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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ANIRUDDHA BOSE; J., BELA M. TRIVEDI; J.
CRIMINAL APPEAL NO(S). 1183/2016; September 13, 2023
RAMESHJI AMARSING THAKOR *versus* **STATE OF GUJARAT**

Evidence Law - Minor Discrepancies - An eyewitness to a gruesome killing cannot in deposition narrate blow by blow account of the knife strikes inflicted on the deceased like in a screenplay. Just because there were more injuries than the ones narrated by the eyewitness cannot negate the prosecution version. Even if in the opinion of the autopsy surgeon there was mismatch of the knife with the injuries caused, the doctor's evidence cannot eclipse ocular evidence. *(Para 7 & 9)*

For Appellant(s) Mr. D.N. Ray, Adv. Mr. Dillip Kumar Nayak, Adv. Ms. Disha Ray, Adv. Mrs. Sumita Ray, AOR For Respondent(s) Ms. Swati Ghildiyal, AOR Ms. Deepanwita Priyanka, Adv. Ms. Devyani Bhatt, Adv. Ms. Neha Singh, Adv.

J U D G M E N T

The appellant before us, after being acquitted by the Trial Court, on appeal by the State, was convicted by the High Court for commission of offences under Sections 302 and 114 of the Indian Penal Code, 1860. The case arises from killing of one Jayantibhai (deceased) in the evening hours of 10.07.1995 with knife blows. In his statement supporting the FIR, PW1, brother of the deceased has attributed commission of the offence to the appellant as also two other individuals who were arraigned as accused. They are the father and brother of the appellant. The prosecution case is that upon receiving knife injuries, the deceased had collapsed after running few paces. Subsequently, he was brought to his residence and thereafter taken to the hospital where he was declared dead. The autopsy surgeon found his death to have been caused by shock and hemorrhage due to stab injuries. He had identified altogether eight injuries on the body of the deceased, which in his opinion were ante-mortem.

2. The prosecution case is primarily founded on evidence of PW2 (Parvatiben), who is presented by the prosecution as eyewitness. She happens to be a distant relative of the deceased. The other part of evidence on which prosecution has relied upon is dying declaration of the deceased, which was made before PW2 and PW3 (Shivaji), brother of the deceased, in response to the latter's query about the identity of the assailant. PW4 (Rameshji) and PW5 (Laxmanji) have corroborated this. The Trial Court acquitted three individuals arraigned as accused mainly based on medical evidence and the reasoning of the Trial Court would appear from paragraph 17 of the judgment of the Trial Court. We reproduce the said paragraph below:-

"17. According to P. M. Note, there were total (08) eight injuries of "chhari" (long Knife) on the body of the deceased. One (01) "chhari" (long Knife) has been recovered in "Muddamal". It has been produced as "Muddamal" - article number -9. And Dr. Pratikbhai Ravjibhai Patel has deposed below Ex.-28 that injuries nµmber- 3, 6, 7 and 8 can be done with that "chhari" (long Knife) and according to his version above mentioned any injuries were not sufficient to succumb death. It means death of the deceased has not been done due to injµries number- 3, 7 and 8. And death has not been caused due to "Muddamal" article number -9. Further injuries have been sustained on account of two (02) different "chhari" (long Knife). police has not recovered other "chhari" (long Knife) which channels to death. And any witness has not deposed that they have seen such "chhari" (long Knife) any witness has not deposed that there were more than three (03) injuries on body of the deceased. Each witness has specifically deposed that Rameshji had inflicted two (02) blows on chest and one (01) on stomach of the deceased, which they had seen.

Thus, deposition of the eye witness and opinion of the Medical Officer and P.M. Notes have been having contradictions in vital aspects. Deceased Jayantiji had also stated in his oral dying declaration before the witnesses that Rameshji had sustained two (02) injuries in chest and one (01) injury in stomach to him."

3. Mr. D.N. Ray, learned counsel appearing for the appellant has argued that there were substantial inconsistencies and contradictions in the witnesses statements and the eyewitnesses herself, being a relative, was not a neutral person. He has also taken us through the part of the judgment in which the Trial Court found contradiction in the prosecution version as regards the manner in which the knife blows were inflicted as also identification of the assault weapon. His submission is that the medical evidence was clear that the knife which was muddamal 9 (the seized knife) could not have caused fatal injury. He also raised doubt on the authenticity of the dying declaration. The High Court held, reversing the Trial Court's judgment:-

"13.0. Thus, it is evident from the Postmortem Note that the cause of death is knife injury. PW2 Parvatiben Ishwarji had clearly stated that the accused came to the spot and inflicted knife blows on both sides of chest and on the abdomen. The doctor confirmed that the injuries are possible with knife. According to this witness Shivaji had asked to name the accused and Jayantibhai had given the name of the accused no. 1. This witness had also identified the accused in the Court. She has also identified the knife used for the alleged offence. The defence could not controvert any of these depositions. PW3 Shiavaji Shakarji has also fully supported the evidence of PW2 Parvatiben. He also described about the injuries inflicted by the accused. PW4 Rameshji Babaji Thakore deposed that on hearing the shouts he had rushed to the place. He also noticed the injuries. He also stated that when Shivaji had asked Jayantibhai as to who had inflicted the blows. Jayantibhai clearly stated the name of the accused no. 1. Further, PW5 Laxmanji Shanaji Thakore also supported the evidence of PW 2, 3 and 4. Thus, PW2 was at the scene of offence as Jayantibhai was walking in front of her. She also described about the accused coming to the place and inflicting blows on Jayantibhai. She shouted and thereupon the accused ran away. She had no reason to involve the accused no. 1. She has identified the accused No. 1 and also the knife used by the accused no. 1. Her presence at the place of incident is not doubted by anybody. The injured has also given the name of accused no. 1. The injuries are on vital part of the body. It was also established that there was motive as there was an altercation between the accused no. 1 and Raiben who is wife of Amratji about 15 days prior to the incident. Therefore the learned Sessions Judge should not have discarded the evidence of the said witnesses.

14.0 The first and foremost evidence is of PW 7-Savitaben Shivaji Exh. 27, who is the eyewitness. In her cross examination she has admitted that incident has happened at 6.30 p.m. She has stated that her brother-in-law had come at 10 'o clock. However, it was at around 7.30 p.m. Merely because she has stated the wrong time, her presence cannot be disputed and the acquittal cannot be based on the same. The same is supported by the brother of the deceased who has reached to the scene of offence and son of the accused. Their evidence is also supported by PW 7 Savitaben Shivaji (ExH. 27). Accused No. 2 and 3 have also caught hold the deceased however their names were not reflected in the first Vardhy and hence their involvement is doubtful. Thought the witnesses are close relatives, they have stood firm despite incisive cross-examination. There can be no doubt over the proposition that when the witnesses are related and interested, their testimony should be closely scrutinized, but as we find, nothing has been elicited in the cross-examination to discredit their version. There was no reason for the witnesses to involve the accused in the alleged offence. On a studied scrutiny of their evidence, it can be said with certitude that they have lent support to each other's version in all material particulars. There are some minor contradictions and omissions which have been emphasized by the learned trial Judge. We treat the said discrepancies and the minor contradictions as natural. That apart, their evidence also find support from the medical evidence. We are of the opinion that there is no inconsistency in the version of witnesses. The learned trial Judge, has attached immense emphasis to such omissions and contradictions. In our considered opinion, in the present case,

the same cannot be a ground for not placing reliance on the eye witnesses who has supported the prosecution.

15.0 As far as medical evidence is concerned, injuries were described in column no. 17 of the PM Note. The doctor who was examined at PW 28 stated that there were as many as eight injuries found on the body of the deceased and the opinion of the doctor was that the death of the deceased was possible with the knife. 16.0 The aforesaid evidences are so clinching that the learned trial court ought not to have acquitted the accused as the prosecution had proved the case against the respondents on the basis of dying declaration, medical evidence and other evidence on record.

17.0 As a result of hearing and perusal of records, we are of the opinion that the prosecution has been successfully able to prove the motive and the presence of accused at the scene of offence at the time of alleged incident took place which clearly prove the guilt of the accused no. 1 in the alleged offence.

18.0 However, in light of the contents first Vardhy, there is serious dispute regarding the presence of accused no. 2 and 3, who are father and brother of the accused no. 1. Therefore they are required to be given benefit of doubt especially because after 21 years from the incident the whole family may not be put behind bars without concrete evidence against them. Therefore, we grant them benefit of doubt. The presence of the accused no. 1 is proved beyond reasonable doubt and the motive is also established beyond reasonable doubt.

19.0 Thus we are of the opinion that the trial court committed an error in acquitting the respondent-accused no. 1. The respondentaccused no.1 is required to be guilty for the offence punishable under section 302 read with section 114 of Indian Penal Code and therefore we are inclined to allow this appeal filed by the State in part"

4. PW2 after identifying the accused persons as also the weapon of assault, being a knife has stated in her deposition that she was close to the place of the occurrence when the offending incident took place. She, in her deposition, stated that two other accused persons were holding the deceased while the appellant inflicted three knife blows, one on the left side, one on the right side and one on the stomach. She raised hue and cry, as a result of which PW3, PW4 and PW5 had rushed to the spot. Place of occurrence is close to a cluster of houses in the village Ghuma, where the deceased, the prosecution witnesses as also the appellant reside. The version of the PW2 is that after assault, three assailants had escaped in a direction opposite to the course followed by the deceased and the deceased, after running a short distance, had collapsed. He was then brought to his residence and kept on a cot. It was at that point of time a query from PW3, as to who had assaulted him had come.

5. There is no dispute of the body of the deceased being taken to the "civil hospital". Substantial reliance has been placed on the evidence of the autopsy surgeon – PW8 by the appellant. He has referred to eight injuries on the body of the deceased. When shown the knife, his opinion has been that injury nos.1, 2 and 4 which were fatal could not have been caused by the muddemal no.9. The relevant portion of his deposition is set out below:-

"8) In my opinion, death of deceased occurred due to shock and hemorrhage due to stab injuries. The aforesaid injuries were sufficient to cause death in the ordinary course of nature. The injuries were caused with two separate weapons. Both edges of one weapon were sharp, whereas one edge of other weapon was sharp. I am shown muddamal article 9, and external injury no.3, external injury no.6, 7 and 8 can be caused by it. Death cannot occur due to any injury out of aforesaid injuries because aforesaid four injuries were superficial injuries. Injury no.1, 2, 4 cannot be caused with muddamal article no.9. I am shown mark 3/8 wherein there is my signature. The same is in my handwriting. I identify my signature and signature of Dr.D.S. Patel therein. The same is given exhibit no.29. I am shown exhibit no.12 wherein there is my signature."

6. The Trial Court primarily relied on the autopsy surgeons deposition and disbelieved the dying declaration. Mr. Ray has relied upon a judgment of this Court in the case of **Murugesan -vs- State** reported in [2012 (10) SCC 383], to argue that in a case of acquittal, interference by the High Court was permissible only if the Trial Court view was not found to be a possible view.

7. On being taken through the depositions and the judgment of the Trial Court, we are satisfied that the Trial Court had ignored the deposition of the prosecution witnesses and referred to very minor contradictions in support of its judgment of acquittal. The contradiction in number of injuries was not fatal to the prosecution case. Nor can the prosecution case altogether be negated because the fatal injuries, in the opinion of the autopsy surgeon could not have been caused by the recovered knife. Eyewitness account is consistent that the deceased was stabbed by the appellant and on this count there is no inconsistency. The PW2 also described the injury spots on the body of the deceased. Just because there were more injuries than the ones narrated by the eyewitness cannot negate the prosecution version. Even if in the opinion of the autopsy surgeon there was mismatch of the knife with the injuries caused, the doctor's evidence cannot eclipse ocular evidence. The evidence on post-occurrence events is consistent. The other point of inconsistency pointed out by Mr. Ray is about the position in which the deceased was lying after collapsing on sustaining injuries. PW2 had stated that he fell in the supine position, whereas PW4 and PW5 stated that he was lying in prone position and was brought to supine position.

8. On the aspect of discrepancies, it has been held by this Court in the case of **State of H. P. -vs- Lekh Raj and Another.**, reported in [2000 (1) SCC 247] :-

"7. In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony.

In Jagdish v. State of M.P. [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person.

8. Referring to and relying upon the earlier judgments of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012 : 1959 Supp (2) SCR 875] , Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : JT (1988) 1 SC 249] and Rammi v. State of M.P. [(1999) 8 SCC 649 : JT

(1999) 7 SC 247] , this Court in a recent case Leela Ram v. State of Haryana [(1999) 9 SCC 525 : JT (1999) 8 SC 274] held:

"There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence….

The court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.""

9. In our opinion the discrepancies pointed out by the appellant are minor ones. An eyewitness to a gruesome killing cannot in deposition narrate blow by blow account of the knife strikes inflicted on the deceased like in a screenplay. We find nothing which could establish that the eyewitness or post-occurrence witnesses were not present at the place of offence or PW2's description of the incidence was imaginary. On the other hand, we find sufficient corroborations of the eyewitness account with the depositions of post-occurrence witnesses of fact, so far as narration of the sequence of events subsequent to inflicting of injuries on the deceased are concerned. As regards the dying declaration, PW3, PW4 and PW5 broadly have given the same narration and there is no reason to disbelieve them. In the judgment of this Court reported in **Darbara Singh -vs- State of Punjab**, [(2012) 10 SCC 476], this Court has given greater importance to ocular evidence over opinion of the medical expert. This principle applies to the case before us. Ms. Deepanwita Priyanka, learned counsel appearing for the State has relied on judgment of this Court in the case of **Anvaruddin and Others -vs- Shakoor and Others** reported in [1990 (3) SCC 266] on the same point. We find no reason to interfere with the judgment under appeal. It has been held in the case of **Gurbachan Singh -vsSatpal Singh and Others**, reported in [(1990) 1 SCC 445] that exaggerated devotion to rule of benefit of doubt must not nurture fanciful doubts letting guilty escape is not doing justice, according to law. In this appeal, we follow the same course. It is a fact that two other accused persons, against whom there were allegations of holding the deceased at the time when the appellant was striking knife blows on the deceased, have not been convicted. They were given benefit of doubt by the High Court, while the High Court opined that presence of the appellant was proved beyond reasonable doubt. As there is no appeal by the state against the said judgment as regards the other two co-accused persons, we refrain from making any comment on that aspect of the High Court judgment.

We, accordingly, dismiss this appeal. We are apprised that the appellant is on bail. His bail bond shall stand cancelled and the appellant is directed to surrender before the Trial Court within a period of four weeks from the date of receipt of copy of this judgment. Pending application(s), if any, shall stand disposed of.