Laxman Ramkishan and ors. Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-08-1994

Reported in : 1995(0)MPLJ916

Judge : P.N.S. Chouhan and ;D.K. Jain, JJ.

Acts : Indian Penal Code (IPC) - Sections 147, 149 and 302

Appeal No. : Cri. Appeal No. 948 of 1987

Appellant : Laxman Ramkishan and ors.

Respondent : State of Madhya Pradesh

Advocate for Def. : Dilip Naik, Dy. Adv. General

Advocate for Pet/Ap. : S.R. Nema, Adv.

Disposition : Appeal allowed

Judgement :

P.N.S. Chouhan, J.

1. The appellants challenge their conviction under Sections 147 and 302 read with Section 149, Indian Penal Code and sentences of six months' R.I. on the first charge and imprisonment for life on the charge of murder awarded vide judgment dated 10-9-1987 passed in S.T No. 134/86 of Balaghat Sessions Division.

2. The appellants as also deceased Bhaddu were residing in Village Dokerbandi about 10 Kms. from Police Station, Lalbarra. Appellant Laxman had purchased a she-buffalo from the deceased. Part of the money was not paid at the time of the sale. Mehtar (PW-1), son of deceased Bhaddu, had requested Laxman to pay the balance amount. This appears to have annoyed Laxman. On 11-8-1986 the appellants assaulted Bhaddu in his own house. The matter was reported to the police. This incident further aggravated their enmity. The deceased was threatened and was warned that he will not be able to celebrate Pola. On the date of incident, i.e., 24-8-1986, Bhaddu took out his she-buffalo for grazing early in the morning. It is alleged that the appellants followed him at a distance and then surrounded and fatally assaulted him at the place where he was grazing his she-buffalo. Though this assault was witnessed by Bhawangiri (PW-5) and Kishan (PW-14), they were so much scared that they did not divulge to anyone for quite some time, when Bhaddu did not return home, his son Mehtar became anxious. He first tried to search his father, but in vain. Then he lodged a report in the Police Station which was recorded in Sanha being Ex.P.-13. Search for the missing man continued till the following day i.e., 25-8-1986. Dead body of Bhaddu was found lying in a paddy field. The matter was then informed to Kishan (PW-2), the Village Kotwar, who went and reported the matter to the police. A case of unnatural death was registered. Police reached the spot, held inquest vide Ex.P.-2 and sent the dead body for post mortem examination. Dr. G. A. Dodwani (PW-13), vide report Ex.P.-19A, found the body

in a state of decomposition. Skin over most of the body was pealed off. Lacerated wound 3 cm. x 2 cm. x 1 cm. was found on left side of cheek touching the ear. Contusion over the anterior aspect of chest and neck was also noticed. The doctor opined that death was due to asphyxia resulting from throttling and head injury. It was homicidal. Duration of death as per doctor was 2 to 5 days from the time of post mortem examination. Statement of Bhawangiri was recorded on 27-8-1986, i.e., after 3 days of the incident and case-diary statement of Kishan was recorded on 29-8-1986, i.e., on the 5th day of incident. The learned trial Judge accepted the explanation given by these witnesses for delayed disclosure of what they had seen and accepting their testimony as creditworthy, recorded the impugned findings.

3. Appellant's learned counsel argued that both Bhawangiri and Kishan have admitted that they were aware of Mehtar, son of the deceased, making hectic search for his missing father, but they did not tell him that his father was murdered by the appellants. The reason assigned for this wholly unnatural conduct by Bhawangiri is that he was terror stricken. In the facts and circumstances of the case, when this witness was going round in his routine in the Village, meeting people in his normal course of life, the said explanation was so unnatural that it ought to have been rejected by the learned trial Judge. The explanation tendered by Kishan is that he was working at that time with Narbad and had told him what he had seen. Narbad advised him not to tell anyone else about the incident and he followed his advice. On behalf of the State, it was added that Kishan had seen the assault on the deceased by the appellants on 11-8-1986 and, therefore, there was good reason for him to be scared of the appellants which prevented him from opening his mouth. It was also pointed out that Narbad was initially arrayed as one of the accused persons, but was discharged by the Court. Therefore, there was good reason for Narbad to have instructed his servant Kishan to keep quiet. On behalf of the State, reliance was placed on Lalli alias Chiranjib Bhowmic v. State of West Bengal, AIR 1986 SC 998, wherein non-disclosure by an eye witness for 56 days was held to be for sufficient cause. As against this, the defence cited Babboo and Ors. v. The State of M.R, AIR 1979 SC 1042 where delay of 12 hours in disclosing what an eye witness had seen was held sufficient to destroy his credibility. For obvious reason no hard and fast rule can be laid down in this behalf. Each case must depend on its own facts and circumstances and the persuasive quality of explanation tendered for non-disclosure. In the present case we find besides this unnatural conduct of alleged eye witnesses Bhawangiri and Kishan, there is yet another aspect of the case which goes to expose the falsity of their claim of being eye witnesses of the incident. Even if we assume that they were standing at different places and, therefore, could not see each other which may explain their assertion that no one else was nearabout to see the assault, the narration of Bhawangiri is that appellant Laxman was armed with a Khatua and Sewa was armed with a Lathi whereas rest of the appellants were unarmed and were assaulting the deceased with fists and as against this, the claim of Kishan is that Laxman was armed with Sabbal, Sewa was having a Khatua, Suresh was wielding a Phawda and remaining three were armed with Lathi and all the six were using their weapons freely at the time of the assault. It is impossible if two persons had seen the assault they would have given such divergent version of the arms used by the assailants. We are, therefore, convinced that this discrepancy in their evidence inter se coupled with their unnatural conduct of failing to disclose what they had seen immediately in particular to Mehtar, son of the deceased, who was all along trying to find out his father and had even made enquiries in this behalf from Kishan, their evidence cannot be relied upon. The learned trial Judge was manifestly in error to have based the conviction on such shaky evidence. After excluding the evidence of these two witnesses as unreliable and got up, what remains is admittedly not sufficient to sustain the conviction.

4. In result, the appeal is allowed. Appellants' convictions and sentences as aforesaid are hereby set aside and they are acquitted of the charges. They be released forthwith, if not wanted otherwise.