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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S. OKA; J., SANJAY KAROL; J.
CRIMINAL APPEAL No. 1578 OF 2012; 10 October, 2023

KAMAL PRASAD & ORS.
versus
THE STATE OF MADHYA PRADESH (NOW STATE OF CHHATTISGARH)

Evidence Act, 1872; Section 11 - *plea of alibi* - It is not part of the General Exceptions under the IPC and is instead a rule of evidence. This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein. Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden. The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence. It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of 'strict scrutiny' is required when such a plea is taken. *(Para 19)*

Registration of FIR - Delay - Principles of Law - Undue unreasonable delay in lodging the FIR, inevitably gives rise to suspicion which puts the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. No time duration, in the abstract could be fixed as the 'reasonable time' to give information to the police and therefore, the same is a question to be determined as per facts and circumstances of each case. Courts when faced with the question of delay in registration of FIR are duty-bound to determine whether the explanation afforded is plausible enough based on the given facts and circumstances of each case. If the prosecution attempts to 'improvise its case stage by stage and step by step' during the intervening period, it would be open for the accused to contend that the delay was fatal to the proceedings and the same was done to 'stave off proceedings against the accused'. *(Para 13)*

For Appellant(s) Mr. S. K. Verma, AOR

For Respondent(s) Mr. Sumeer Sodhi, AOR Mr. Yash Gupta, Adv.

J U D G M E N T

SANJAY KAROL J.,

1. This appeal calls into question the correctness of a judgment and order passed by the High Court of Chhattisgarh in Criminal Appeal No.596 of 1992 by which the guilt of the accused and the sentence of imprisonment imposed in Sessions Trial No.198 of 1988 vide a judgment dated 11.05.1992 stands confirmed.

2. Challenging their conviction, before us are three convict(s) appellants, namely, Kamal Prasad (A-3); Shersingh (A-6); and Bhavdas (A-9).

3. The convict-appellants stand convicted of having committed an offence punishable under Sections 148, 302 read with 149, 307 read with 149, Indian Penal Code, 1860[1] and

[1] For Brevity, "IPC"

Sections 4/5 of the Explosive Substance Act, 1908 under which the sentence awarded varies from rigorous imprisonment for 3 years to life imprisonment, all to run concurrently.

BACKGROUND

4. Facts, as they emerge from the judgments of the Court below are:

4.1 On 17.04.1988 one Chetram was taking his son Kapildeo @ Guddu to the hospital for treatment with one Choubisram (PW-3) as a pillion rider. Upon reaching the house of accused Darasram, 11 persons attacked them with country made bombs as also Laathis and tabbal. Chetram received multiple injuries and eventually succumbed while receiving the treatment. PW-3 escaped this attack and took shelter in the house of Baisakhu Kewat. Kapildeo, son of Chetram, who was being taken to the hospital by his father and Chaubisram, was found close to a tree near the place of occurrence alive and was taken to a Government Hospital, Palari and was shifted to D.K. Hospital, Raipur. However, in the course of treatment, he also died, same day at about 4.55 p.m.

4.2 Post-mortem examination of the body of the deceased Chetram was conducted by Dr. R.P. Pandey (PW-11) and the post-mortem examination of Kapildeo was conducted by Dr. K.L. Gopawar (PW-10). The police reached the spot of the crime at 11.15 a.m. after reading the dehatinalishi recorded at 11.00 a.m at the instance of PW-3.

4.3 The investigation having been conducted by SI Sahid Ali (PW19) revealing the complicity of all 11 accused persons, challan was presented before the Court concerned for trial.

5. The Trial Court, based on the evidence led by the prosecution and the accused endeavoring to establish their plea of alibi, finding the evidence led by the prosecution to be reliable; the witnesses to have established the prosecution case beyond reasonable doubt; the witnesses' testimonies being of sterling quality and their credit, unimpeachable, convicted 9 of the 11 accused persons.

6. In an appeal preferred by the convicts, the findings of fact, reasoning adopted, and the judgment of conviction and consequent sentence imposed, stands affirmed. The High Court in the impugned judgment records as follows:

"(21.) After due appreciation of these witnesses, it comes that firstly two accused persons namely Anandram and Kamal threw bombs on the deceased and thereafter the other accused persons started assaulting the deceased by lathis and tabbal while he fell down on the ground. If we examine the conduct of each accused it would appear that they had an intention to commit murder of the deceased and for that they had made preparation by forming an unlawful assembly which is evident from the series of events which took place in a sequence when firstly two accused threw bombs on the deceased and when the. Deceased fell down, all of them attack over him with deadly weapons like lathis and tabbal and caused multiple injuries to him."

7. Counsel for the appellants contended before the High Court that since most of the witnesses were close relatives or interested witness, hence their testimonies could not be relied upon, which contention was not accepted, not only in view of the unimpeachable creditworthiness of the witnesses, fully inspiring in confidence, but also in the light of principles of law enunciated by this Court. On facts, the Court also observed that PW-3, is not a relative at all, and Khorbahrin Bai (PW-16) although is a relative of the deceased but is not a close relative. Also, even though PW-17 is the wife of the deceased, nothing elicited prompting her testimony to be unbelievable.

THE PRESENT APPEAL

8. Before us, the aforesaid convict-appellants have assailed the impugned judgment on four fronts- (a) Inordinate delay in filing of the First Information Report (F.I.R.) (Ex.15) introduces to the case, the possibility of improvements thereby casting doubt on the version of the prosecution; (b) the testimonies of the witnesses of the prosecution being contradictory, hence unreliable; (c) the deceased being a history-sheeter, having numerous cases pending against him, hence equal probability that someone other than the convict(s)-appellant(s) favouring and wanting, his elimination; and (d) that the accused persons were, in fact, not at the scene of the crime and their plea of *alibi* is probable.

9. The case of the prosecution rests primarily on the testimonies of three witnesses, namely, Choubisram PW-3; Khorbahrin Bai PW-16 and Jugbai PW-17.

10. Here only we may record that the Courts below have concurrently found the witnesses to have deposed truthfully, their testimonies to be entirely inspiring in confidence.

11. Further that the death of the deceased Chetram and Kapildeo is undisputed, with medical and scientific evidence including the post-mortem reports conducted by two doctors referred to supra (PW-10 and PW-11), confirm such fact. Deceased Chetram having sustained multiple injuries upon vital parts of the body as a result of the bombs being thrown at him also stands proved.

12. It is also a matter of record that PW-3 had sustained lacerated wounds the causation of which could well have been the country made bombs used in the commission of offence. Such fact is evident from the medical opinion of Dr. Ghanshyam (PW-20) who conducted his medical examination.

13. Before proceeding to the four contentions advanced, firstly it would be necessary for us to appreciate the principles of law in respect of delay in registration of FIR as evolved over time.

13.1 This Court in **Apren Joseph v. State of Kerala**[2], has observed that "Undue unreasonable delay in lodging the FIR", "inevitably gives rise to suspicion which puts the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version." The Bench of three learned Judges further observed that no time duration, in the abstract could be fixed as the 'reasonable time' to give information to the police and therefore, the same is a question to be determined as per facts and circumstances of each case.

13.2 Further, referring to **Ram Jag v. State of U.P**.[3], this Court in **State of M.P. v. Ratan Singh**[4] observed that Courts when faced with the question of delay in registration of FIR are duty-bound to determine whether the explanation afforded is plausible enough based on the given facts and circumstances of each case.

13.3 This Court recently in **Bhagwan Singh v. Dilip Singh alias Depak & Anr**[5] has observed that if the prosecution attempts to 'improvise its case stage by stage and step by step' during the intervening period, it would be open for the accused to contend that

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[2] (1973) 3 SCC 114
[3] (1974) 4 SCC 201
[4] (2020) 12 SCC 630
[5] 2023 SCC OnLine 1059

the delay was fatal to the proceedings and the same was done to 'stave off proceedings against the accused'.

14. In respect of the first contention put forth by the convictappellants it is seen from the record that the FIR was registered about two hours after the incident having taken place on 17.04.1988 at about 08.00 a.m. The document itself records the time of incident as being 8.15 a.m. and the time of report as being 11.00 a.m. The testimony of PW-3 at whose instance the FIR was recorded, shows that out of fear and having sustained numerous injuries, he ran from the place of occurrence and hid in the house of Baisakhu Kewat and only emerged therefrom two hours later. In such a situation, delay in filing of the FIR cannot be said to be fatal to the case of the prosecution more so in view of the injuries sustained by him; the place of occurrence being a remote village area and that the version of events was dictated to the police by this witness only upon their reaching his place of shelter. To us it does not appear to be a case of prior consultation; discussion; deliberation or improvements.

15. Relevant portion of the testimony of PW-3 reads as under:-

"After 2 hours someone opened the door and I came out from the place where I was hiding. Public had assembled there. But I cannot tell the names of those persons who had assembled. Because I was badly injured and I was feeling immense pain. My left eye which was perfectly alright before this incident, was completely damaged in this incident. Thereafter I dictated report of this incident to the station House Officer at the house of Baisakhu. First information report was read over to witness and he stated that this is the same report which I had dictated. First information report marked Ex. P15."

16. Significantly, this part of his testimony goes unrefuted. Even a suggestion of such statement being false was not given by any one of the accused in cross-examination. Having perused the same and also the cross-examination forming part of the record, we do not find anything emanating therefrom which would credibly suggest that the time gap between the occurrence of incidence and registration of the FIR is unjustified.

17. Resultantly, the first contention of the convict appellants must necessarily be answered in the negative.

18. Another defence taken by the convict-appellants is that of the plea of *alibi*. This Court in **Binay Kumar Singh v. State of Bihar**[6] has noted the principle as:

"23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime."

19. The principles regarding the plea of *alibi*, as can be appreciated from the various decisions[7] of this Court, are:

19.1 It is not part of the General Exceptions under the IPC and is instead a rule of evidence under Section 11 of the Indian Evidence Act, 1872.

19.2 This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.

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[6] (1997) 1 SCC 283

[7] Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220; Binay Kumar Singh (supra) Jitender Kumar v. State of Haryana (2012) 6 SCC 204; Vijay Pal v. State (Govt. of NCT of Delhi) (2015) 4 SCC 749; Darshan Singh v. State of Punjab (2016) 3 SCC 37; Mukesh v. State (NCT of Delhi) (2016) 6 SCC 1; Pappu Tiwari v. State of Jharkhand 2022 SCC OnLine SC 109.

19.3 Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.

19.4 The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence.

19.5 It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of 'strict scrutiny' is required when such a plea is taken.

20. We notice that the defendants have laid certain evidence attempting to indicate their presence being at a place other than the spot of commission of the offence. The statements of four witnesses, namely, Sonchand DW-1; Jageshwar Prasad DW-2; Ramadheen DW-3; and Parsu Das DW-4 form part of record. However, DW-3 testifies to the whereabouts of accused Sandas and DW-4 does so for accused Anand Ram, both of whom the present case does not concern as the appellants before us are Kamal Prasad (A-3), Shersingh (A-6) and Bhavdas (A-9). The two relevant defence witnesses for the convict-appellants before us, are as under:-

20.1 DW-1 states that A-9 is his uncle and had come to his house to go to Sandi Bazar. When the police came to arrest him he mentioned to them that he had just been returning from Bhalesur and did not have any relation with the offence. He was arrested by the police.

20.2 DW-2 submitted that on the day of the offence, A-9 went to the shop run by him at Bhalesur to purchase some tea and jaggery. The distance between Bhalesur and Sundri is 16 Kilometres.

21. In our considered view, both these defence witnesses do not conclusively establish the plea of *alibi*, based on the principle of preponderance of probability as their statements stand unsupported by any other corroborative evidence. Not only that, no reason stands explained in such testimony for A-9 having travelled from Bhalesur to Sundri in order to go to Sandi Bazar. It is a matter of record that A-9 is a resident of Bhalesur where he resided with his family. He owned farms in Sundri. The family of A-9 was not examined to substantiate the claim of such travel. For those reasons, we cannot believe the version testified to by DW-1 and DW-2. We also cannot ignore that all 3 primary witnesses of the prosecution i.e., PW-3, PW-16, and PW-17 have categorically deposed the presence of the convict-appellants at the spot of the crime and such a statement could not be shaken in cross-examination.

22. We find that for the plea of alibi to be established, something other than a mere ocular statement ought to have been present. After all, the prosecution has relied on the statement of eyewitnesses to establish its case against the convict-appellants leading to the unrefuted conclusion that convict-appellants were present on the spot of the crime and had indeed caused injuries unto the deceased as also PW-3 with Lathis and Tabbal on various and vital parts of their bodies.

23. As we have hitherto observed, the prosecution case relies primarily on 3 witnesses whom, the Courts below have believed without exception. It is next urged that there are contradictions in the testimonies of three witnesses, hence, it would neither be appropriate nor safe to place reliance thereon. Having perused the same, we find them to be coherent on material facts such as the presence of the accused on the spot of the crime; the death of Chetram; a blast having taken place; and the accused being the assailants. A perusal thereof reveals PW3 to have categorically deposed that Kamal (A3) threw a bomb on him and deceased Chetram. He also stated the other two accused Shersingh (A6) and

Bhavdas (A9) were also present at that time. PW16 has named all three accused persons, attributing upon them the act of hitting the deceased with shovels and lathis and further stated that accused Kamal hurled abuses at the said witness and the others present alongside, prompting them to run away from that place. She, however, does not ascribe particular roles to any of the accused as to who had hit the deceased with a lathi or who did so with a showel. Jugbai PW-17 deposed that the three accused before us, as well as others had lathis and shovels with them and they had challenged her presence there forcing her to run away. She stated that she along with others had witnessed the incident from near the house of one Samaru and that she had seen the accused beating the deceased. Therefore, we find no force in the contention that the testimonies relied on by the prosecution are inherently contradictory.

24. It may be true that the deceased Chetram was a historysheeter and had scores of criminal cases pending against him or cases in which he was involved. However, such fact is unsubstantiated on record for no detail whatsoever stands provided in respect of such cases involving the deceased. Be that as it may, simply because the deceased had a chequered past which constituted several run-ins with the law, Courts cannot give benefit thereof, particularly when such claims are bald assertions, to those accused of committing such a person's murder. And in any event, such a plea is merely presumptuous.

25. In conclusion, we find that the charges levied against the accused, i.e., under Sections 148, 302 read with 149, 307 read with 149, IPC, and Sections 4/5 of the Explosive Substance Act, 1908, and the sentence corresponding thereto as awarded by the Trial Court and confirmed by the High Court, do not warrant interference of this Court. It may also be observed that the sentences awarded are in no manner excessive or disproportionate to the crimes for which the convict-appellants stand convicted.

26. The appeal, therefore, fails and is accordingly dismissed.

27. The bail granted by this Court vide order dated 1st October 2012, stands cancelled. The appellants are directed to surrender forthwith. The concerned trial court to take consequential steps.

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