A.F.R.

(Judge)

HIGH COURT OF MADHYA PRADESH JABALPUR

Cr. A. No.427/2008

Ashish @ Banti Sen

Vs.

State of Madhya Pradesh

Present : Hon'ble Mr. Justice S.K. Gangele, Judge
Hon'ble Smt. Justice Anjuli Palo, Judge

Whether approved for reporting: Yes/No

Name of counsel for the parties:

Smt. Nirmala Raikwar, learned counsel for the appellants.

Shri Ajay Shukla, learned Govt. Advocate for the respondent/State.

Law laid down:- The evidence of injured eye-witness has great evidentiary value. Conviction can be based on the testimony of related eye-witnesses.

***Significant Paragraphs*:- 14, 16 and 20.**

J U D G M E N T

(16.03.2018)

Per : Smt. Anjuli Palo, J.

This appeal arises out of judgment dated 17th April, 2007 passed by the Court of Special Judge [SC/ST (Prevention of Atrocities) Act], Bhopal in Special Case No.17/2006, whereby the trial Court convicted the appellant for the offences punishable under Sections 302 and 324 of

the IPC and sentenced for life imprisonment with fine of Rs.1,000/- and R.I. for one year with fine of Rs.1,000/- respectively along with default stipulations.

2. The prosecution story in brief is that in the intervening night of 14th and 15th November, 2005 one Vijay informed the complainant Bhimrao that the appellant committed murder of Vinod. Hence, the complainant Bhimrao and his family members went to the house of appellant situated at Panchsheel Nagar and found that Vinod was lying dead. One Anil Tatya was also present there, who has been assaulted by the appellant. He informed that the appellant killed Vinod by inflicting blows of stone on his head. Bhimrao lodged the FIR at Police Station, T.T. Nagar, Bhopal. After investigation, charge sheet has been filed against the appellant for the offences under Sections 302 and 307 of the IPC.

3. The trial Court framed charges under Sections 302 and 307 of the IPC and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act. The appellant abjured guilt and claimed to be tried. The trial Court relied the testimonies of injured eye-witnesse Anil (PW-5) and eye-witness Vijay (PW-4). It was held that the ocular evidence of aforesaid witnesses was corroborated by Dr. M.S. Khan (PW-11) and Dr. D.S. Badkur (PW-2). Hence, the appellant was convicted for offences punishable under Sections 302 and 324 of the IPC and sentenced as mentioned above.

4. The accused challenging the findings of learned trial Court on the grounds that the prosecution witnesses Vijay (PW-4) and Anil (PW-5) had good relations with the deceased Vinod. The trial Court wrongly ignored

the material contradiction or omission in the prosecution evidence. Hence, the appellant has prayed to set aside the impugned judgment and further prayed for his acquittal from the charges levelled against him.

5. We have heard learned counsel for both the parties and perused the record.

6. Learned Govt. Advocate has supported the impugned judgment and submitted that the trial Court has not committed any error in convicting and sentencing the appellant.

7. We have perused the record and by carefully scanning the statements of Anil (PW-5) and Vijay (PW-4), we find that at the time of incident, their presence on the spot is quite natural and reliable.

8. Vijay (PW-4) was cousin brother of the deceased. He has stated that, on the date of incident i.e. on 14th November, 2005 at about 9:00-9:30 p.m. he was standing near the STD shop along with Vinod (since deceased) and 2-3 other boys. The appellant called him and directed to bring some goods. When Vinod objected for the same, the appellant abused him. He caught hold his collar of the deceased and threatened him. They separated them. Thereafter, Vinod and his friends came to drop him in the house. The house of appellant was adjacent to the house of Vinod. The appellant again abused them. Pankaj and Lalit tried to settle their quarrel. Thereafter, the deceased and appellant both had collected Rs.100/- for drinking liquor.

9. Vijay (PW-4) further deposed that he came back to his home for sleeping. At about 1:30-2:00 am in the midnight, the appellant threw stone on his door. When Vijay came to his door, he saw that Anil (PW-5) was

coming out from the house of appellant and he shouted that the appellant inflicted blow of stone (Alanga) on the head of deceased. Thereafter, the appellant rushed towards Anil (PW-5) to assault him. After sometime, the appellant came back to his home and threatened Vijay (PW-4) not go to his house, otherwise he will be killed as Vinod has been killed. Due to fear of the appellant, Vijay (PW-4) went to his uncle Bhimrao's house and informed the incident. They went altogether to the house of appellant and found that Vinod was lying inside the house of appellant. He had sustained injuries. Thereafter, they took injured Vinod to the "1250-Hospital", where the duty doctor declared him dead. The testimony of Vijay (PW-4) is duly corroborated by Anil (PW-5) and partly corroborated by other prosecution witnesses.

10. Anil (PW-5) is an injured eye-witness. He witnessed the incident. He has stated that at the time of incident, Vinod was sleeping due to the effect of liquor. He also deposed that when he raised objection for the incident, the appellant inflicted blows by a pointed object on his neck and head. The testimony of injured eye-witness has great importance, which establish his presence on the spot.

11. In case of **Chandrasekar & Anr. Vs. State, 2017 SCC Online SC 620**, Hon'ble Supreme Court has held that :

> "Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though, the law is well settled and precedents abound, reference may usefully be

> made to **Brahm Swaroop Vs. state of UP (2011) 6 SCC 288** observing as follows: Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone."

12. Learned counsel for the appellant has submitted that eye-witness Vijay (PW-4) is relative of the deceased. Hence, as an interested witness, his testimony is not reliable.

13. We are not inclined to accept the contention of learned counsel for the appellant because we do not find any inconsistency or infirmity in his cross-examination to indicate that he has falsely narrated against the appellant. His testimony inspire confidence from the corroboration of Anil (PW-5).

14. In case of **"Kartik Malhar Vs. State of Bihar [(1996) 1 SCC 614**]" the Hon'ble Supreme Court has held as under :-

> "A close relative who is a natural witness cannot be regarded as an interested witness, for the term "interested" postulates that the witness must have some interest in having the accused, somehow or the other convicted for some animus or for some other reason."

Therefore, we do not disbelieve the testimony of Vijay (PW-4) and Anil (PW-5).

15. In case of "**Arjun vs. State of C.G. [2017 (2) MPLJ (Cri.) 305]",** the Hon'ble Supreme Court has held as under :

> "Evidence of related witness is of evidentiary value. Court has to scrutinize evidence with care as a rule of prudence and not as a rule of law. Fact of witness being related to victim or deceased does not by itself discredit evidence."

16. In case of "**Roop Narain Mishra Vs. State of UP [2017 Cri.LJ 1487]"** has held as under :

> "On the point of 'interested witnesses', the Hon'ble Supreme Court in State of U.P. v. Jagdeo, reported in 2003 Cri LJ 844 (SC) observed that only on the ground of interested or related witnesses, their evidence cannot be discarded. Most of the times eye witnesses happen to be family members or close associates because unless a crime is committed near a public place, strangers are not likely to be present at the time of occurrence.

17. Dr. D.S. Badkul (PW-2) conducted postmortem of body of deceased Vinod and found the following injuries:-

(i) Lacerated wound 3 cm. x 2 cm., vertical on right mastoid just post to pinna along with contusion of 8 cm. x 6 cm. on right pinna on mastoid region. Wound is bone deep. Clotted blood present,

(ii) Contusion 3 cm. diameter on right forehead, 2 cm. above the lateral end of right eyebrow,

(iii) Depressed fracture 8 c.m. x 1 cm. present on left temporal parietal bone just above the pinna of ear,

(iv) Depressed fracture size of 6 c.m. x 4 cm. on right temporal region,

(v) Dura mater tense, brain swellen Difference subdural hemorrhage present on left hemisphere all over on right occipital and temporal lobes and on all over the cerebellum,

(vi) Base of skull fractured from right to left involving right spleen.

Dr. D.S. Badkur (PW-2) opined that death of the deceased was due to asphyxia, as a result of aspiration of blood due to head injuries. Injuries were caused by hard and blunt object and were homicidal in nature and sufficient to cause death of the deceased in ordinary course of nature.

18. Dr. M.S. Khan (PW-12) medically examined the witness Anil and found the following injuries:-

(I) A bruise on left forehead size 3 cm. x 2 cm. bluish in colour,

(ii) A lacerated wound size 2 cm. x 0.5 cm. on left cheek,

(iii) A linear abrasion on left neck

size 10 cm. x 0.25 cm.,

As per opinion of Dr. M.S. Khan (PW-12), all the above injuries were caused by hard and blunt object. Therefore, above medical evidence are duly supported the prosecution story. There is no inconsistency in ocular evidence and medical evidence. Hence, we find that the prosecution has duly proved the case against the appellant beyond reasonable doubt.

19. Learned counsel for the appellant has contended that there is no independent eye-witness adduced by the prosecution. Generally, at about 1:30-2:00 a.m., in the midnight, at the time of incident, an independent witness is not available. Vijay (PW-4) is neighbour of the appellant and Anil (PW-5) accompanied the deceased Vinod and appellant. Anil (PW-5) is the injured eye-witness, hence, their testimony cannot be discarded.

20. Under Section 134 of the Indian Evidence Act, no number of witness has been prescribed to prove any fact. This provision is based on the principle that the quality of evidence has to be considered and not the quantity. In case of **Prithipal Singh Vs. State of Punjab, (2012) 1 SCC 10** it was held as under:-

> "49. This Court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The timehonoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and

> quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. **(See Vadivelu Thevar Vs. State of Madras, AIR 1957 SC 614, Sunil Kumar Vs. State (Govt. of NCT of Delhi), (2003) 11 SCC 367, Namdeo Vs. State of Maharashtra, (2007) 14 SCC 150 and Bipin Kumar Mondal Vs. State of W.B, (2010) 12 SCC 91.**

21. Hence, it is not necessary for the prosecution to adduce the independent witness in every case.

22. Learned counsel for the appellant has submitted that act of the appellant does not come under the purview of Section 302 of the IPC, whereas it comes under Section 304 Part-I or Part-II of the IPC. In case of **Babubhai Ranchodbhai Patel Vs. State of Gujarat, (1994) 1 SCC 410,** it was held as under that:-

> "Even if there was a sudden quarrel that cannot be a ground to hold that he had only the knowledge. The intention for the purpose of Clause 3rdly of Section 300 IPC has to be inferred from the facts and circumstances in each case. One can understand if there had been some grappling or struggle between A-1 and the deceased and in the course of which if he came to inflict an injury perhaps a doubt may arise whether he aimed and intended to cause that particular injury during that grappling or struggle. But in this case the evidence is that he went straight and attacked the deceased with a knife inflicting such a serious injury and not only that he also inflicted injuries on the two witnesses with the weapon. These circumstances would attract Clause 3rdly of Section 300 IPC."

23. In case of **Nankaunoo Vs. State of Uttar Pradesh, (2016) SCC 317,** it was held as under:-

> "Intention is different from motive. It is the

> intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder. Section 300 (Thirdly) IPC consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas under the second part whether it was sufficient to cause death is an objective enquiry, and it is a matter of inference or deduction from the particulars of the injury.
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> The language of Section 300 Thirdly speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. The "intention" and "knowledge" of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Penal Code, 1860 designedly used the words "intention" and "Knowledge" and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensure. As compared to "knowledge", "intention" requires something more than the mere foresight of the consequences, namely, the purposeful doing of a thing to achieve a particular end.
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> The emphasis in Section 300 (Thirdly) IPC is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary course of nature. When the sufficiency exists and death follows, causing of such injury is intended and causing of such offence is murder. For ascertaining the sufficiency of the injury, sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant. Depending on the nature of weapon used and situs of the injury, in some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has, in fact, taken place.

24. As per medical report of Dr. B.S. Badkur (PW-2), it is apparently clear that the appellant inflicted five blows on the head of the deceased and

size of all the injuries were above 3 cm. to 8 cm. Due to such injuries, the deceased sustained two fractures on his head. One was about 8 cm. x 1 cm. and another was depressed fracture about 6 cm. x 4 cm. over both ear. In injury no.6, the base of skull was also found broken. All the injuries were inflicted on vital part of the deceased. Force was used by the appellant with intention to kill the deceased. He used a heavy stone for assaulting the deceased. It cannot be said that the stone is not a deadly weapon. It cannot also be said that (only by knife, sword or any sharp edged weapon), the death may be caused.

25. M.S. Sisodiya (PW-12) has stated that he received information of the incident. Then, he proceeded to the spot at Panchsheel Nagar. On the spot, he registered *Dehatinalishi* Ex.P/1 as per information given by Bhimrao. N.K. Saxena (PW-13) prepared spot map Ex.P/2, which undisputedly indicated that incident took place at the house of the appellant. On 15.11.2005 he recorded the statements of Vijay (PW-4) and Anil (PW-5). On the same day, he seized the stone, knife on the basis of memorandum (Ex.P/7) of the appellant. These articles were found stained on the blood. He prepared seizure memo (Ex.P/15). We do not find any reason to disbelieve the above testimony of the investigating officer.

26. In case of **Madhu @ Madhuranatha & Anr. Vs. State of Karnataka, AIR 2014 SC 394**, wherein it has been held as under:-

> "Evidence of police personnel were made recovery witnesses. Their evidence is reliable and cannot be discarded even though large number of people were available."

27. In our opinion, case of the appellant clearly comes under the purview of murder, for the offence punishable under Section 302 of the IPC. The trial Court has rightly convicted the appellant for the same. On the basis of the aforesaid discussion, the appeal has no merit to interfere in the impugned judgment. Accordingly, it is hereby dismissed.

28. Copy of this judgment be sent to the trial Court along with its record for information.

(S.K. Gangele)
Judge

(Smt. Anjuli Palo)
Judge

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