2019 INSC 1190

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.480 OF 2009

IMRAT SINGH & ORS. APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH RESPONDENT(S)

J U D G M E N T

Deepak Gutpa, J.(Oral)

This appeal by the convicted accused is directed against the judgment dated 24.10.2008 passed by the Division Bench of the High Court of Madhya Pradesh, whereby the High Court upheld the judgment of the Sessions Judge, Datia dated 30.03.1995 convicting the appellants of having committing offences punishable under Sections 148 and 302 read with 149 of the Indian Penal Code. Appellants were sentenced to undergo life imprisonment for the offence of murder and two years rigorous imprisonment for the offence punishable under Section 148 IPC. They were also directed to pay fine of Rs.25,000/- and in default of payment of fine further three years rigorous imprisonment.

Shortly stated the prosecution case, as reflected in

the FIR is that on 25.05.1994 at about 2 pm., Lakhan Singh (PW-10) and Ram Singh (PW-11), who were coming from village Baron Kalan to village Kotra, saw the accused persons beating Gajraj Singh with lathis at a place called Brar Khora. These two witnesses asked why the accused were beating Gajraj Singh and then they were threatened by the accused. Being scared, they ran away from the spot to save their own lives. Then they reached village Kotra and thereafter went to the police station at about 5 pm. to lodge the FIR. We may also add that though this is not part of the FIR, during the course of investigation it has transpired that Somati (PW-6) and Raghubir (PW-7) last saw Gajraj Singh with accused Imrat Singh. Both, the Trial Court and the High Court, have accepted the testimony of Lakhan Singh (PW-10) and Ram Singh (PW-11) to be true and accepting their evidence to be true and treating these two witnesses as eye-witnesses have convicted all the accused as aforesaid. Hence, the present appeal.

The main contention raised before us by Ms. June Chaudhary, learned senior counsel, as well as Mr. Shikhil Suri, whom we had asked to assist us as amicus, is that the testimonies of Lakhan Singh (PW-10) and Ram Singh (PW-11) are totally untrustworthy and cannot be relied upon. They submit that if the testimonies are read as a whole along with the other attending circumstances, to which we shall advert later, no reliance can be placed on

these two witnesses and, therefore, the conviction is liable to be set aside. Even with regard to Somati (PW-6) and Raghubir (PW-7), it is submitted that their testimonies are contradictory and cannot be relied upon and at best the testimonies will go against Imrat Singh and not against any of the other accused.

We need not refer to the FIR in detail. We will straight away deal with the statement of the two star witnesses of the prosecution Lakhan Singh (PW-10) and Ram Singh (PW-11). They are both residents of Village Kotra. Their version is that they had gone to village Baron Kalan since they both had worked there and Lakhan Singh (PW-10) had to meet a potter Bhagwan Dass to get some work done. According to them, when they were returning from Baron Kalan and had reached near Brar Khora they saw all the five accused Imrat Singh, Hetam Singh, Raghubir Singh, Nirbhaya Singh and Ratan Singh beating Gajraj Singh with lathis. According to Lakhan Singh (PW-10), this occurrence took place in Brar Khora near the passage where they were walking. Whereas according to Ram Singh (PW-11), the distance was only 10 steps. Both of them stated that when they enquired from the accused as to why they were beating Gajraj Singh, they were also threatened and then they ran away. As far as this part of the story is concerned, there is complete identity between the versions of those two witnesses. It is almost a parrot like version. The question is whether these witnesses are

telling the truth or not. If we were to rely only on this portion of the testimony there would be no difficulty in upholding the judgment of the High Court.

The subsequent portion of the statements of these witnesses is so much at variance with each other and there are so many material contradictions in the statements of these two witnesses that as far as other aspects are concerned, a doubt has been cast in our minds that these witnesses are prepared witnesses who have come out with a parrot like version as far as the incident itself is concerned but when it comes to the attending circumstances their evidence falls apart and does not withstand the scrutiny of cross-examination.

According to Lakhan Singh (PW-10), immediately after the incident, they reached village Kotra. Lakhan Singh (PW-10) states that on reaching village Kotra he narrated the entire incident to Vrish Bhan Singh, Man Singh, Rudra Singh and Kishori. None of these four have been examined. Thereafter, Har Bilas (PW-15), who happens to be the brother of the daughter-in-law of the deceased came to village Kotra and he was informed about the occurrence. If the occurrence occurred at about 2 pm., the witnesses would have reached village Kotra in 10 minutes at the most. Mahender Singh (not examined) and Jabbar (not examined) also arrived in the village. According to Lakhan Singh (PW-11), one Raghubir, servant of Brij Mohan, came and told him that the dead body of Gajraj

Singh was lying in the jungle at Khora. Here it is pertinent to mention that Raghubir (PW-7), who has been examined, is actually servant of Gajraj Singh and not of Brij Mohan, but we will, for the sake of this case, accept that Raghubir, who has been referred to in the statement of Lakhan Singh (PW-10), is the servant of Brij Mohan.

Thereafter, according to Lakhan Singh (PW-10) he went to the police station to report the matter and lodged the complaint vide report-Exhibit P-10, which was read over and explained to him. However, in cross-examination he gives a totally different version. According to him, he had reached the village Kotra between 2.30 and 3 pm. and thereafter he, Rudra Singh, Ajab Singh (not examined), Har Bilas and Ram Singh (PW-11) consulted with each other and then went to report the matter to the police. When they reached the police station the Head Constable, who was present in the police station, stated that he was calling the SDOP and the FIR would be lodged and further action will be taken only after the SDOP was called. Thereafter, the SDOP reached the police station at about 6 pm. and then Lakhan Singh reported the entire matter to the SDOP. It would be pertinent to mention here that neither the Head Constable nor the SDOP have been examined. Whereas in examination-in-chief this witness has stated that his report was lodged as soon as he reached the police station but when

cross-examined he was forced to admit that the report was lodged only on the arrival of the SDOP who further advised that they will visit the place of occurrence first and then lodge the report, which means that an oral report was lodged with the SDOP, then some persons went to the spot and after coming back from the spot the formal FIR was lodged.

Interestingly, this witness states that many villagers, including Ram Singh, along with SDOP and other police officials had visited the place of occurrence but he did not go to the place of occurrence with the SDOP.

Coming to the statement of Ram Singh (PW-11), as we have mentioned above, as far as the main witnesses are concerned, statement is almost similar. He also states that he went to the police station and lodged the report. However, he states that when they reached the village they did not tell anybody about the incident after reaching the village. This conduct is not natural. He then states that Har Bilas, Mahender Singh and Raghubir then informed in the village that Gajraj Singh had expired. This is totally different from what has been stated by Lakhan Singh. This witness also states that site plan of the place of occurrence was not prepared by the police in his presence. He states that the site plan does not bear his signatures. This witness has been confronted with the statement recorded under Section 161 Cr.P.C. (Ex.D-5) wherein the fact that he had seen the

occurrence from a distance of 10 steps, has not been specifically stated. We do not find this a material contradiction because in a Section 161 statement a person may or may not state the exact distance. However, whereas in Court this witness states that when Gajraj Singh was being beaten up, the accused were asking Gajraj Singh why he had not voted for Meera, this fact was not recorded in the Section 161 statement which is a material contradiction because if this had actually happened, this would have been recorded in the statement under Section 161 Cr.P.C. and would have also been stated by Lakhan Singh (PW-10) who was along side Ram Singh (PW-11). This clearly shows that these witnesses have been improving their statements with the passage of time.

Another important aspect of the statement of this witness is that he says that when he and Lakhan Singh (PW-10) witnessed the incident, they rushed back to the village and went to the shop of Rudra Singh where Mahender Singh was also present. He states that none of them had made an effort to go back to the place of occurrence to save Gajraj Singh. According to him, Har Bilas came after half an hour and told them that Gajraj Singh had died. This is totally different from the statement of Lakhan Singh (PW-10). According to him, it was Raghubir, servant of Brij Mohan, who informed about the death of Gajraj. Therefore, there is contradiction in the statement of these two witnesses as to who informed

the villagers that Gajraj Singh was dead.

The other major contradiction is that according to Ram Singh (PW-11) they reached the police station at 5 pm. at which time the Deputy Superintendent of Police had already reached the police station. This is totally different from the statement of Lakhan Singh (PW-10). According to this witness, Lakhan Singh (PW-10) narrated the whole incident to the Deputy Superintendent of Police and thereafter the Deputy Superintendent of Police said that they would first go to the place of occurrence and see the dead body and the complaint will be registered thereafter. It seems that his reference to the Deputy Superintendent of Police is to the same person referred to as the SDOP by Lakhan Singh (PW-10). The contradiction is that whereas Lakhan Singh (PW-10) stated that this person was not at the police station and came after about one hour, according to Ram Singh (PW-11) this person was already at the police station.

The first site plan (Ext.P-18) was prepared by Head Constable Sita Ram, who has not been examined, however, it is counter signed by one Jagdish, who has been examined as PW-14. Interestingly, the site plan is alleged to be signed by both Lakhan Singh (PW-10) and Ram Singh (PW-11) and the site plan indicates that it was prepared on the instructions given by Lakhan Singh but Lakhan Singh states that he never went to the place of occurrence with the police and Ram Singh states that he

never signed the site plan. We are not using the site plan to support the prosecution case or the case of the accused but the manner in which the site plan was prepared clearly indicates that the investigation was not a fair investigation.

We shall now deal with Somati (PW-6) and Raghubir (PW-7), the witnesses on whom the prosecution places reliance for the purpose of the last seen theory. However, before we deal with these two witnesses, it would be pertinent to mention that the prosecution had also examined one Smt. Puniya as PW-5, who has turned hostile. We are recording this fact because her name finds mention in the statement of both these witnesses.

According to Somati (PW-6) at about 12 noon when she was present at her well, Gajraj Singh, who was in his residence was called by accused Imrat Singh, who informed Gajraj Singh that they will consume liquor together and thereafter her father-in-law Gajraj Singh left with Imrat Singh. She also states that later Puniya (PW-5) told her that she (Puniya) had seen accused Imrat Singh and Hetam Singh beating Gajraj Singh. According to this witness, her brother Har Bilas and one Mahender Singh came to her house and she informed them that her father-in-law had been beaten. According to this witness, she was informed about the beating of her father-in-law by Puniya (PW-5) who has not supported her version. She herself had not seen her father-in-law being beaten by anybody. In fact,

this witness in cross-examination states that it was not Puniya who told her about Imrat Singh and Hetam Singh beating Gajraj Singh but this fact was told to her by her brother Har Bilas. As far as Raghubir (PW-7) is concerned, he states that the accused Imrat Singh came at about 2 pm. and in his presence told Gajraj Singh to accompany him since they had prepared mutton. Interestingly, Somati (PW-6) had not stated that Raghubir (PW-7) was present when Imrat Singh came. Their version about the enticement given to Gajraj Singh is different. According to Somati it was liquor which was offered whereas according to Raghubir (PW-7) it was mutton which was offered to Gajraj Singh.

Raghubir (PW-7) also states that he was informed by Puniya that she had seen Imrat Singh and Hetam Singh beating Gajraj Singh. According to him, thereafter he along with Har Bilas and Mahender Singh went towards the jungle and saw Gajraj Singh lying dead. He further states that then he went to the village and told Lakhan Singh and Man Singh that the dead body of Gajraj Singh was lying in the jungle. He then stated that the dead body was lying in the river. According to him, Lakhan Singh and Man Singh told him that they had already seen the dead body of Gajraj Singh which is not the case of Lakhan Singh at all.

The only other important witness to whom the reference is being made is Har Bilas (PW-15). He states

that he was informed by Somati that Gajraj Singh had been called by Imrat Singh and both had left together. According to him, Puniya reached there and informed that Gajraj Singh had been taken by Imrat Singh and Hetam Singh and he was beaten by them. Thereafter, he along with Mahender Singh and Raghubir went in search of Gajraj Singh and saw the body of Gajraj Singh lying in the river. He states that he saw no injuries on the body of Gajraj Singh which is difficult to believe because the prosecution story is that Gajraj Singh was beaten to death by the five accused with lathis. The versions of Har Bilas and that of Lakhan Singh (PW-10) are totally different. According to Lakhan Singh (PW-10) when Har Bilas (PW-15) came to the village, he did not know anything and it was only Raghubir who came and informed that Gajraj Singh was dead. This casts a serious doubt on the prosecution story.

Another factor which we have taken into consideration is that a number of very important witnesses who should have been examined have not been examined. Neither Bhagwan Dass the potter who was supposed to meet Harnam Singh in Bharon Kalan nor any other person from Bharon Kalan have been examined to support the version of Lakhan Singh (PW-10) and Ram Singh (PW-11) that they actually went to Bharon Kalan.

The villagers who were first told about this incident by Lakhan Singh (PW-10) and Ram Singh (PW-11)

have not been examined. The Head Constable who is alleged to have not recorded the FIR and said that he would wait for the SDOP has not been examined. The SDOP/Deputy Superintendent of Police has not been examined. The FIR has been recorded admittedly after visiting the spot by the police and, therefore, there is a possibility that the story could have been concocted after seeing the site and conferring with all the villagers. It has come on record that Gajraj Singh was not a very popular man. He had a lot of enemies. It has also come in evidence that almost all the witnesses have some criminal antecedents and some cases are pending against them. It may be true that there was enmity between the two sides. Enmity, as is often said is a double edged sword. It can be the motive but it can also be a reason to falsely implicate the other side. In the present case, keeping in view the various contradictions pointed out above and the fact that in view of the contradictions it is difficult to rely upon the statements of Lakhan Singh (PW-10) and Ram Singh (PW-11) as well as Somati (PW-6) and Raghubir (PW-7), we are of the view that a doubt has been cast and the benefit of doubt has to be given to the accused.

We are of the view that the High Court and the Trial Court did not take into consideration these contradictions of the witnesses and relied upon the witnesses especially Lakhan Singh (PW-10) and Ram Singh (PW-11) without referring to the attending circumstances

to which we have referred to in detail hereinabove. In view of the above discussion, we allow the appeal, set aside the conviction of both the Courts below. Accused are acquitted accordingly. Accused are on bail. Their bail bonds are discharged.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

New Delhi
October 24, 2019

ITEM NO.101 COURT NO.15 SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s).480/2009

IMRAT SINGH & ORS. Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH Respondent(s)

(PART HEARD BY HON. DEEPAK GUPTA AND HON. ANIRUDDHA BOSE, JJ.)

Date : 24-10-2019 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s)
Ms. June Chaudhary, Sr. Adv.
Mr. Shikhil Suri, Adv. (A.C.)
Mohd. Parvez Dabas, Adv.
Mr. Uzmi Jameel Husain, Adv.
Ms. Shilpa Saini, Adv.
Mr. Shakil Ahmed Syed, AOR

For Respondent(s)
Mr. Rahul Kaushik, AOR
Ms. Bhuvneshwari Pathak, Adv.
Ms. Shilpi Satyapriya Satyam, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed reportable judgment.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT) (RENU KAPOOR)
COURT MASTER (SH) BRANCH OFFICER
(signed reportable judgment is placed on the file)