgments, previous enmity is a double-edged weapon. On one hand, it provides motive, and on the other hand, the possibility of false implication cannot be ruled out.

11. In this background, we will have to examine the testimony of Prem Narain (PW-5).

12. Prem Narain (PW-5) in his examination-in-chief stated that, on 2nd August 1998, which was a Sunday, at around 8.45 P.M.,

he had gone in the Meghdoot Garden to search for his younger son Dharmender. When he went there, he saw that three boys were killing his son. He named them to be Babbu @ Nandkishore, Mahesh and one of them a Rajput whose name he did not remember. He later identified the said person to be 'Vijay'. He also stated that when he reached the spot, the crowd had gathered at a distance from his son upon which he had seen the accused persons present in the court fleeing from there. They were armed with knives and the clothes of these three persons were stained with blood. He further stated that though he raised an alarm, nobody from the crowd came to save him. When he reached near his son, he saw him lying in a pool of blood on the ground. He stated that thereafter he became nervous. After some time, Police came there and asked him the names of the accused persons.

13. In his examination-in-chief, he stated about the prior incident wherein his elder son Jagdish (PW-8) was beaten up by these three accused persons along with one Deepak.

14. In his cross-examination, he admitted that his house is at a distance of about 200 meters from the Meghdoot Garden. He

submitted that since his brother-in-law Tula Ram had come to his house, all the members of his family were present. He stated that when his brother-in-law asked about Dharmender, he alone went in search of him. He stated that he had not been told by anyone that his son is in Meghdoot Garden, but he went there on his own accord. The reason given by him is that his son used to go to Meghdoot Garden to take a walk.

15. It is relevant to refer to his admission in his cross-examination, which is as under:

“It is correct that I had gone to see Dharmender in Meghdoot Garden by chance because he used to go there only. My wife had not said that he had gone Meghdoot Garden and therefore to bring him back.”

16. He further admitted that when he entered Meghdoot Garden, he saw the crowd and there were about 7-8 persons. He stated that he could not identify the said 7-8 persons. He stated that only after reaching near the dead body, he could recognise that the said dead body was that of his son.

17. He further admitted that only a few people come towards the bridge when it gets dark. It is further his admission that there is no light near the bridge. It is his clear admission that there was

darkness from the bridge towards Ram Nagar in which direction the accused persons, according to him, fled.

18. As already stated herein above, there is an admitted previous enmity between Prem Narain (PW-5)'s family on one hand and the accused persons on the other hand. The learned Trial Court and the High Court have disbelieved the evidence of Virender Sahu (PW-4) and Jagdish (PW-8), who are the other sons of Prem Narain (PW-5).

19. As discussed herein above, there are material contradictions in the testimony of Prem Narain (PW-5). From the tenor of the evidence, it is doubtful, as to whether he has really witnessed the alleged incident or not. Can it be a mere coincidence that Prem Narain (PW-5) goes to the Meghdoot Garden to search for his younger son Dharmender and at the same time, he finds the appellants assailing the deceased and thereafter run away? It is also questionable, as to whether in the darkness he could see who the assailants were?

20. As discussed herein above, no doubt that the conviction can be rested on the testimony of a sole eye-witness. However, the evidence of such a witness has to be found to be wholly

trustworthy, reliable, and cogent. We do not find that the evidence of Prem Narain (PW-5) is of such a quality that would inspire confidence in the Court.

21. We are, therefore, of the considered view that the appellants are entitled to the benefit of doubt.

22. The appeals are accordingly allowed. The judgment and order dated 19th April 1999 of the learned Trial Court thereby convicting and sentencing the appellants for offences punishable under Section 302/34 IPC as well as the judgment and order dated 16th September 2008 of the High Court affirming the same, are set aside.

23. The appellants are acquitted of all the charges. The bail bonds of the accused shall stand discharged.

24. Pending application(s), if any, shall stand disposed of.

.....J
(B.R. GAVAI)

.....J
(M.M. SUNDRESH)

**NEW DELHI;
JANUARY 11, 2023**