

**INTHE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

CRIMINAL APPEAL No. 186 of 2001

BETWEEN:-

**RAMSEWAK S/O MOOLCHAND
BRAHMAN, AGED ABOUT 32
YEARS, R/O VILL. SUMAOLI
DISTT. MORENA (MADHYA
PRADESH)**

.....APPELLANT

(BY SHRI ATUL GUPTA – ADVOCATE)

AND

**STATE OF M.P. THROUGH P.S.
SUMAOLI DISTT. MORENA
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI RAJESH SHUKLA – ADDITIONAL ADVOCATE GENERAL)

Reserved on : 6.5.2024

Pronounced on : 20.05.2024

This appeal coming on for hearing this day, Justice Rajendra Kumar Vani passed the following:

J U D G M E N T

Feeling aggrieved by the judgment of conviction and order of sentence dated 7.3.2001 passed by the 1st Additional Sessions Judge, Morena, in Sessions Trial No.205/1998 convicting the appellant under Section 302 in the alternative 302/34 of IPC and sentencing him to suffer life imprisonment with fine of Rs.5,000/-, appellant has preferred this appeal under Section 374(2) of Cr.P.C.

2. Admittedly, deceased Ramautar was real brother of complainant Bhagwati Prasad (PW-1), Ramsanehi (PW-4) and Rajendra Prasad (PW-6).

3. Prosecution case in brief is that on 16.4.1998 at 8 pm complainant Bhagwati Prasad had gone to old Well situated in the field in village Sumawali to keep a watch. After reaching there, he watered the field of sugarcane. His younger brother Ramautar (deceased) had gone to new Well and Rajendra (PW-6) had gone to the Well of Shankar Patel for watering the crop of sugarcane. The three Wells are situated at a distance of two fields. After watering field of sugarcane and cutting crop of wheat, the complainant at about

12 am went to nearby Madaiya (hut) to sleep. At that juncture, he heard shouting of Ramautar, then complainant called Rajendra (PW-6) and rushed towards Ramautar at new Well and saw that accused persons are assaulting Ramautar by means of axe while he was sleeping and Neeraj was standing armed with hockey. As soon as complainant reached there, accused persons fled away towards the road. At that moment Rajendra came and he also saw the accused persons running away. Thereafter the complainant and Rajendra went near to Ramautar and found that near temporal reason deceased has sustained some injuries and blood was oozing out and Ramautar had died. The complainant Bhagwati Prasad and his brother Rajendra were weeping & crying whole night, but nobody came to the spot. On 17.4.1998 in the morning Rajendra went to home and informed about the incident to his brother Ramsanehi (PW-4), Ramdeen, Ramgopal and other villagers, then they reached on the spot. It is alleged that accused persons have committed murder of the deceased on account of old enmity. Report of the incident was lodged by Bhagwatiprasad (PW-1) at police Station Sumawali on which crime No.24/1998 was registered under Section 302/34 of IPC. During investigation, postmortem was conducted, accused persons were arrested, statements of the witnesses were recorded and after completion of investigation, charge-sheet was filed in the Court of JMFC, Jaura,

who committed the case to the Court of Sessions.

4. Accused persons were charged under Section 302 in the alternative under Section 302/34 of IPC which they denied by submitting that they have not committed any offence and they have been falsely implicated in the case on the ground that on account of murder of their brother, complainant and other witnesses are keeping enmity with them.

5. After trial, appellant has been convicted & sentenced as aforesaid. Co-accused Rambhajan has died during pendency of his appeal. Co-accused Neeraj was juvenile at the time of offence.

6. It is submitted by learned counsel for the appellant that learned trial Court convicted the appellant on the basis of statements of close relatives of the deceased and inimical witnesses whose statements are not believable. The incident took place at mid night and there was no source of light at the place of occurrence except moonlit. The conduct of the eye-witnesses complainant Bhagwatiprasad (PW-1) and Rajendra (PW-6) was very unnatural. Neither they informed nearby persons nor lodged any FIR at police Station Sumavali immediately after the incident though as per own admission of complainant police Station is situated at a distance of only 10 minutes from the place of occurrence. It is further submitted that there is contradiction in the statements of two eye-witnesses on the point of reaching to the spot.

No independent witness has been examined in the case. No motive has been attributed to the appellant. It is further submitted that circumstantial evidence did not link the appellant with the crime. On such premises, learned counsel prays for allowing the appeal by setting aside the impugned judgment and acquitting the appellant from the charge levelled against him.

7. Per contra, learned counsel for the State by supporting the impugned judgment submits that the learned trial Court after appreciating the evidence in proper perspective has rightly convicted and sentenced the appellant and no interference is warranted in the impugned judgment.

8. Heard learned counsel for the parties and perused the record.

9. As per the evidence of Dr. K.R.Mahore (PW-5) on 17.4.1998 he was posted at Primary Health Center, Noorabad, and he performed postmortem on the body of deceased Ramautar and he found following injuries on his body :-

“1. Incised wound 3”x1 1/2” x 1 1/2” on the left parietal region of the head with cutting bony fracture, antero-posterior in direction, clotted blood present.

2. Incised wound 2 1/2” x 1 1/2” x 1” on the left temporal region of the head with cutting bony fracture, A.P. in direction, clotted blood present.

3. Incised wound 3” x 2 1/2” x 2 1/2” on the left temporo mandibular joint with cutting bony fracture & left pinna of the ear, AP in direction with escaping of brain matter,

clotted blood present.

(4) Incised wound 3" x 2" x 1 1/2" on the vertex of the head with cutting bony fracture, transverse in direction with escaping of brain matter and clotted blood present.

(5) Incised wound 2 1/2" x 1/2" x 1/2" on the left cheek, oblique in direction, clotted blood present.

Abrasion 2"x2" on the left shoulder joint reddish brown in colour.(7) Abrasion 1" x 1" on the posterior aspect of left elbow joint reddish brown in colour."

10. As per the opinion of the doctor, the cause of death is due to head injuries. Death was homicidal in nature and was caused within 12 hours of examination. Thus, from the evidence of Dr. K.R.Mahore (PW-5), it is clear that death of the deceased is homicidal in nature.

11. So far as ocular evidence is concerned, the prosecution has examined Bhagwatiprasad (PW-1) and Rajendra (PW-6) as the eye-witnesses of the incident who are real brothers of the deceased. Ramsanehi (PW-4) is also brother of these witnesses and the deceased. However, his evidence is hearsay. The incident was narrated to him by Bhagwatiprasad (PW-1) and Rajendra (PW-6).

12. Bhagwatiprasad (PW-1) has deposed that at the time of incident he was at old Well and his brother deceased Ramautar was at new Well and Rajendra (PW-6) had gone for watering the field of sugarcane. In the night upto 10.30 – 11.00 pm he watered the field and thereafter the electricity went off, then he was cutting crop of wheat in

the moonlit night. At about 12 O'clock in the night he went for sleeping in nearby Madaiya. At that moment, he heard the scream of Ramautar "*Bhaiya Mujhe Mar Dalo*", On hearing his scream, he called Rajendra and rushed towards the spot and Rajendra was coming behind. He saw that appellant Ramsevak and co-accused Rambhajan were assaulting the deceased by axe and son of Ramsevak namely Neeraj was standing there with hockey. On seeing him, accused persons ran away from the spot. He found that Ramautar had died and there were certain injuries on his body from which blood was oozing out. Till then, Rajendra also came there. Whole night this witness and his brother Rajendra remained there with the corpse of his brother. In the wee hours at about 4- 4.30 am he sent Rajendra to home and Ramsanehi and other villagers came to the spot. Thereafter he lodged the report (Ex.P/1) at police Station, Sumavali. Police proceeded for Merg enquiry and investigation. The statement of Bhagwatiprasad (PW-1) is supported by Rajendra (PW-6) that immediately after Bhagwatiprasad he reached at the spot and saw the incident.

13. The core submission on behalf of learned counsel for the appellant is that some unknown persons have caused death of deceased Ramautar. Bhagwatiprasad and Rajendra have seen the corpse of the deceased in the morning and they have no clue about the

murderer. They falsely implicated the appellant in the incident. In this regard, when we travel through the testimony of Bhagwatiprasad (PW-1) and Rajendra (PW-6), it is found that the conduct of both the witnesses seems to be unnatural as after the incident neither they called nearby residents, nor their brother Ramsanehi (PW-4), who was also residing in adjacent village Sumawali, nor informed the police immediately after the incident. Till morning they did not narrate the incident to anyone while it revealed from the evidence of these witnesses that in nearby fields there were houses of Shahriya who used to work in the fields in day time. There may be some agriculturists present on their fields, but they did not even try to call them. It is also revealed that police Station Sumavali was at a distance of 1 or 1/2 mile away from the place of incident and could be reached there in 10 minutes only, but Bhagwatiprasad (PW-1) and Rajendra (PW-6) did not try to go to the police Station and inform the police. These witnesses have deposed that they were under the effect of fear of the incident, and therefore, they remained with the corpse and did not go anywhere. However, from the evidence of these witnesses it revealed that after reaching the spot Bhagwatiprasad (PW-1) made hue & cry and when accused persons were fleeing away, he followed them upto around 100 ft. Therefore, the explanation on behalf of these witnesses that they were being afraid of accused persons and were

under the effect of fear and because of that they did not lodge the report or inform to nearby persons immediately after the incident is not found believable.

14. The eye-witnesses in this case Bhagwatiprasad (PW-1) and Rajendra (PW-6) and Ramsanehi (PW-4) are real brothers. There is no independent witness in the case. It is admitted by Bhagwatiprasad (PW-1) that the Well of Sobran is nearby their field and he himself does the work of agriculture. Nearby agriculturists also used to work in the night in their fields, but he did not get information with regard to their presence. The houses of Shahriyas are at a distance of 1-2 minutes, but they did not try to call them and to inform them. He also admits that there were 20 Tapras nearby the place of incident.

15. Rajendra (PW-6) also admits these facts which shows their unnatural conduct of not calling the nearby persons in the night just after the incident and not to go for lodging FIR to police Station Sumawali which is at the distance of only 10 minutes. It also reveals from the evidence of these witnesses that in the morning when Bhagwatiprasad was going to lodge the report, he did not inform the persons who met him on the way. This conduct of these witnesses also seems to be unnatural. It is also admitted by Bhagwatiprasad (PW-1) in para 14 of his cross-examination that when he reached the place of incident, he shouted by saying that "*Kya Bat Hai Kaun Mar Raha*

Hai” (What is the matter, who is beating), then accused persons fled away and he followed them upto around 100 ft. In the light of the statement of this witness, it is not believable that they were afraid of the accused persons, and therefore, they did not try to call their brother, nearby residents and other agriculturists and to inform the police.

16. As per Naksha Panchayatnama of dead-body (Ex.P/3) the deceased was found lying dead towards right side on the cot having his right hand beneath the head and the injury was found at left side of his head. Assuming that the deceased was lying towards right side and if any injury is caused on the left side of head, it is difficult for him to cry on such a pitch that a person present at a distance of more than 200 ft may be able to hear him clearly. Further Dr. K.R.Mahore (PW-5) in his cross-examination has admitted in para 13 that it is most likely that deceased immediately after sustaining injuries fell in coma, but it cannot be stated with certainty that immediately after receiving such injuries he fell in coma. He further stated that if a person who is sleeping sustains such fatal injuries on his head, then high possibility would be that such person immediately would fall in coma.

17. The position in which the deceased was lying dead as well as the statement of Dr. K.R.Mahore (PW-5) creates a reasonable doubt on the aforesaid story of the prosecution that after sustaining such

injuries on his left side, whether deceased Ramautar was in a position to scream or cry and to call his brother present at the distance of around 200 ft. Bhagwatiprasad (PW-1) in para 23 of his statement has deposed that he has given the statement to police that accused persons were beating deceased Ramautar when he was “sleeping” and he has also stated this fact in FIR (Ex.P/1) which is correct. The statement of this witness further strengthens the doubt as stated aforesaid that deceased Ramautar would not have been in a position to scream or call his brother which ratifies the contention put forth by the defence in the given facts and circumstances.

18. At this moment, the statement of defence witness Ramgopal (DW-1) is also pertinent to mention. Though he has been examined on behalf of the defence, but his statement under Section 161 of Cr.P.C. was also taken by the police. He stated in his chief examination that on the day of occurrence there was a rumour in the village that somebody has killed Ramautar, but he has not heard the names of assailants.

19. Rajendra (PW-6) has admitted in para 27 of his cross-examination that accused persons have not inflicted any injury to the deceased in his presence. It is also admitted by this witness that they have no animosity with the accused persons. It is pertinent to mention here that no motive of such incident has been found proved and it is

also discussed by the learned trial Court in para 26 of the impugned judgment. Therefore, absence of motive also favours the defence.

20. At this stage, it is also important to mention that though axe has been seized from the present appellant and Rambhajan (since deceased), but as per the report of FSL (Ex.P/18) no serum examination could be conducted as blood was insufficient on the article. It is also discussed by the learned trial Court in para 29 of the impugned judgment that examination of articles by the FSL is of no value as there was no definite report as regards human blood on these articles, and therefore, in absence of such report accused persons cannot be connected with the alleged crime. Complainant Bhagwatiprasad (P-1) in his chief examination too did not identify the axe submitted before him during his evidence as a weapon used in the commission of offence by the appellant.

21. Bhagwatiprasad (PW-1) in para 19 of his cross-examination has stated that he has not indicated the police the place from which he has seen the accused persons fleeing away. He did not indicate the police the point from which and the point upto which he followed the accused persons. He also has not stated that accused persons had fled in which direction. He also admits in para 24 that he had not got written in the FIR that under fear they could not proceed for lodging the FIR. The aforesaid defects in the story of prosecution, coupled

with the contradiction and omission revealed from the statements of both the witnesses Bhagwatiprasad (PW-1) and Rajendra (PW-6) render the case of prosecution doubtful.

22. In the backdrop of aforesaid discussion, in our considered opinion, the story of prosecution is not found proved beyond reasonable doubt. The conduct of star witnesses of the prosecution Bhagwatiprasad (PW-1) and Rajendra (PW-6) is not found natural, which is expected from a common man in given situation.

23. Keeping in view the settled principles of criminal justice that burden of proving the guilt beyond all reasonable doubt always lies on the prosecution. In this case, reasonable doubt creates on the story of prosecution. The appellant is entitled for the benefit of doubt.

24. Accordingly, this appeal is allowed by setting aside the impugned judgment of conviction & sentence. The appellant is acquitted of the charge under Section 302/34 of IPC by giving him benefit of doubt. Appellant is on bail, his bail bonds shall be discharged. The order as regards disposal of the property is hereby maintained.

(VIVEK RUSIA)
JUDGE

(RAJENDRA KUMAR VANI)
JUDGE

Ms/-