

Pintu @ Pradeep Kumar and anr. Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-30-2013

Appellant : Pintu @ Pradeep Kumar and anr.

Respondent : The State of M.P.

Judgement :

Criminal Appeal No.867/1997 HIGH COURT OF MADHYA PRADESH AT JABALPUR Criminal Appeal No.867/1997 Appellants :

1. Pintu @ Pradeep Kumar aged about 19 years S/o Shiv Kumar Mishra, Student
2. Sanjay Mishra, aged about 20 years s/o Basant Kumar, Student Both residents of Village Silodi P.S. Naurojabad, District-Shahdol, M.P. Vs. Respondent : The State of Madhya Pradesh Present: Hon. Shri Justice B.D.Rathi For appellant : Shri S.K. Tiwari, Advocate For the respondent : Shri C.K. Mishra, Government Advocate

JUDGMENT

(30/8/2013) This appeal has been preferred under Section 374(2) of the Code of Criminal Procedure (for short the Code.) against the judgment dated 9.4.1997 passed by Additional Sessions Judge, Umaria, District Shahdol in Sessions Trial No.53/96, whereby the appellants have been convicted under Section 304 Part II read with Section 34 of the IPC and sentenced to undergo R.I. for 10 years, while co-accused Gopal and Kunjbihari were acquitted of the offences charged with.

2. According to the prosecution case, on 31/1/96 at 7.30 p.m., First Information Report (Ex.P/1) was lodged by complainant Kamlesh Kumar (since deceased) at Police Outpost Naurozabad leading to registration of Crime No.36/96, to the effect that on the same day, when he was returning to his home on a Motorcycle, in the way appellants Sanjay Mishra and Pintu intercepted him and started assaulting him with Lathis. While exhorting to kill, they assaulted him on his head, hand and leg. During the assault, Kamlesh was rendered unconscious and after some time when he regained consciousness, he saw that Ramdasgupta, Bharat Namdeo and Gulab were taking him home, from where with his brother Shivkumar, he had come to lodge the report. According to him, he had enmity with Kunjbihari Gupta and Gopal Vishwakarma of the village and suspected them for the assault. As per information (Ex.P/8) given by the doctor, during treatment, on 1/2/96 at 9.15 2 Cr.A. No.867/1997 a.m., he succumbed to the injuries thus sustained at the Hospital. After investigation, charge-sheet was filed.

3. Charge under Section 302/34 of the IPC were framed against the appellants. Appellants denied the charges and pleaded false implication.

4. Learned counsel for the appellants submitted that the First Information Report was concocted as there was over-writing in the name of deceased and the same was not lodged by the complainant. He submitted that the prosecution had failed to prove any motive behind the offence and the trial Court had committed grave error in convicting the appellants on the same set of evidence that formed the basis of acquittal of co-accused persons. According to him, there was contradictions and omissions in the evidence of eye-witnesses and the same was un-reliable. Alternatively, he submitted that on the date of incident, the appellants were respectively 19 and 20 years of age and, therefore, benefit of probation of offenders act should have been given to the appellants.

5. In response, learned Government Advocate, while making reference to the incriminating pieces of evidence on record, submitted that the conviction is well merited and the impugned judgment does not deserve to be interfered with.

6. Having regard to the arguments advanced by the parties, record of the trial Court was perused.

7. Trial Court, after considering the material and evidence available on record held that offence under Section 304 Part II read with 34 of the IPC was committed by the appellants because prosecution had successfully proved its case by adducing oral, as well as, documentary evidence of dying declaration i.e. First Information Report (Ex.P/1) dated 31/1/96 which was lodged by deceased in presence of his brother Shivkumar Shrivastava alias Kudda at 7.30 p.m. in regard to offence committed at 6.30 p.m. at Police Outpost Naurozabad and the same was recorded by Sub Inspector Anand Pratap Singh (PW11).

8. It was also held by the trial Court that deceased had narrated the incident to his brother Shivkumar (PW2), on the way, in presence of the witnesses, while he was being brought to the Police Station. Hence, deceased had levelled allegations against the appellants in both the ways, as described above. 3 Cr.A. No.867/1997

9. In the opinion of this Court, trial Court has wrongly appreciated the evidence brought on record and the prosecution had totally failed to prove its case beyond a reasonable doubt as neither set of evidence is trustworthy.

10. Shivkumar Shrivastava alias Kudda (PW2) testified in para 1 of his evidence that witnesses Gulab Singh, working as labour at PWD, and Ramprasad Dubey (PW1), had met him at the Crossing while coming from the spot. Only Gulab Singh had told him that his brother had been beaten by Lathis by the appellants. Evidence of Shivkuamr, being hearsay, is neither admissible nor trustworthy because Gulab Singh has not been examined by the prosecution. Moreover, Ramprasad Dubey (PW1) has been declared hostile as he did not depose that he also saw the incident. In this way, prosecution failed to prove its case on the basis of direct evidence, as Gulab was not examined and Ramprasad was declared hostile.

11. Shivkumar Shrivastava (PW2) deposed in para 1 of his evidence that on receiving the information from Gulab, he and his brother had rushed towards the spot and after going for a kilometer, had seen that Ramdas Gupta (PW6) and Bharat Namdeo (PW5) were bringing Kamlesh on a bicycle. In para 2, he deposed that he had seen that blood was oozing from the head of Kamlesh, who had told him that he was beaten by the appellants on the instigation of Kunjbihari and

Gopal. In para 19 of his cross-examination, he further deposed that he was informed by Kamlesh in presence of Ramdas Gupta (PW6) and Bharat (PW5), but again this evidence in regard to oral dying declaration is not trustworthy as both Bharat and Ramdas were declared hostile and have not supported the evidence of Shivkumar.

12. Further, this Court is also not inclined to accept the First Information Report (Ex.P/1) as dying declaration as prosecution has failed to establish its credibility of being lodged by Kamlesh. Shivkumar (PW2) deposed in paras 3 and 5 of his evidence that FIR was lodged and signed by Kamlesh and written by SHO Anand Pratap Singh (PW11), but he admitted in para 5 that he had signed the FIR on the portion marked as A to A, whereas in para 11 he deposed that he did not know who had signed on B to B part. It is also pertinent to mention that on A to A and B to B parts of the FIR, word Kamlesh. is written and it was not explained by Shivkumar as to why he had signed in A to A part as Kamlesh (in the name of the deceased), instead of his own name Shivkumar.. In this way, signature of deceased on the FIR could not be proved. 4 Cr.A. No.867/1997 13. Anand Pratap Singh (PW11), Sub Inspector and Scriber of the FIR deposed in para 1 of his evidence that Kamlesh was quite perplexed and unable to speak properly. He had signed on B to B part in a zigzag manner and when told by this witness to sign correctly, had signed on A to A part and thereafter had immediately fallen unconscious. He further admitted in his cross-examination that father's name of deceased was written as Kunjbihari by him at his own accord and 2-3 days thereafter, when he came to know about the mistake, he had amended and written the same as Krishnkumar. He also admitted in para 13 of his evidence that he had not mentioned the facts, as it is, in the FIR, as narrated by Kamlesh. In the aforesaid premises, the FIR cannot be treated as dying declaration of Kamlesh.

14. That apart, the following circumstances also indicate that the prosecution case is not at all believable :- (a) Crime has not been mentioned on FIR (Ex.P/1), Naksha Panchayatnama (Ex.P/2), Safina Form (Ex.P/3), Requisition for post mortem (Ex.P/10), and property seizure memos dated 3/2/96 (Ex.P/13 and P/14). Though, in some of the documents, crime number has been mentioned as 36/96, yet, no evidence has been led to prove that when the same was registered. (b) In

post mortem requisition form (Ex.P/10), it has been mentioned that deceased was referred to PHC, Pali after the accident, from where he was sent to District Hospital and during treatment he had died and this endorsement was made on the information given by nephew of deceased Harish Kumar as deposed by Head Constable No.523 Mahendra Pratap Singh (PW9), who had prepared Ex.P/10. In support of the defence, Ramprasad Dubey (PW1), hostile eye-witness, deposed that when he and Gulab had reached the spot, they saw that Kamlesh had fallen as his Motorcycle had slipped. (c) From the spot, neither blood stained earth was seized nor any blood was found there, as reflected from para 11 of the evidence of Anand Pratap Singh (PW11), Investigating Officer. (d) All the articles viz. Moped, Headlight, piece of nylon rope, broken spectacles etc. were produced by Santosh (PW4), brother of deceased at the Police Station after bringing them from the spot and were seized vide seizure memo (Ex.P/4). These articles were not seized by the Investigating Officer from the spot and the prosecution failed to explain as to why the family members were allowed to tamper with the status of the spot by the police. 5 Cr.A. No.867/1997 (e) Dr. A.P.Pathak (PW8) has not opined in the post mortem report (Ex.P/6) that death of deceased was homicidal in nature. (f) Compliance of S.157 of the Code has not been made as neither the evidence of sending nor of receiving the copy of the FIR in the Court of JMFC has been produced. So the possibility that a concocted FIR was prepared on the basis of afterthought cannot be ruled out. (g) As per FSL report (Ex.P/19), it could not be ascertained that the blood found on the Lathis allegedly seized from the possession of appellants was human blood and further, tests to determine blood group of the same could also not be carried out.

15. In the aforesaid premises, looking to the facts and circumstances of the case and the evidence brought on record, this Court is of the considered view that due to lack of evidence against the appellants and because investigation was carried out in a hasty and faulty manner, case of the prosecution deserves to be discarded in toto.

16. Accordingly, the appeal is allowed. Impugned convictions and consequent sentences are set aside. Appellants are acquitted of the offence. Appellants are on bail. Their bail bonds stand discharged.

17. Copy of the judgment along with the record of the trial Court be sent to the trial Court for information and compliance. (B. D. RATHI) JUDGE (and)

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