

Abhay Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Dec-05-2007

Reported in : 2008CriLJ1489

Judge : S.L. Kochar and ;S.R. Waghmare, JJ.

Appellant : Abhay

Respondent : State of Madhya Pradesh

Disposition : Appeal allowed

Judgement :

S.L. Kochar, J.

1. The appellant has lodged his grievance by filing this appeal against the judgment dated 25-9-1998 passed by the learned Third Addl. Sessions Judge, Dhar in Sessions Trial No. 192/97 thereby convicting the appellant under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life with fine of Rs. 1,000/-, in default of payment of fine to suffer additional R.I. for one month with a further direction that on realization of the amount of fine, Rs. 1,000/- be paid to the wife of the deceased Narottam as compensation.

2. The facts of the prosecution case in narrow compass are that on 7-5-1997 there was a verbal altercation between the deceased Narottam and appellant Abhay on

the score of not accepting two rupee currency note by the appellant. The accused appellant brought A Gupti and dealt 4/5 blows to Narottam causing injuries on his hand, legs, abdomen and chest. On hearing the cry, Smt. Rekhabai and Madan reached over on the spot. On raising cry by Smt. Rekhabai, Parwatsingh (P.W. 5), Soma and others also reached on the spot and on seeing them, the appellant fled away from the spot. Narottam as a result of the injuries became unconscious and was sent to Sardarpur hospital in a tractor. Narottam was primarily examined and treated by Dr. M. L. Jain (P.W. 1') and issued Medico Legal certificate (for short 'MLC') Ex. P/1 and referred the injured to Mital Hospital, Dhar for further treatment from where he was further referred to Indore Choithram Hospital. In Choithram Hospital Narottam breathed his last on 9-5-97. Station House Officer of P.S. Rajendra Nagar, Indore prepared inquest report of the dead body and sent the body for postmortem examination to M. Y. Hospital, Indore which was conducted by Dr. Ravindra Chaudhary (P.W. 6) and issued postmortem Report Ex. P/11. When Police went to village Tandakheda, Smt. Rekhabai (P.W. 2) reported the matter which was recorded as Dehati Nalishi Ex. P/3 by Asstt. Sub Inspector Kanchansingh Chauhan (P.W. 4). He also prepared the spot map Ex. P/4 at the instance of Smt. Rekhabai and seized the blood stained and controlled earth vide Ex. P/5. He also recorded the statement of P.W. 2 Rekhabai. The information sent from Sardarpur hospital was recorded in Roznamcha at P.S. Sardarpur from where requisition for examination and treatment of Narottam as also for recording of his dying declaration was issued, but since Narottam was not in a position even to speak, his dying declaration could not be recorded. All the relevant papers were sent to Police Station Amzera having jurisdiction over the matter.

3. On the basis of Dehati Nalishi, the Station House Officer of P.S. Amzera registered the First Information Report Ex. P/7. He arrested the appellant and on his memorandum statement Ex. P/9 seized one Gupti at his instance vide Ex. P/10. and made query from Sardarpur Hospital vide Ex. P/ 12. During investigation, the Baniyan of the deceased soiled with blood was seized and statements of the concerned witnesses were recorded. The seized articles were sent to the Forensic Science Laboratory, report whereof is Ex. P/12. Spot map Ex. P/6 was got prepared by the Patwari. On completion of investigation, the accused was charge-sheeted for the aforementioned offence. The accused/appellant

abjured his guilt and pleaded innocence. His defence was that of false implication. He examined D.W. 1 Head Constable Halwanshi, Dr. Umesh Mittal (D.W. 2), Banarasi Prasad (D.W. 3), Head Constable Hiralal (D.W. 4) and Kamal Kishore Vaishnav Advocate (D.W. 5) in his defence. In order to prove its case prosecution examined in total 7 witnesses. Learned trial Court on trial and hearing the parties, found the appellant guilty, convicted and sentenced him as indicated hereinabove.

4. We have heard learned Counsel for the parties and perused the entire record carefully.

5. In the instant case, homicidal death of Narottam could not be and has not been challenged. Even otherwise it has been duly established by the postmortem report issued by Dr. Chaudhary (P.W. 7) and his evidence that deceased Narottam sustained as many as 7 injuries on his person;. In the opinion of this witness, deceased died of shock and haemorrhage as a result of the injuries to the vital organs, caused within 24 hours from the date and time of postmortem examination. Smt. Rekha (P.W. 2) also stated that the deceased sustained injuries by Gupti. Thus, it is found fully proved that the deceased met a homicidal death.

6. It emerged from the impugned judgment that the conviction of the appellant is based on the eye-witnesses account of sister-in-law of the deceased Narottam namely, P.W. 2 Smt. Rekha Vaishanav and P.W. 5 Parwatsingh and the medical evidence. We have scrutinized the evidence of eye-witnesses sister-in-law of the deceased Narottam with due care and caution and find that she is not a reliable witness because of her highly unnatural conduct. According to this witness, on the date of incident i.e. 7-5-2007 in the noon at 1.00 p.m. she was in her house and putting the clothes for being dried. She overheard the clamour of quarrel between her brother-in-law deceased Narottam and the appellant on which, she reached on the spot in front of the shop of the appellant which was about 40 to 50 feet away from her house. She asked the deceased Narottam as to why they were quarrelling on which the deceased disclosed that in the morning he had purchased cigarette from the shop of the appellant. At that time, the appellant had given him a two rupees torn currency note and when he gave the same note for purchasing cigarette, he (the appellant) refused to accept it. The further say of this witness is

that the appellant started hurling abuse to her brother-in-law and also went inside his shop and came out with a GUPTI and struck six to seven GUPTI-blows on the person of Narottam causing in total 7 Injuries on chest, hand and both legs. She raised cry attracting P.W. 5 Parwatsingh and upon his reaching, the appellant fled away. Further narration of this witness is that P.W. 5 Parwatsingh called the villagers and they all took Narottam to the hospital. She returned back from the hospital to her village where Dehati Nalishi Ex. P/3 was recorded by the police. She also admitted about preparation of spot map Ex. P/4 by the police at her instance and seizure of blood stained and controlled earth from the spot. Their seizure memo is Ex. P/5. According to this witness, the Gupti was also seized by the police from the spot.

7. In cross-examination, she deposed that her husband Brij Mohan was having two brothers namely one the deceased Narottam and another Kamal Kishore who was a practising Government Advocate at Sardarpur and her husband was a teacher in Primary School. In para 10, she admitted that in Sardarpur hospital, her brother-in-law Kamalkishore (D.W. 5) also reached, but she had not disclosed about the incident to him as well as to other persons. She has also admitted that after admission of Narottam in Sardarpur Hospital, after half an hour, police also reached at the hospital and her husband Brij Mohan went to the Police Out Post, Amzera for lodging report, but no intimation or report lodged by P.W. 3 Brij Mohan has been filed by the prosecution during the course of trial. She also stated that Brij Mohan did not meet them in Sardarpur Hospital, but met after returning to home. In para 12, she admitted that while going from the village to Sardarpur with so many persons along with Parwatsingh and Soma, she did not disclose about the incident on the way to them. She reached from the hospital to her house in the evening at about 5.30 p.m. along with the friends of her husband. Thereafter at 7.00 p.m. police reached in the village with her father-in-law Ramnarayan Vaishnav accompanied by so many villagers and her husband. In para 14, a specific question was put to her as to why she did not give information about the incident to police in Sardarpur hospital, she answered that because the police did not ask her or interrogated her and also did not disclose about the incident to her husband and brother-in-law (JETH/elder brother of her husband) Kamal Kishore. We find ourselves unable to accept the explanation given by this witness for non

disclosure of witnessing the incident and name of the accused to police in Sardarpur Hospital. Not only this, but she did not disclose to the villagers who had accompanied her from the spot of Sardarpur Hospital and in Sardarpur Hospital to her husband and brother-in-law Kamal Kishore (D.W. 5) who was a Government Advocate and while returning from the hospital to the house in the evening. If she had really witnessed the incident, it was not possible for her to keep mum for about six hours having ample opportunity and meeting with so many persons including her near and dear as well as the police and disclose the name of the appellant as assailant for the first time in Dehati Nalishi Ex. P/3 recorded by Kanchan Singh Chauhan ASI (P.W. 4) in the village.

8. It would be apposite to mention here that according to this witness Smt. Rekhabai (P.W. 2), the incident was also witnessed by Madan son of Hiralal and Prakash S/o Jhinnala. But both these witnesses have not been examined by the prosecution without showing any cogent and reliable reasons. The normal course of human conduct would have been for witness Rekhabai to have immediately disclose the name of the assailant as well as about witnessing the incident to the villagers who accompanied her as well as in Sardarpur Hospital on arrival of police, brother-in-law Advocate D.W. 1 Kamal Kishore (D.W. 5) and her husband Brij Mohan who was a teacher. This witness Rekhabai is a woman studied up to 10th standard and she could not be considered to be a rustic villager. It is also a natural conduct of any one who met the victim or brother and relative in the circumstances as narrated by this witness while going to the hospital and also in the hospital to ask or enquire about the incident and name of perpetrator of crime. The police personnel who reached in Sardarpur hospital would have certainly enquired from this witness about the incident, because she had brought the deceased from the spot to the hospital. The brother-in-law Kamal Kishore being a law knowing person would have not kept quiet after reaching at the hospital from enquiring from villagers and this witness Smt. Rekhabai who had brought the deceased Narottam to Sardarpur Hospital and would have also asked the police official to record the First Information Report in the shape of Dehati Nalishi in the Hospital, because he being a Public Prosecutor in Sardarpur Court, must be knowing the importance of the First Information Report and delay of its lodgment as well as delay in disclosure of the name of the assailant. These are all tell-tale

circumstances to show that Smt. Rekhabai did not witness the incident or did not identify the assailant.

9. That apart, the MLC Report Ex. P/1 proved by its author P.W. 1 Dr. M. L. Jain is disclosing the fact that the deceased Narottam was not brought by any body in the hospital, but he himself had reached at the hospital, it is specifically mentioned in the report after the name, father's name, age, address that he was brought by 'B/B' self. In the MLC report Ex. P/1, there is a specific place required to be filled in by doctor i.e. name of the person or persons who brought the victim and the person who identified the victim. If the deceased would have been taken by P.W. 2 Smt. Rekhabai along with the villagers, Dr. P.W. 1 M. L. Jain would have not failed to have mentioned this fact in the report Ex. P/1.

10. The Supreme Court in the case of Bachhu Narain Singh v. Naresh Yadav AIR 2004 SC 3055 : 2004 Cri LJ 5013 about natural conduct of human being in para 12 has observed as under:

In the first instance there appears to be no reason why no one stated before the investigating officer who came to the place of occurrence at 7.20 a.m. that he had witnessed the occurrence as an eye-witness. Since they claimed to be eye-witnesses and large number of persons had gathered at the place of occurrence when the investigating officer reached that place with police force, the normal course of human conduct would have been, for any of the eye-witnesses to immediately inform the investigating officer that he had witnessed the occurrence. We fail to understand why from 7.30 a.m. till 8.45 p.m. while the investigating officer was preparing inquest reports no one came before him claiming to be an eye-witness.

Also see : Joseph v. State of Kerala : 2003 CriLJ2543 .

11. The second eye-witness P.W. 5 Parwatsingh also cannot be relied upon, because of his unnatural and abnormal conduct about disclosing the incident though he had the meeting with the police in the hospital as well as with brother of the deceased namely, Advocate Kamal Kishore. The say of this witness in para 7 is that since he was not asked about the incident by Advocate Shri Kamal Kishore

or any body, he did not disclose the same. In para 8, according to this witness, when the report was lodged by Smt. Rekhabai in the village, he was present and his statement was recorded by the police of Out Post Dasai of Police Station Amzera. But, according to the A.G.P. there was no statement of this witness recorded on 7-5-97. The further say of this witness P.W. 5 Parwatsingh is that after recording his statement on 7-5-1997, no other statement was recorded. Again he changed his version and stated that his statement was recorded on the date 13th/14th (13th/ 14th May, 1997). On this disclosure about recording of statement, counsel for the appellant requested for supply of copy of statement of this witness, if recorded on 13th, 14th or 15th May, 1997, but according to the A.G.P. no such copy of the statement was available. The statement of this witness further demolishes the prosecution case that Rekhabai did not mention in the report about witnessing the incident by him and he also did not ask her as to why she did not mention his name as eye-witness of the incident. In para 9, this witness has further admitted that in the night of the incident he did not disclose to the police about witnessing the incident, because the police did not ask him. He further stated voluntarily that he did not disclose about witnessing the incident to the police. This statement of the witness corrodes the complete prosecution case with regard to lodging of the Dehati Nalishi Ex. P/3 by P.W. 2 Smt. Rekhabai in two ways viz. First in Ex. P/3, the name of this witness Parwatsingh as eye-witness, but according to this witness Smt. Rekhabai did not mention his name and secondly, if he was present at the time of lodging of the report by Smt. Rekhabai to P.W. 4 Kanchansingh Chauhan ASI as to why his statement was not recorded by the police in the same night after recording the Dehati Nalishi. The statement of this witness in para 10 further causes a serious dent to the prosecution case about witnessing the incident by him, because of his unnatural conduct. He admitted that the police reached in the village in the evening on the date of incident and also after two/three days he also met with the police, but did not disclose his name as eye-witness, because the police did not ask him. Learned trial Court has mentioned in para 4 of the impugned judgment that statement of his witness Parwatsingh was recorded by the police after ten days i.e. on 16-5-1997 (Ex. D/3). Learned trial Court has held in para 40 of the judgment that according to P.W. 6 Investigating Officer P.W. 6 Pramod Kumar Shinde he

had gone on training and returned back on 23-5-1997 and during this period, investigation and case-diary was handed over to ASI Yadav (not examined in this case by the prosecution) and because of this, delay has occurred in recording the statement of eye witness P.W. 5 Parwatsingh. This reasoning given by the trial Court is not the reason for the delay in recording the statement of P.W. 5 Parwatsingh assigned by the prosecution or the Investigating Officer (P.W. 6) Shri Pramod Kumar Shinde.

12. Shri Pramod Kumar Shinde (P.W. 6), in para 12 of his deposition has stated that after registration of crime on the date of incident in the night at 8.05 p.m. he made a search of the eye-witnesses on 7th and 8th May, 1997 and thereafter, went on training, handed over the case diary to the Yadav. Shri Shinde returned back from training on 23-5-1997 and according to his statement in para 14 of his deposition the ASI Yadav mentioned in case-diary that he searched the witnesses on 16-5-1997, but they were not available. Apart from his note, nothing was written by Yadav ASI in the case diary. He further stated in para 15 that he cannot assign any reason as to why Shri Yadav did not record the statement of other witnesses during the period of his training. The date of recording of the statement of Parwatsingh (P.W. 5) might have been gathered by the learned trial Court from his police statement Ex. D/3. But, none of the prosecution witnesses including Investigating Officer Shri Shinde (P.W. 6) has stated the date of recording of the statement of this witness.

13. The law is well settled that only on ground of delay in recording the statement of material witnesses, their testimony cannot be discarded, but in the case at hand, it is not only the delay in recording the statement by the police, but there is abnormal conduct of the eye-witness Parwatsingh who was having meeting with the police on the date of incident and also after two/three days, did not disclose about witnessing of the incident. The two inferences are possible on the basis of the statement of P.W. 5 Parwatsingh and the statement of P.W. 6 Shri Pramod Kumar Shinde Investigating Officer that either the police was not knowing that Parwatsingh was the eye-witness and this inference is drawn on the basis that the Dehati Nalishi Ex. P/3 was recorded later on in anti date and anti time wherein the name of Parwatsingh as eye-witness is mentioned and the second inference that

Parwatsingh was a got up witness after ten days of the incident under the influence of the complainant-party.

14. The Supreme Court in the case of Ganesh Bhawan Patel v. State of Maharashtra : 1979 CriLJ51 regarding importance of delay in recording the statement and observed as under :- '

Delay of a few hours, simpliciter, in recording the statements of eye-witnesses may not, by itself, amount to a serious infirmity in the prosecution case. But, it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. Thus, under the facts and circumstances of the case delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.

15. In the instant case, there is absolutely no plausible and reasonable explanation given by Parwatsingh as well as the Investigating Officer as to why the statement of Parwatsingh could not be recorded at the earliest point of time.

16. There is one more important circumstance in the present case that the appellant was available to the police in the night of 7-5-97, the date of incident, but he was not arrested. If Dehati Nalishi was recorded at the instance of Rekhabai on 7-5-1997, itself at 6.30 p.m. and crime was also registered at 8.30 p.m. against the appellant, then on his availability why he was not arrested. His arrest was shown on 8-5-1997 at 3.00 p.m. vide Ex. P/8 proved by P.W. 6 I.O. Shri Shinde. This also shows that on 7-5-1997, police was not having clear and sufficient information against the appellant.

17. The Supreme Court has observed in the case of Mohanlal v. State of Maharashtra : [1982]3SCR277 as under:

The witness further admits that although he had come to know the name of the assailant at 00.50 a.m. yet he did not take any step to arrest or cause the arrest of any one of the accused. He has not given any explanation for this unusual

conduct. It is extremely doubtful if P.W. 1 had actually named the appellant, Inspector Sawant would not have arrested him immediately after the FIR was lodged or, at any rate, after he returned from the hospital. The evidence, however, shows that A/1 was arrested on 5-4-1972, that is to say, two days after the occurrence. No explanation for this unusual phenomenon has been given by the prosecution.

Also see *Sadaram v. State of M.P.* : 1975 CriLJ23 , *Shankarlal v. State of Maharashtra* : 1981 CriLJ325 and *State of U.P. v. Sufchbasi* : 1985 CriLJ1479 .

18. The version of the eye-witness (P.W. 2) Rekhabai is also falsified by (D.W. 5) her brother-in-law advocate Kamal Kishore, who has stated in para 4 that in Sardarpur Hospital (P.W. 2) Rekhabai and the villagers had narrated the incident to him and the name of the appellant as author of the causing knife injury to deceased Narottam, but after receiving information he did not give the same to the police, because he was busy in the treatment of his brother. This version is just contrary to the statement of Smt. Rekhabai (P.W. 2).

19. In view of the foregoing factual and legal discussion with regard to both the aforesaid witnesses we are of the considered view that both the aforesaid witnesses had not witnessed the incident and introduced by the investigating agency with the help or aid of the relations of the deceased and, therefore, the prosecution has utterly failed to establish its case against the appellant beyond reasonable doubt by adducing cogent and reliable evidence.

19.1 Resultantly this appeal succeeds and is hereby allowed. The conviction and sentence of the appellant are hereby set aside. He is in Jail. Learned trial Court is directed to release him forthwith if not wanted in any other criminal case. A copy of this judgment be transmitted to the trial Court along with its record for immediate compliance.

S.R. Waghmare, J.

20. I agree.

