

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1810 OF 2000

1. G. Shrinu Babu @ Shrinu, S/o Akaiya, aged about 19 years, R/o Section-7, Thana-Bhilai Nagar, Distt. Durg (M.P.) (now C.G.)
2. Chhinti @ Nataniyal, S/o Joseph, aged 20 years, R/o Section-6, Thana Bhilai Nagar, Distt. Durg (M.P.) (now C.G.)
3. Chhinna @ Chhiniya, S/o A. Chankesh, aged 30 years, R/o Bhilai Hotel, Servant Quarter, Thana Bhilai Nagar, Distt. Durg (M.P.) (now C.G.)

... Appellants

Versus

The State of M.P. (now C.G.), through P.S. Bhilai Nagar, Distt. Durg (M.P.) (now C.G.)

... Respondent

For Appellants	:	Mr. Praveen Das and Mr. Vaibhav P. Shukla, Advocates.
For Respondent-State	:	Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

18/01/2016

1. The Appellants stand convicted under Section 302/34 IPC to life imprisonment along with fine of Rs.5000/- each, failing which they were required to undergo one year further rigorous imprisonment, as ordered on 26.6.2000 by the 1st Additional Sessions Judge, Durg, in Sessions Trial No. 325 of 1999.
2. With regard to an occurrence on 17.8.1999, a report was registered against three unknown persons at 9:25 p.m. and a formal FIR registered at 10:50 p.m. the same night. The deceased was taken to the hospital and declared dead. Merg, Exhibit P-5, was lodged by PW-4, J. Maheshwar, nephew of the deceased proved by PW-11, Yogendra Mishra of Bhilai Police Station. The Inquest done at the

hospital was marked Exhibit P-19 and the post-mortem, Exhibit P-2, was conducted by PW-2, Doctor R.D. Sharma who found 30 injuries on the person of the deceased. 10 injuries were ascribed to sharp weapon and the rest by hard-blunt object. It was opined that some of the injuries were caused by sharp long weapons except contusion and ecchymosed which were caused by hard-blunt substance. Death was opined due to multiple injuries to the vital organs and time elapsed since death was 2 to 3 days. The accused are alleged to have first come to the Kiosk of the deceased looking for him. Not finding him there they went away and returned a little later, took him away near a culvert and while returning back, the Appellants are alleged to have surrounded the deceased and assaulted him.

3. TIP was held on 27.8.1999 conducted by PW-15, S.R. Mandavi where the Appellants are stated to have been identified. Pursuant to the confession of the Appellants, sharp weapon "gupti" was recovered on 19.8.1999 from Appellant No.3, marked Exhibit P-11, and his clothes were seized, marked Exhibit P-12. Likewise, on confession of Appellant No.1, a stick was seized, marked Exhibit P-14 and his clothes, marked Exhibit P-16. Likewise, the clothes of Appellant No.2 were seized, marked Exhibit P-15. Bloodstains are stated to have been found on all the aforesaid except Exhibit P-14.

4. Learned Counsel for the Appellants contended that they have been falsely implicated. There was no enmity between them and the deceased and thus there existed no motive. PW-4, J. Maheshwar, nephew of the deceased, D. Janardan Rao, has stated in his cross-examination that he does not understand Hindi. The Merg, the FIR were both written in Hindi but have been signed by him in English as also the TIP along with the Spot Map. There is no statement in the documents

that they had been read over and explained in English and neither did the Investigating Officer, PW-13, N.P. Tripathi depose that he had read over the documents to the witness and explained it in English. The police falsely implicated the Appellants. No credence can be given to the TIP in view of the statement of PW-4, J. Maheshwar, the star prosecution witness, that the Appellants were shown to him at the jail previously after which the TIP was held. It was next submitted that PW-4, J. Maheshwar did not mention in the FIR any physical features of the assailants and that if he saw them again he could recognize them. The witness further stated that there was complete darkness near the kiosk with no source of light. If no identification by silhouette or otherwise was possible due to darkness it is difficult to understand and appreciate how he identified the Appellants during the TIP. The occurrence is stated to have taken place at a distance of about 50ft from the Kiosk. The fact that an oil lamp may have been burning at the kiosk is inconsequential for identification. Raising serious doubts about the manner of TIP, it was submitted that according to PW-4 J. Maheshwar, PW-7, Surya Narayan had gone to fetch sugar and came back after the deceased had been assaulted and the assailants had run away. The question of PW-7, Surya Narayan having made any identification in the TIP hence does not arise. In any event, PW-7, Surya Narayan has denied any identification during the TIP by him. PW-4, J. Maheshwar in his statement under Section 161 Cr.P.C., recorded on the date of occurrence mentioned the registration number of the Scooter on which the accused persons are alleged to have come as MP24 D, the next two numerals being covered with mud he identified the last two numerals as 81. The police during investigation seized a Scooter in its effort to connect it to the crime from Appellant No.1, bearing registration

MP24 EA 5049. It is therefore evident that the police had falsely implicated the Appellants, a specific defence taken by them under Section 313 Cr.P.C. No doubt the Investigating Officer, PW-13, N.P. Tripathi, denied in his cross-examination that the Appellants as the accused were exposed to PW-4, J. Maheshwar at the police station but PW-4, J. Maheshwar was not specifically confronted again by the prosecution with the denial by PW-13, N.P. Tripathi, the Investigating Officer and therefore the denial by the latter is inconsequential. The Trial Judge has therefore erred in placing complete reliance on the evidence of PW-4, J. Maheshwar for conviction merely because he was also a signatory to the Spot Map. The place of occurrence according to PW-4, J. Maheshwar is not in dispute. The issue is with regard to identification of the Appellants as the assailants which cannot be said to have been established by the prosecution beyond all reasonable doubts. The mere fact that a "gupti", Exhibit P-11, may have been recovered on the confession of Appellant No.3 and FSL report, Exhibit P-22, may have confirmed presence of blood on it, cannot automatically lead to the conclusion of the Appellants being the assailants but can at best be a corroborative evidence relying on 2015 AIR SCW 5324 (Vijay Shankar v. State of Haryana). It was next submitted that regarding seizure of the clothes, that if they had been already washed, it is difficult to understand and appreciate how the forensic report, Exhibit P-22, confirms the presence of blood on it. Conviction therefore in the facts of the case and the manner in which the police had collected evidence was not sustainable and the Appellants are entitled to acquittal.

5. Learned Counsel for the State opposing the appeal submitted that PW-4, J. Maheshwar is an eye-witness to the occurrence. He had

more than sufficient opportunity to identify the Appellants when they came twice to the kiosk. The area was inhabited with a Guest House, residential area, a tea stall adjacent and people milling in the area which suggests that there must have been some minimum light because of which the Appellants may have been identified by their silhouette and physique even though PW-4, J. Maheshwar may not have specifically said so. Even in darkness, there is never absolute darkness as observed in 1998 SCC (Cri.) 907 (Kedar Singh v. State of Bihar). If PW-4, J. Maheshwar had sufficient opportunity to see the assailants more than once, any defect in the TIP is inconsequential. PW-4, J. Maheshwar had identified the Appellants in the court room also which was barely six months after the occurrence. FSL report has confirmed the presence of blood on the weapon of assault and the clothes. The Appellants have offered no explanation for the same. It is not normal for a person to have blood on his clothes unless valid explanation is given for it.

6. We have considered the submissions on behalf of the parties and perused the evidence on record.

7. Three persons are alleged to have come to the kiosk of the deceased when he was not present. They came back a little later according to PW-4, J. Maheshwar. The assault then took place on the deceased at a distance of approximately 50ft from the kiosk. PW-4, J. Maheshwar, who was at the kiosk, deposed that there was no light around. Even if there was no complete darkness, we have serious doubts if the witness could have identified the assailants from that distance in the night when there was no source of light from anywhere. Presumably, for that reason the witness did not mention that he can recognize the assailants from their physical features if he sees them

again. Quite obviously, the witness did not know who the assailants were and therefore the FIR was registered against unknown.

8. In his police statement under Section 161 Cr.P.C., recorded the same day, PW-4, J. Maheshwar stated that the Appellants had come on a Scooter and mentioned the registration number as MP24 D, unable to read the numerals he mentioned the last two numerals as 81. The police during investigation has seized a Scooter from Appellant No.1, bearing Registration No. MP24 EA 5049.

9. Since the FIR was registered against unknown, TIP was conducted on 27.8.1999 by PW-15, S.R. Mandavi, during which both PW-4, J. Maheshwar and PW-7 Surya Narayan are stated to have identified the Appellants as the assailants. If according to PW-4, J. Maheshwar, after the assault the deceased fell down and the assailants ran away and PW-7, Surya Narayan then returned after buying sugar and deposed that he saw the deceased lying on the ground, it is difficult to appreciate the contention of the prosecution that PW-7, Surya Narayan had also identified the Appellants as the assailants in the TIP. The identification during TIP by PW-4, J. Maheshwar is also rendered gravely doubtful in view of the statement in his cross-examination acknowledging that the Appellants were shown to him by the police across a net in the jail and told to identify them as the assailants. No doubt, PW-13, N.P. Tripathi, the Investigating Officer, has denied this fact. But the prosecution witness, PW-4, J. Maheshwar was not confronted with the denial of PW-13, the Investigating Officer. If the Appellants had been shown to the witness before the TIP, it is rendered a nullity. Furthermore, Counsel for the Appellants rightly pointed out from the evidence of PW-4, J. Maheshwar that police personnel were also present during TIP which further renders it bad in the law.

10. PW-4, J. Maheshwar in his cross-examination has clearly stated that he does not know Hindi. Assessing the entirety of the evidence cumulatively it is found that the Merg, the FIR, the Spot Map and the statement under Section 161 Cr.P.C., are all in Hindi. The signatures of PW-4, J. Maheshwar on the former three are in English. We have seen the original FIR also and it creates a serious doubt in our mind for the manner in which it is signed as to whether the signature was obtained on a blank paper and then a complaint drawn up on it because the signature is in more than on a normal slant. Normally if a person signs on a written document the signature would be straight and in line after the document is completed. Even PW-7, Surya Naryana, who has signed the Spot Map, has signed in his local south Indian language which only lends credence to the case of the Appellants that the prosecution witnesses were not aware of all that the police were doing. We also find substance in the submission that none of the documents state that the contents in Hindi had been read over and explained to PW-4, J. Maheshwar.

11. That leaves only the recovery of a blood stained “gupti”, Exhibit P-11, from accused No.3. In Vijay Shankar (supra) relied upon by the Appellants, it was observed at paragraph 18 as follows:-

“18. Recovery :- According to the prosecution, after the alleged confession, Budhram (PW 12) and Harsarup produced the appellant before the investigating officer and Dalip Singh (PW 20) arrested the appellant on 19.3.1995. His confession led to the recovery of bloodstained clothes from the box lying in the house of the appellant and also knife from the field. Bloodstained clothes and also the knife were sent to the Forensic Science Laboratory and human blood was detected in the bloodstained clothes of the appellant. So far as the bloodstained clothes and knife, the material was disintegrated. As discussed earlier, extra-judicial confession made to Budhram (PW 12) is highly doubtful and in these circumstances, much weight cannot be attached to the alleged recovery of bloodstained clothes and the knife.”

12. With regard to the clothes of the Appellants alleged to have blood stain on it, the same reasoning would apply with additional material that if the clothes had already been washed, it is difficult to appreciate the FSL report was regarding the clothes of the Appellants alone. If the clothes were seized on 19.8.1999 and after they had been washed were sent for forensic examination on 11.10.1999 and the report received on 20.10.1999, we are not satisfied to hold that in the facts of the case, it would be safe to rely upon the forensic report in any manner. In the entirety of the evidence and having given our anxious thought and consideration, we find it difficult to conclude that the prosecution has established beyond all reasonable doubts that the Appellants were the assailants to sustain the conviction.

13. The Trial Judge has completely relied upon the evidence of PW-4, J. Maheshwar, including the fact that the Spot Map was prepared on his information. The Trial Judge has erred in coming to the conclusion that PW-4, J. Maheshwar was not speaking the truth in cross-examination and had been won over by the Appellants merely because there had been some delay in his cross-examination when there was no evidence to that effect.

14. We therefore find it difficult to sustain the conviction of the Appellants as not having been proved beyond reasonable doubt. The Appellants are held entitled to the benefit of doubt.

15. The order of conviction is set aside and the appeal is allowed subject to the conditions incorporated in Section 437-A Cr.P.C. to be complied with by the Appellants.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge