2023 INSC 1000

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2300 OF 2009

BALARAM **...APPELLANT(S)**

VERSUS

STATE OF MADHYA PRADESH **...RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

1. This appeal challenges the judgment and order passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur, Bench Gwalior in Criminal Appeal No.276 of 1995 thereby dismissing the appeal filed by the present appellant as well as Rameshwar (since deceased) and confirming the judgment and order passed by the learned Special Judge and Second Additional Sessions Judge, Bhind passed in Sessions Trial No.70 of 1984.

2. The prosecution story as could be gathered from the material placed on record is thus:-

2.1 PW.5-Ramkali, PW.6-Mulchand along with their relative Pannalal (PW.8) and son-Ashok as well as grand-daughter Rani and two other villagers namely, Badri and Mahesh were going on a bullock cart to Mau from Ujhawal at around 8-9 a.m. Pannalal (PW.8) was driving the cart. It is the case of the prosecution that when the cart reached near village Rasnol, two persons came in front of the cart and stopped their cart. Thereafter, 3-4 other persons also came there.

2.2 It is the prosecution case that Rameshwar (since deceased), appellant-Balaram, Uma Charan and Munna had come there after ten minutes of stopping of the cart, accused-Rameshwar fired the first shot and it hit Ashok in his chest. Thereafter, another shot was fired by accused-Uma Charan, which hit Ashok in the arms and thereafter, the third shot was fired which hit Ramkali (PW.5) in her right thigh.

2.3 As a result of firing, Ashok had become unconscious and was brought to Mau on cart. Pannalal reported the

incident to the police on the basis of which an FIR came to be lodged initially for an offence punishable under Section 307 of the Indian Penal Code (for short 'IPC'). Following the death of Ashok, the case was converted to one under Section 302 of the IPC.

3. After investigation, the charge-sheet came to be filed before the jurisdictional Magistrate. Since the case was exclusively triable by the Sessions Judge, it came to be committed to the Special Judge & Second Additional Sessions Judge, Bhind. Six accused came to be tried for the offences punishable under Sections 147, 148, 302, 149, 307 and 341 of the IPC. The learned Special Judge & Second Additional Sessions Judge, Bhind at the conclusion of the trial, found that accused Ram Bharosey, Munna, Uma Charan and Amar Singh were entitled to be acquitted for the charges levelled against them. However, Rameshwar (since deceased) was found guilty for commission of offences punishable under Sections 148, 302, 307 read with Section 149 of the IPC and appellant-Balaram was found guilty for the commission of offences

punishable under Sections 148, 302 read with Section 149 and Section 307 of the IPC.

4. Being aggrieved thereby, an appeal was preferred by the accused which was dismissed by the High Court. Being further aggrieved, Rameshwar and Balaram filed an appeal before this Court. During the pendency of the appeal, Rameshwar has died and as such, the appeal against him has abated, which leaves us only with the appeal of the appellant-Balaram.

5. Heard Shri R. Chandrachud, learned counsel for the appellant and Shri V.V.V. Pattabhiram, learned Deputy Advocate General for the State of Himachal Pradesh.

6. Shri Chandrachud submits that, on the basis of very same evidence, the learned Trial Judge has acquitted four accused persons. He further submits that, though the evidence of PW.5-Ramkali and PW.6-Mulchand has specifically attributed a gun shot to Uma Charan, their evidence has been disbelieved insofar as Uma Charan is concerned. However, on the basis of the very same evidence, the appellant-Balaram has been convicted. It is submitted that, from the testimony of the other witnesses it would be clear that the appellant-Balaram was not even

present at the spot and he has been falsely implicated. Learned counsel further submits that the motive attributed i.e. previous enmity is also far fetched inasmuch as the incident with regard to the murder of Ramadhar, brother of Balaram, had taken place 4-5 years earlier. In any case, he submits that previous enmity is a double edged weapon, and as such the possibility of false implication cannot be ruled out.

7. He therefore submits that the appeal deserves to be allowed and the appellant deserves to be acquitted of the charges charged with.

8. Shri Pattabhiram, on the contrary, submits that the learned Trial Judge, by separating the chaff from the grain, has believed the testimony of PW.5-Ramkali and PW.6-Mulchand on finding that their ocular testimony was corroborated by the medical evidence on record. He further submits that the witnesses PW.5-Ramkali and PW.6-Mulchand are rustic villagers and merely because there were inconsistencies in their evidence cannot be a ground to discard their testimony.

9. With the assistance of the learned counsel for the parties we have perused the evidence.

10. Insofar as the present appellant-Balaram is concerned, he has been implicated by Ramkali-PW.5 and Mulchand-PW.6, both are wife and husband and parents of the deceased-Ashok.

11. It is well settled, as laid down in a *locus classicus* case of ***Vedivelu Thevar v. State of Madras***[1], there are three types of witnesses, which are

(i) wholly reliable,
(ii) wholly unreliable, and
(iii) neither wholly reliable nor wholly unereliable.

The law laid down in Vedivelu Thevar (supra) is consistently followed by this Court in a catena of judgments. It can thus be seen that, there are three types of witnesses. If the witness is wholly reliable, there is no difficulty inasmuch as relying on even the solitary testimony of such a witness conviction could be based. Again, there is no difficulty in the case of wholly unreliable witnesses inasmuch as his/her testimony is to be totally discarded. It is only in the case of the third category of witnesses which is partly reliable and partly unreliable that the Court faces the difficulty. The Court is required to

1 AIR 1957 SC 614

separate the chaff from the grain to find out the true genesis of the incident.

12. Let us examine the testimony of PW.5-Ramkali and PW.6-Mulchand so as to find out in which of the categories these witnesses would fall.

13. In the evidence of PW.5-Ramkali, there is no mention of the appellant-Balaram; she only states that the third person had fired a gun shot which had injured her leg. It is only on account of the ingenuity on the part of the cross-examiner that the presence of appellant-Balaram has come on record, in the cross-examination.

14. Even accepting her testimony, it can be seen that the injury attributed to the appellant-Balaram is of assaulting her on her leg and not the deceased-Ashok.

15. Per contra, PW.6-Mulchand attributes the fire injuries to three persons. One to accused Rameshwar, the other to Uma Charan and the third one to appellant-Balaram. On the basis of the very same evidence, the Trial Court has disbelieved the version of these two witnesses, insofar as accused Uma Charan is concerned.

16. We find it difficult to accept the distinction drawn by the learned Trial Judge while believing the evidence of

PW.5-Ramkali and PW.6-Mulchand insofar as appellant-Balaram and Rameshwar (since deceased) are concerned.

17. As already discussed herein above, previous enmity is a double edged weapon; on the one hand it provides the motive, whereas on the other hand, the possibility of false implication cannot be ruled out.

18. We find that when the Trial Court has disbelieved the testimony of PW.5-Ramkali and PW.6-Mulchand insofar as accused Uma Charan was concerned, it could not have applied a separate standard while considering the case of the present appellant-Balaram and Rameshwar (since deceased).

19. We are of the considered view that the testimony of PW.5-Ramkali and PW.6-Mulchand would come in the category of wholly unreliable witnesses. As such, conviction on the basis of their testimony, in our view, would not be sustainable.

20. As a result, the appeal is allowed. The order of conviction and sentence as recorded by the learned Special Judge and Second Additional Sessions Judge, Bhind and the order of the High Court are quashed and set aside. The appellant is acquitted of the charges charged with. He

is directed to be set at liberty forthwith, if his detention is not required in any other case.

21. Pending application(s), if any, shall stand disposed of.

.....J.
[B.R. GAVAI]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ARAVIND KUMAR]

NEW DELHI;
NOVEMBER 08, 2023.

ITEM NO.105 COURT NO.4 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). 2300/2009

BALARAM APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH RESPONDENT(S)

(IA No. 105398/2019 - EXEMPTION FROM FILING O.T.
IA No. 105397/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 08-11-2023 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Mr. R. Chandrachud, Adv.
Mr. Ashok Panigrahi, AOR
Mr. Nabab Singh, Adv.
Mr. Dhuli Venkata Krishna, Adv.
Ms. Geetanjali Das Krishnan, Adv.
Mr. Dharmendar Singh, Adv.

For Respondent(s) Mr. V.V.V. Pattabhiram, D.A.G.
Mr. Yashraj Singh Bundela, AOR
Mr. Ramesh Thakur, Adv.
Mr. Pawan, Adv.
Ms. Jyoti Verma, Adv.

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

In terms of the signed judgment, the appeal is allowed. The order of conviction and sentence as recorded by the learned Special Judge and Second Additional Sessions Judge, Bhind and the order of the High Court are quashed and set aside. The

appellant is acquitted of the charges charged with. He is directed to be set at liberty forthwith, if his detention is not required in any other case.

(NARENDRA PRASAD)
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)
COURT MASTER (NSH)

(Signed “Non-Reportable” judgment is placed on the file)