

SU P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

C R I M I N A L A P P E A L N O (s) . 1 2 0 6 O F 2 0 0 7

B A I J N A T H & A N R . Appellant (s)

V E R S U S

S T A T E O F M . P . Respondent(s)

(With appln(s) for exemption from filing O.T. and office report)

Date: 06/08/2009 This Appeal was called on for hearing today.

C O R A M :

H O N ' B L E M R . J U S T I C E H A R J I T S I N G H B E D I
H O N ' B L E M R . J U S T I C E J . M . P A N C H A L

For Appellant(s) Mr. Rajiv Shankar Dwivedi, Adv.
Mr. Praveen K. Singh, Adv.
Mr. Ajay Choudhary, Adv.

For Respondent(s)
Ms. Vibha Datta Makhija, Adv.

U P O N h e a r i n g c o u n s e l t h e C o u r t m a d e t h e f o l l o w i n g
O R D E R

The appeal is dismissed in terms of the signed order.

(Hemalatha Mohan)
Sr.P.A.

(Vinod Kulvi)
Court Master

(Signed order is placed on file)
I N T H E S U P R E M E C O U R T O F I N D I A

C R I M I N A L A P P E A L L A T E J U R I S D I C T I O N

C R I M I N A L A P P E A L N O . 1 2 0 6 O F 2 0 0 7

B A I J N A T H & A N R . A P P E L L A N T (S)

V E R S U S

S T A T E O F M . P . R E S P O N D E N T (S)

O R D E R

The prosecution story is as under :

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On 19 October, 1990 Manohar, the deceased had beaten one Ramesh

who had abused him a day earlier. On account of this incident, the three accused, viz., Baijnath, Devi Singh and Saligram had developed feelings of hostility towards him. At about 10.00 A.M. as Manohar was taking his bath at the village well known as 'Jhiriya Wala Kuan' the three accused reached there armed with an axe, a knife and a sword respectively and attacked him killing him on the spot. Sahodra Bai-PW.4 who had gone to the well to draw water, saw the incident and ran away to inform Amol Singh-PW.3, the uncle of the deceased, as to what had transpired. Amol Singh-PW.3 then called Kotwal Kudau-PW.2 and asked him to report the matter to the police. An FIR was accordingly lodged at 12.00 noon. After registration of the case the Investigating Officer, Bhalendra Shekhar Tiwari-PW.19 reached the place of incident, made the necessary inquiries and sent the dead body for the post-mortem examination. He also recovered the brass pitcher and rope belonging to Sahodra Bai and a bucket and lota belonging to Manohar which were being used by him for taking a bath. An axe was also recovered at the instance of Baijnath, a knife at the instance of Devi Singh and a sword at the instance of Saligram. The first two weapons viz., the axe and the knife were sent for chemical examination to the FSL, Sagar and were found to be stained with human blood. On the completion of investigation the accused were charged under Section 302/34 of the IPC and were brought to trial before the Court of Sessions. The prosecution examined 19 witnesses in all including Sahodra Bai-PW.4, Dharmendra Singh-PW.5 and Ratan Singh-PW.6 as eye witnesses of the incident. In their statement under Section 313 of the Code of Criminal Procedure the accused denied all the allegations levelled against them and pleaded false implication at the instance of Amol Singh. They also produced DW-1, the father of PW-5 Dharmendra Singh in support of their case in an attempt to disprove the presence of Dharmendra Singh and Ratan Singh at the time of incident.

The trial court on an appreciation of the evidence held that the FIR had not been lodged at the police station but at the place of

incident and that in any case the statement made by PW-2 Kotwal Kudrau could not be said to be an FIR under Section 154 of Cr.P.C. The Court further held that the statements of the eye-witnesses did not inspire confidence as they contained material differences inter-se and as there appeared to be no apparent motive for the murder and an attempt had been made to rope in Saligram, created a suspicion about the veracity of the witness account. The trial court accordingly acquitted the accused. The State, thereupon filed an appeal against acquittal which was allowed qua Baij Nath and Devi Singh but dismissed qua Saligram. It is in these circumstances that the matter is before us at the instance of the two accused who have been convicted.

Mr. Rajiv Shankar Dwivedi, the learned counsel for the appellants, has first and foremost pointed out that in the event that the trial court on an appreciation of evidence had acquitted all the accused, there was no reason whatsoever for the High Court to have taken a different view on the same evidence unless the findings of the trial court could be said to be perverse. In this behalf, he has placed reliance on Ganesh Bhavan Patel and Another Vs. State of Maharashtra [AIR 1979 SC 135]. It has also been submitted that the material discrepancies which had been highlighted by the trial court with regard to the evidence of the eye-witnesses as to the number of injuries on the person of the deceased clearly spelt out that the eye-witnesses had not seen the incident. He has finally pleaded that PW.4 was the most material but as her evidence was not inspiring conviction should not have been recorded on her statement.

Ms. Vibha Datta Makhija, the learned counsel for the State has, however, supported the judgment of the High Court and submitted that the evidence of Dharmendra Singh and Ratan Singh was credible but there was no reason whatsoever to disregard the testimony of PW-4 who had absolutely no animus against the accused and no reason to foist a false case on them. She has also pointed out that PW-4 had conveyed the information with regard to the incident to Roop Singh-PW.1 and Amol Singh-PW.3 and as these

two witnesses had affirmed the same in their statements, the evidence of these witnesses was admissible as res gestae evidence under Section 6 of the Evidence Act, 1872. In this connection, she has placed reliance upon Sukhar Vs. State of U.P. [(1999) 9 SCC 507]; and Gentela Vijayavardhan Rao Vs. State of A.P. [1996 (6) SCC 241].

We have given very careful consideration to the matter, more particularly, as we are dealing with a judgment of reversal. It is true that the trial court has given certain findings with respect to the evidence which had led to the acquittal, but we are of the opinion that some of the findings recorded by the trial court were unjustified and unrealistic. The broad principles dealing with appreciation of evidence in a criminal matter have been laid down in Bhoginbhai Hirjibhai vs. State of Gujarat [AIR 1983 SC 753,] and we respectfully reproduce the same :-

".....Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :-

1. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

2. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

3. The powers of observations differ from person to person. What one may notice another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

4. By and large people cannot accurately recall a conversation and reproduce the very words used by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

5. In regard to exact time of an incident, or the time duration of an occurrence, usually people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make every precise or reliable estimates in such matters. Again it depends on the time-sense of individuals which varies from person to person.

6. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

7. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up

facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him ---- perhaps it is a sort of psychological defence mechanism activated on the spur of the moment.

8. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance. More so, when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses.

It is undoubtedly true that an accused is entitled to draw support with regard to his case from discrepancies or flaws in the prosecution evidence. Human fallibility, however cannot be ignored as highlighted by this Court hereinabove. Witnesses, cannot be, and should not be, expected to recall with complete precision as to what had happened more particularly (as in this case) of a sudden attack. On the contrary, an attempt by a witness to recapitulate every moment during the incident, or the evidence of several witnesses giving parrot like statements, could smack of tutoring.

We have examined the ocular evidence in the light of the arguments raised by the learned counsel for the parties and the principles aforestated. We find absolutely no reason whatsoever to disregard the evidence of PW-4. She has deposed that she had gone to the well at about 9.00 or 10.00 A.M. to draw water and for that purpose, had taken a brass utensil and a rope and it was at that time that she had seen Devi Singh and Baijnath causing injuries to Manohar. She further stated that she had left the utensil and rope behind in panic and rushed to the house of Amol Singh to tell him as to what had happened. Significantly the rope and brass utensil, and the bucket used by Manohar for taking a bath were recovered from the spot by the Investigating officer. We find from the cross examination of PW-4 that there was not even the slightest suggestion as to whether she bore any animosity towards the accused or that she had any reason to involve them in a false case. It is significant that it was on the information given by PW-4 that made Amol Singh further informed Kotwal Kudaun about the incident, who then went to the police station and lodged the report. We also find that the statement of Pw-4 is corroborated by Amol

Singh and Roop Singh. Anmol Singh PW-3 stated that she had come running to him in panic and told him that Manohar had been killed by the accused and it was on this information that he had made arrangement to send the information to the police. We find in this background the statement of PW-3 is admissible as res gestae evidence. In Sukhar's case (supra) it has been observed :-

"Section 6 of the Evidence Act is an exception to the general rule; whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provision of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of res gestae, must have been made contemporaneously with the acts or immediately thereafter ..."

Likewise in Gentela Vijayvardhan Rao's case (supra) this Court held:-

"The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognized in English law. The essence of the doctrine is that a fact which, though not in an issue, is so connected with the fact in issue 'as to form part of the same transaction' that it becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae".

It will be seen that PW-4 had made her statement to Amol Singh within a few minutes of the incident and can, therefore, be taken as good evidence.

Ganesh Bhavan Patel's case undoubtedly postulates that interference should not be made by the High Court in an acquittal appeal save in exceptional circumstances and if two views are possible on the evidence and the Trial Court has taken the one in favour of the accused, no interference is called for.

In the light of what has been observed hereinabove, we find that the trial court was completely in error in disbelieving the evidence of PW-4 as supported by the res gestae evidence of PW-3 and the High Court was justified on a re-appreciation of the evidence in setting aside the judgment of the Trial Court. With these observations, we dismiss the appeal.

.....J.
(HARJIT SINGH BEDI)

.....J.
(J.M. PANCHAL)

NEW DELHI,
AUGUST 6, 2009.