REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 852 of 2021
(@ Special Leave Petition (Crl.) No.2345 of 2019)

MADHAV ... APPELLANT(S)

Versus

STATE OF MADHYA PRADESH ... RESPONDENT(S)

WITH

Criminal Appeal No. 853 of 2021
(@ Special Leave Petition (Crl.) No.9326 of 2018)

J U D G M E N T

V. Ramasubramanian, J.

Leave granted.

2. Challenging their conviction for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (*"IPC" for short*) and the sentence of life

imprisonment and a fine of Rs.2500/- imposed upon them by the I[st] Additional Sessions Judge, Sagar, M.P., and confirmed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur, Accused Nos.2 and 3 have come up with these criminal appeals.

3. We have heard Mr. Ardhendumauli Kumar Prasad and Mr. Amit Arjariya, learned counsel appearing for the appellants and Shri S.U. Lalit, learned counsel appearing for the State.

4. Smt. Sahodra Bai (*hereinafter referred to as "A-2"*), who is the appellant in one of these appeals, is the sister of Shri Madhav (*hereinafter referred to as "A-3"*) who is the appellant in the other appeal. Shri Raju Yadav who was Accused No.1 is the husband of Sahodra Bai.

5. The case of the prosecution was that on the night of 13.05.2008, at about 22.30 hrs., all the three accused, in furtherance of the common intention of all, attacked one Pappu @ Nand Kishore (brother of A-1) with a knife and *lathis* resulting in his death and that, thereafter, with the intention

of screening the offenders from legal punishment, A-2 took the victim to the Government Hospital and sent a false information to the Police as though the murderous assault on the victim was committed by two other persons by name Ruia and Kailash. While all the three accused were charged for offences punishable under Section 302 read with Section 34 IPC, A-2 was charged additionally for the offences punishable under Sections 211 and 194 IPC.

6. The prosecution mainly relied upon ***(i)*** the purported eye-witness account of PWs 4, 5, 6, 7 and 9, ***(ii)*** the medical evidence regarding the cause of death; and ***(iii)*** the recovery of the weapons used for the commission of the offence namely, knife and *lathis*, from the houses of the accused and the report of the Forensic Sciences Laboratory *("FSL" for short*).

7. Out of the witnesses on whose ocular testimony, heavy reliance was placed by the prosecution, PWs 6 and 7 were the persons whom A-2 had named as the accused, in the first information sent from the hospital on the night of 13.05.2008. PWs 4 and 5 were related to PWs 6 and 7. Actually the

prosecution treated PWs 4 and 5 as hostile, after they stated during chief examination that they did not see A-3 at the spot, which was contrary to their statement to the Police. The Sessions Court believed their testimony partly in so far as it related to the presence of A-1 and A-2 at the spot but disbelieved their evidence, in so far as it related to the alleged assault on the victim. But the High Court proceeded on the footing, without any rhyme or reason, as though PWs 4 and 5 were independent witnesses who corroborated the testimony of PW-9. The High Court even overlooked the fact that the Trial Court declared them as hostile at the request of the prosecution.

8. PW-6 was a person by name Kailash Yadav and PW-7 was a person by name Ruia Yadav. As stated in the previous paragraph, PWs 6 and 7 were the ones who were named as accused, in the First Information Report FIR No.331 of 2008 registered on 13.05.2008, on the basis of the intimation sent by A-2 from the hospital. The Sessions Court disbelieved the evidence of PW-6 in entirety, but accepted one portion of the

statement of PW-7, on the basis of the so called corroboration by one Smt. Radha Rani, mother of the deceased, examined on the side of the defence as DW-1. But that portion of the evidence of PW-7 taken by the Sessions Court to be probable, merely related to an argument that the victim Pappu had with his brother Raju (A-1) nearly two hours before the time of occurrence of the crime. Interestingly the argument between the deceased and A-1 was purportedly in relation to an amount of Rs.250/- borrowed by the deceased from PW-7, but not repaid by him.

9. The Sessions Court considered Sapna Yadav, examined as PW-9, who was aged 16 years at the time of occurrence, as the star witness. She was the niece of the deceased. Though her statement was recorded by the Police only on 03.06.2008, after 21 days of the date of occurrence, the Sessions Court proceeded to believe her evidence and convicted all the three accused for the offences punishable under Section 302 read with Section 34 IPC. However, A-2 was acquitted of the charges under Sections 211 and 194 IPC. All of them were

sentenced to life imprisonment and also imposed a fine of Rs.2500/-.

10. A-1 and A-2 being husband and wife respectively, together filed an appeal in Criminal Appeal No.1323 of 2009 and A-3 filed a separate appeal in Criminal Appeal No.727 of 2009, on the file of the High Court, challenging their conviction and sentence. Relying mainly upon the testimony of the star witness PW-9 and the medical evidence regarding the cause of death, the High Court confirmed the conviction and sentence and dismissed the appeals. Aggrieved by the dismissal of their appeals, A-2 and A-3 alone have come up with the above criminal appeals. However, A-1 has been arrayed as Respondent No.2, in the appeal filed by A-2.

11. Drawing our attention to the inherent contradictions in the testimonies of PWs 9 and 14, and the glaring inconsistencies between their testimonies, the learned counsel for the appellants argued that the conviction was based entirely upon surmises and that such a conviction is wholly unsustainable in law.

12. However, placing reliance upon the seizure of the knife and *lathis* allegedly used for the commission of the offence, from the houses of the accused under seizure memos and the report received from FSL, it was argued by the learned counsel representing the State that the prosecution had established the guilt of the accused beyond reasonable doubt and that the Sessions Court and the High Court were justified in relying upon the evidence of PW-9 and others.

13. We have carefully considered the material on record and the submissions of the learned counsel on both sides.

14. A close scrutiny of the sequence of events that happened from the date of occurrence of the crime, *namely,* 13.05.2008, would show that the investigation in this case, instead of proceeding in pursuit of truth, had proceeded towards burying the truth. This can be best appreciated by narrating the sequence of events as under:-

(a) Admittedly, an information was received by one Shri G.P. Dwivedi working as Assistant Sub-inspector in Moti Nagar Police Station, Sagar District at about 23.00 hrs. on 13.05.2008 from the Government

Hospital (Tili) about a person having been brought dead. The information had been sent at the instance of A-2, who had taken the body of the victim in an auto rickshaw to the hospital. This Assistant Sub Inspector was examined as PW-12. According to PW-12, a FIR was registered in FIR No.331 of 2008 at 23.50 hrs. showing the name of the complainant as Smt. Sahodra Bai (A-2) and showing Ruia Yadav and Kailash Yadav (later examined as PWs 6 and 7) as the accused.

(b) Admittedly the investigation was taken over by another Assistant Sub-inspector by name R.K. Sen, examined as PW-14. According to him, he started the investigation in the morning of 14.05.2008. Therefore, in the normal course, one would have expected the investigation first to proceed against Ruia Yadav and Kailash Yadav, who were named as accused. But interestingly right from the beginning, the investigation carried out by PW-14 proceeded in the reverse gear, by making the informant, *namely,* Sahodra Bai and her husband and brother as accused and the original accused Ruia and Kailash as witnesses. One would have expected an Investigating Officer, who takes up investigation in the morning of 14.05.2008, in relation to a FIR

registered at 23.50 hours the previous night, to record the statements of the informant, visit the place of commission of the crime, secure the accused and collect evidence to find out the truth. But in this case, the IO, right from the beginning, had turned the case entirely against the informant and her family. The reason for the IO doing this, is not far to seek.

(c) During cross-examination, PW-14 admitted that there were demonstrations by political parties when the investigation was taken up by him on 14.05.2008 against Ruia and Kailash. This is perhaps why, the IO first took A-1 to the Medical Officer (examined as PW-2) of the District Hospital for medical examination on 15.05.2008 and got a report to the effect that there were several abrasions on the back of A-1. On the basis of such a report, the IO concluded that these abrasions must have been caused during the scuffle that the deceased had with A-1.

(c) After obtaining the medical report about the injuries on the body of A-1 on 15-5-2008, PW-12 admittedly called all the three accused to the police station in the morning of 16.05.2008 and effected their arrest. In other words, within three days of

the commission of the crime, persons named as accused in the FIR were made witnesses for the prosecution and the informant, her husband and her brother were made as accused.

(d) It is only after 18 days of effecting the arrest of all the three accused, that the statement of PW-9, the so called star witness, was recorded by the IO.

15. It is quite strange and completely unfathomable as to how, where, why and at what point of time, the investigation that should have started against PWs 6 and 7 took a U-turn and proceeded towards the very informant and her family members. Right from the beginning, the defence taken by the accused was that due to political influence, they were made accused and the actual accused were made witnesses. This stands corroborated by the admission made by PW-14 (IO) that when he took up the investigation on 14.05.2008, there were demonstrations held by political parties.

16. What is shocking is the admission made by PW-14 during cross-examination that he was not aware, at the time when he started the investigation (in the morning of 14.05.2008), whether the accused named in the FIR, *namely*, Ruia and

Kailash Yadav (later examined as PWs 6 and 7) were in police custody. But he admitted that after he took up investigation in the morning of 14.05.2008, he did not arrest both of them.

17. The reason why the IO did not even suspect the role of Ruia and Kailash Yadav in the commission of the crime, remains unexplained. We are conscious of the fact that at times persons who commit a crime, themselves make/lodge the first information, so as to create an *alibi* of innocence. But even in such cases the investigation would normally proceed first against those named as accused in the FIR and, thereafter, the needle of suspicion may turn against the informant himself.

18. A useful reference can be made in this regard to the decision of this Court in ***Kari Choudhary*** vs. ***Mst. Sita Devi & Ors***.[1]. It was a case where the mother-in-law of the victim first filed a complaint of culpable homicide against unknown persons, who, allegedly sneaked into the bedroom of her daughter-in-law and murdered her. During the progress of the

1 (2002) 1 SCC 714

investigation into the FIR registered on the basis of the mother-in-law's complaint, the Police found that the murder was committed pursuant to a conspiracy hatched by the first informant and her other daughters-in-law. Therefore, the Police sent a report to the Court to the effect that the allegations in the FIR registered at the behest of the mother-in-law were false. The Police thereafter registered a fresh FIR and continued the investigation against the original informant and others. The original informant filed a protest petition against the Report of the Police on the first FIR, but the same was rejected by the Chief Judicial Magistrate (*"CJM" for short*). However, the said order was over-turned by the High Court in a revision and the CJM was directed to conduct an inquiry under Section 202 of the Code. Thereafter, the Police filed a charge-sheet against the original informant (mother-in-law) and two others. The CJM committed the case to Sessions and the Sessions Judge framed a charge for the offence punishable under Section 302 read with Section 34 but the mother-in-law approached the High Court and got the proceedings quashed.

That order became the subject matter of appeal before this Court in ***Kari Choudhary*** (supra). The main contention of the original informant in that case was that once the order of the CJM rejecting the protest petition was set aside by the High Court, the logical consequence of such an order was that the conclusion reached by the Police that the original complaint was false, also stood rejected. Therefore, it was contended that there cannot be another prosecution and that too against the original informant. While rejecting the said contention, this Court held that the course adopted by the Court on the first complaint cannot disable the Police to continue to investigate into the offence and to reach a final conclusion regarding the real culprit. Yet another contention before this Court in ***Kari Choudhary*** (supra) was that once the proceedings initiated under the first FIR ended in a final report, the Police had no authority to register a second FIR. While dealing with the said contention, this Court opined; *"Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in*

respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them…"

19. Therefore, it happens at times that the real culprit lodges the first information against known or unknown persons, to misdirect the investigation of an offence. But even in such a case, it is only during the course of investigation into the first FIR that the case may take a U-turn. When it does, the informant may also have to face additional charges for the offences punishable under various provisions of Chapter XI of IPC. This is exactly the reason why, in this case, the prosecution charged A-2 for the offences punishable under Sections 194 and 211 IPC. But the Trial Court acquitted her of the charges under these two provisions.

20. As stated earlier, when a question was put to him as to whether Ruia and Kailash Yadav (PWs 6 and 7), who were the original accused, were ever taken into custody, the IO (PW-14) feigned ignorance. The answer given by the IO is as follows:-

"It was not in my knowledge that when I started investigation at that time Ruia and Kailash Yadav

> *were in the custody of the police. On having knowledge about this information that case is registered against Ruia and Kailash, I have not tried to arrest them."*

But interestingly, the star witness for the prosecution, *namely*, PW-9, who was admittedly just 16 years of age at the time of occurrence, not only claimed knowledge about their arrest, but also revealed what happened thereafter. The testimony of PW-9 in this regard reads as follows:-

> *"It is true that after death of my Mausa Pappu, Police had taken into custody Rooiya and Kailash for murder. It is not known to me that where my Mausa was living who is leader there. It is true that for taking into custody of Rooiya and Kailash there was strike in Mohalla. Persons of Yadav caste assembled. It is true that persons of Yadav caste put pressure on police and leaving Rooiya and Kailash on that day soil of my Mausa came."*

21. Unfortunately neither the Trial Court nor the High Court took note of the above admission on the part of PW-9 in the context of the admission made by the IO as PW-14.

22. That the case was foisted against the very informant and their family members due to political pressure is also borne out by another admission made by PW-14 which reads as follows:

> *"I was given verbal instructions by higher police officers that Kailash Yadav, Rooiya @ Bhagirath Yadav be impleaded as witnesses instead of accused. When I have started the investigation at that time Additional Superintendent of Police Tilak Singh has given me verbal order that Kailash & Rooiya be impleaded as witnesses instead of accused. In my diary I have not mentioned about that order. In this case during the course of investigation accused was having bad relation with deceased this fact has not come on record."*

23. According to the IO, the knife used by A-1 for the commission of the offence was seized from the house of A-1. Similarly the *lathis* used for the commission of the offence were also seized from the houses of A-2 and A-3. Seizure was effected, according to the IO, in the presence of witnesses and seizure memos prepared. But those witnesses Dal Chandra and Deen Dayal did not support the prosecution. Dal Chandra was examined as PW-1 and he stated categorically ***(i)*** that in his presence no enquiry was conducted from the accused; *and* ***(ii)*** that in his presence no weapons were seized from the accused. However, he admitted his signatures in the seizure memos. He explained this by stating that he signed the seizure memo and memorandum statement outside the hotel situate

near the police station. Even after he was declared hostile, he reiterated in response to the questions posed by the Additional Public Prosecutor that seizure of the weapons was not effected in his presence. Yet the High Court gave credence to the testimony of PW-1 merely on the ground that he admitted the signatures in the seizure memo and memorandum statement.

24. The fact that right from the beginning, the IO proceeded to favour those two persons originally named as accused in the FIR, is also borne out by the statement made by him in chief examination that even on the very first day, he recorded the statements of several witnesses including Kailash and Ruia. It means that he started with a pre-determination that the informant, her husband and her brother were the culprits and the original accused were innocent. The relevant portion of the evidence of PW-14 in this regard reads as follows:-

> *"From place of incidence blood stained soil and common soil was collected and was sealed in different – different packets was seized in presence of witnesses and seizure Memo is Ex.P/15 on which from B to B is my signature. On that date only witnesses Rahul Yadav, Rajesh Yadav, Kailash Yadav, Ruia @ Bhagirath Yadav, Baby @ Leelabai, Gandharv Patel, Raghuvir Thakur, Brijesh Rawat, Om Prakash Pathak,*

Gorelal Kurmi, Mahesh Kurmi statement was obtained as told by them and nothing was increased or decreased from my side."

25. Interestingly the story built by the prosecution was that A-1 had a quarrel with his brother (the deceased), sometime before the commission of the crime, over the non-repayment of a sum of Rs.250/- by the deceased to Ruia and that in the quarrel, A-1 got injured and that thereafter all the 3 accused attacked the victim resulting in his death. A-1 had no reason to take up the cause of Ruia and go to the extent of committing the murder of his own brother. But unfortunately, the Trial Court has believed this story on the basis of the testimony of DW-1, the mother of both A-1 and the deceased. All that DW-1 stated in her testimony was that A-1 questioned the deceased as to why he was not returning the money due and payable to Ruia.

26. Coming to the testimony of PW-9, projected as the star witness for the prosecution, the explanation given by the IO for recording her statement on 03.06.2008, after 21 days of the occurrence of the crime, is unbelievable. In any case, if her

evidence is to be accepted, it should be accepted in total. We have already extracted one portion of her evidence, where she has categorically admitted that Ruia and Kailash were originally taken into custody and that there were protests from the people of the caste to which they belonged and that those people also put pressure on the police to give a clean chit to Ruia and Kailash. These admissions on the part of PW-9, made the prosecution case completely untrustworthy.

27. Apart from the fact that the witnesses in whose presence the seizure of the weapons was allegedly effected, had turned hostile, there was also one more thing. There is nothing on record to show that the blood stains said to have been present in those weapons, matched with the blood of the deceased. Unfortunately, the High Court proceeded on a wrong premise that there was scientific evidence to point to the guilt of the accused, merely because as per Exhibit P-25 (FSL Report), the knife and *lathis* said to have been seized by the police, contained stains of human blood. The prosecution has not established either through the report of FSL or otherwise, that

the blood stains contained in the knife and *lathis* were that of the deceased.

28. We are conscious of the fact that there is a divergence of views on this aspect. In ***Raghav Prapanna Tripathi*** vs. ***The State Of Uttar Pradesh***[2]**,** a Constitution Bench of this Court by a majority held that, *"...that it would be far-fetched to conclude from the mere presence of blood-stained earth that that earth was stained with human blood and that the human blood was that of the victims..."*. In ***Kansa Behera*** vs. ***State of Orissa***[3]**,** this Court acquitted the appellant on the ground that though the Serologist report found the shirt and *dhoti* recovered from the possession of the appellant to be stained with human blood, there is no evidence to connect the same with the blood of the deceased. In ***Surinder Singh*** vs. ***State of Punjab***[4], the blood stains found on the knife allegedly used for the commission of the offence, were established to be human blood. But this Court rejected the prosecution theory

2 AIR 1963 SC 74
3 (1987) 3 SCC 480,
4 (1989) Supp.(2) SCC 21

on the ground that those blood stains on the knife were not shown to be of the same group as the blood of the deceased. In ***Raghunath, Ramkishan & Ors.*** vs. ***State of Haryana,***[5] this Court held that the blood stain, though of a human blood, is not conclusive evidence to show that it belongs to the blood group of the deceased. In ***Sattatiya*** vs. ***State of Maharashtra***[6], this Court found the credibility of the evidence relating to the recovery of the object used for the commission of the crime, substantially dented, on account of the fact that the blood stains, though found to be of human source, could not be linked with the blood of the deceased.

29. In contrast, this Court held in ***State of Rajasthan*** vs. ***Teja Ram and Others***[7], that at times the Serologist may fail to deduct the origin of the blood, either because the stain is too insufficient or because of hematological changes and plasmatic coagulation. After referring to the Constitution Bench decision in ***Raghav Prapanna Tripathi*** (supra), this

5 (2003) 1 SCC 398
6 (2008) 3 SCC 210
7 (1999) 3 SCC 507

Court held in ***Teja Ram*** (supra) that it is not as though the circumstances arising from the recovery of the weapon would stand relegated to disutility, in all cases where there was failure of detecting the origin of the blood. This Court indicated in ***Teja Ram*** (supra) that, *"...the effort of the Criminal Court should not be to prowl for imaginative doubts..."* and that the doubts should be of reasonable dimension, which a judicially conscientious mind entertains with some objectivity.

30. The decision ***Teja Ram*** (supra) was followed in ***Gura Singh*** vs. ***State of Rajasthan***[8] and in ***Prabhu Dayal*** vs. ***State of Rajasthan***[9]**.**

31. In ***R. Shaji*** vs. ***State of Kerala***[10], this Court took note of almost all previous decisions starting from ***Prabhu Babaji Navle*** vs. ***State of Bombay***[11] and including those in ***Raghav Prapanna Tripathi*** (supra); ***Teja Ram*** (supra), ***Gura Singh*** (supra); ***John Pandian*** vs. ***State***[12]; and ***Sunil Clifford***

8 (2001) 2 SCC 205
9 (2018) 8 SCC 127
10 (2013) 14 SCC 266
11 AIR 1956 SC 51
12 (2010) 14 SCC 129

Daniel vs. ***State of Punjab***[13] and came to the conclusion that once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood groups loses significance.

32. Therefore, as pointed out by this Court in ***Balwan Singh*** vs. ***State of Chhattisgarh***[14], there cannot be any fixed formula that the prosecution has to prove, or need not prove that the blood groups match. But the judicial conscience of the Court should be satisfied both about the recovery and about the origin of the human blood.

33. In the case on hand, even PW-1, who allegedly witnessed the seizure had turned hostile. Right from the beginning there has been an attempt on the part of the prosecution to shield the culprits named in the first FIR, on account of political pressure, as admitted by PW-14 and corroborated by PW-9, whom the prosecution considered to be a star witness. Unfortunately, both the Sessions Court and the High Court completely overlooked these aspects.

13 (2012) 11 SCC 205
14 (2019) 7 SCC 781

34. It is seen from the judgment of the High Court that the accused were represented by *amicus curiae* either due to the inability of the accused to engage a counsel or due to the non-appearance of the counsel engaged by them at the time of hearing. As a result, the accused do not appear to have had the best of legal assistance. It is in such type of cases that the burden of the court is very heavy and unfortunately, the Sessions court and the High court did not discharge this burden properly.

35. In the light of the above, we are clearly of the view that the investigation in this case was carried out by PW-14, not with the intention of unearthing the truth, but for burying the same fathom deep, for extraneous considerations and that it was designed to turn the informant and her family members as the accused and allow the real culprits named in the FIR to escape. Both the Sessions Court as well as the High Court have completely overlooked some of the important admissions made by PWs 9 and 14. They have not even taken into account the normal human conduct. It is unbelievable that A-1, A-2

and A-3 caused the death of A-1's brother due to the failure of the victim to return an amount of Rs.250/- due and payable to Ruia (PW-7) and that thereafter, they deliberately named Ruia as the accused. It is equally unbelievable that one of the persons who killed the victim, in the presence of witnesses, took the body of the victim to the hospital in an autorickshaw. The normal human behaviour in such circumstances will be either to flee the place of occurrence or to go to the police station to surrender, except in cases where they are intelligent and seasoned criminals. Neither did happen.

36. Therefore, we are of the considered view that the appeals deserve to be allowed. But before we do that, we must take note of the fact that A-1 has not come up on appeal. Though Shri Shreeyash U. Lalit, learned counsel for the State submitted that A-1's case stands on a completely different footing and that therefore, in the absence of an independent appeal by him, he cannot be granted any relief, we do not agree. This is not a case where we have proceeded on the basis of individual overt acts on the part of A-2 and A-3 (the

appellants-*herein*) to conclude that they are entitled to acquittal. This is a case where we have disbelieved, in entirety, the story of the prosecution. Therefore, to deny the benefit of the said conclusion to A-1 merely on the ground of a technicality that he is not on appeal would be to close our eyes to a gross injustice, especially when we are empowered under Article 142 to do complete justice.

37. Therefore, the appeals filed by the appellants are allowed and the conviction handed over by the Sessions Court and confirmed by the High Court as against all the three accused, including A-1, are set aside. All the three accused shall be released forthwith, unless they are in custody in relation to any other case.

.....J.
(Indira Banerjee)

.....J
(V. Ramasubramanian)

AUGUST 18, 2021
NEW DELHI.