NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 177 OF 2014

PRUTHIVIRAJ JAYANTIBHAI VANOL ...APPELLANT(S)

Vs.

DINESH DAYABHAI VALA AND OTHERS ...RESPONDENT(S)

J U D G M E N T

NAVIN SINHA, J.

This appeal arises from an order of acquittal, reversing the conviction of respondents 1 to 4 under Sections 302, 34, 120B of the Indian Penal Code (IPC) sentencing them to life imprisonment and fifteen days imprisonment under Section 135(1) of the Bombay Police Act.

2. The deceased was assaulted on 01.10.2003 at 2:30 am while he was returning on a motorcycle along with PW-2 who was the pillion rider. The respondents are said to have assaulted with iron pipe, steel rod and stick, causing three stab wounds and nine incised wounds. The acquittal is premised on

the reasoning that the evidence of the eye-witnesses PW-2 and PW-10, is inconsistent with the medical evidence, regarding the nature of injuries vis-à-vis the weapons of offence.

3. Shri Shikhil Suri, the learned amicus curie appearing on behalf of the appellant submitted that the First Information Report was lodged promptly at 5:15 am the same day by PW-2 naming the four respondents. The deceased, PW-2, and the four respondents were well known to each other from earlier. Relations between them had soured, leading to the occurrence. PW-12 had deposed that the respondents had threatened the deceased earlier also. The deposition of PW-2 is corroborated by an independent witness, PW-10 the security guard of the bungalow near which the occurrence took place. There were street lights near the place of occurrence.

4. The deceased was brought to the hospital emergency ward by PW-2 at 2:45 am, with serious injuries and expired at 8:00 am, as deposed by the Doctor PW-14. The witness deposed that Dr. Vishwamitra, whose signatures he identified, had noted that the injuries to the deceased were caused by sharp weapons.

5. The postmortem report, as deposed by the Doctor PW-1, revealed three stab wounds and nine incised injuries. Injuries 1 to 4 which were on the head, were sufficient to cause death. The witness deposed that the iron rod used for assault had a turned sharp edge which could cause incised injuries. The stab wounds were possible by a sharp instrument.

6. It was submitted that there was no inconsistency between the ocular and medical evidence. The High Court erred in the appreciation of evidence by failing to take not that the iron rod had a sharp edge by which the injuries on the deceased were possible. It is only if the medical evidence was totally inconsistent with the ocular evidence, the former was to be given precedence. Reliance was placed on ***Solanki Chimanbhai Ukabhai vs. State of Gujarat,*** 1983 (2) SCC 174 and ***State of U.P. vs. Krishna Gopal and Another,*** 1988 (4) SCC 302 and ***Baleshwar Mahto vs. State of Bihar,*** 2017 (3) SCC 152.

7. Shri Kanwaljit Kochar, learned counsel appearing on behalf of the first three respondents, the fourth one absconding

till date, relying on ***Ramesh Babulal Doshi vs. State of Gujarat,***1996 (9) SCC 225, ***Dhanna vs. State of M.P.*** with ***Kanhiyalal and another vs. State of M.P.***, 1996(10) SCC 79, and ***Ghurey Lal vs. State of Uttar Pradesh***, 2008(10) SCC 450, submitted that in an appeal against acquittal if two views are possible, the benefit of doubt should be given to the accused. It was submitted that stab and incised injuries were not possible by a steel rod or iron pipe. The genesis of the occurrence was therefore itself in doubt. The acquittal by High Court therefore calls for no interference. The recovery of the weapons from the place of occurrence is doubtful as the seizure witnesses, PW-4 and PW-5 have both turned hostile. There is no FSL report with regard to the finger prints on the weapons of assault to link them with the respondents. The occurrence is stated to have taken place in an open area near a bungalow and not on the street where street lights may be available. It was a dark night with no moonlight even. Identification of the respondents is therefore doubtful. Disputing that PW-2 was an eye witness to the assault, it was submitted that he had run away from the spot.

8. PW-14 did not mention the presence of any stab or incised injuries on the person of the deceased. PW-1 acknowledged that stab or incised injuries could not be caused by an iron rod. In view of the variation between the ocular and medical evidence, the High Court rightly opined that the Doctor was in a confused state of mind. There was no motive and it was a mere chance meeting of the respondents with the deceased. In absence of any specific allegations with regard to which of the respondents assaulted in what manner, and also considering that respondent nos. 1 to 3 have undergone approximately eight and half years of custody, in the entirety, their conviction may be altered to one under Section 304 Part II IPC, sentencing them to the period already undergone.

9. We have considered the submissions on behalf of the parties and have been taken through the records.

10. The occurrence took place at 2:30 am. It is not in dispute that PW-2 who was accompanying the deceased on the motorcycle, took him to the hospital at 2:45 am. The deceased was unconscious and in a precarious condition as deposed by PW-14. The FIR was lodged barely hours later by PW-2 at 5:15

am naming the respondents. There was no time for the witness to consider and ponder for naming the accused except to state the truth. PW-2 deposed that the respondents stopped them near the bungalow of one Chimanbhai Patel. He was pushed down by Dipak who hit the deceased on his head with the iron pipe. Thereafter all the respondents started assaulting the deceased with iron pipes, sticks and iron rods. Thereafter, the witness ran away and returned with his friends. The credibility of PW-2 as an eye witness has not been doubted by the High Court.

11. The respondents were not strangers, but well known to PW-2 and the deceased. PW-12 deposed that the respondents had threatened the deceased earlier also, and were compelling him to withdraw the case and would also demand money from him because of which the deceased had shifted from the locality where they all they lived earlier.

12. There is evidence about the availability of light near the place of occurrence. Even otherwise, that there may not have been any source of light is hardly considered relevant in view of the fact that the parties were known to each other from earlier.

The criminal jurisprudence developed in this country recognizes that the eye sight capacity of those who live in rural areas is far better than compared to the town folks. Identification at night between known persons is acknowledged to be possible by voice, silhouette, shadow, and gait also. Therefore, we do not find much substance in the submission of the respondents that identification was not possible in the night to give them the benefit of doubt.

13. In ***Nathuni Yadav vs State of Bihar,*** (1998) 9 SCC 238, with regard to identification in the dark, this court observed:

> "9.... Even assuming that there was no moonlight then, we have to gauge the situation carefully. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glow of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be borne in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, we must bear in mind the further fact that the assailants were no strangers to the inmates of the tragedy-bound house, the eyewitnesses being well acquainted with the physiognomy of each one of the killers. We are, therefore, not persuaded to assume that it would not have been possible for the victims to see the assailants or that there was possibility for making a wrong identification of them. We are keeping in mind the fact that even the assailants had enough light to identify the victims whom they targeted without any mistake from among those who were sleeping on the terrace. If the

> light then available, though meagre, was enough for the assailants why should we think that the same light was not enough for the injured who would certainly have pointedly focussed their eyes on the faces of the intruders standing in front of them."

14. PW-10 was an independent witness. Neither has his presence been doubted nor his impartiality been suspected. Sitting at the gate, he saw two persons on a motorcycle passing through the ground. Four persons stopped them and started beating the person who was driving the motorcycle while the pillion rider ran away and then returned with four to five people. The assailants had pipes, sticks and an iron rod with a turn. The assailants ran away throwing the weapons of assault at the place of occurrence. The witness has corroborated PW-2 in all material particulars.

15. PW-1, the Doctor who conducted the post-mortem, found the following injuries on the person of the deceased:

> "...(vi) 2.5 cm long cut wound on middle of right ear.
> (vii) One stitched wound one centimeter below the injury No. 5, its size was 8 cm x .25 cm, it was stitched with black thread.
> (viii) One cut wound going oblique from lip to ear, its size was 1.5 cm, it was deep upto muscle.
> (ix) One cut wound, 2 cm below the right lip going towards backside of ear, its size was 2.5 cm, it was deep upto muscle.
> (x) One stitched oblique wound on right side of chin going towards backside, its size was 3.5 cm x .25 cm,

it was stitched with black thread.
(xi) One stabbed wound on right occipital protuberance (at middle of the backside of skull), its size was 1 cm x .5 cm, it was deep upto muscles of scalp.
(xii) One stabbed wound on right hand at upper 1/3 and lower 2/3 level, its size was 2 cm x 1.5 cm, deep upto muscles, both the edges were T square and wound margin was sharp.
(xiii) One stabbed wound at 2.5 cm below injury No.2, its size was 2.5 cm x 1 cm, deep up to muscles, both the edges were T-square and wound margin was sharp.
(xiv) Innumerous cut wounds on middle of arm region of right hand and cutting each other at outside, its size was 15 cm x 20 cm.
(xv) One cut wound on douser aspect of right forearm (towards outside), it was starting from right wrist and going upwards, its length was 10 cm and was deep upto muscles.
(xvi) One cut wound found in the middle of right forearm, which was oblique and upward on the anterior aspect, its size was 6.6 cm, it was deep upto subcutaneous tissue.
(xvii) One cut wound on index finger of left hand, on douser aspect near base of second and third finger, its size was 4.5 cm, it was deep upto muscles.
(xviii) One cut wound on base of left thumb oblique on palmer aspect i.e. on palm, its size was 3.5cm, it was deep upto muscles.
(xix) One cut wound found on base of left index. finger, its size was 2.5 cm and was deep upto muscles."

He deposed that the iron rod used for assault, shown to him, had a turn and that injuries nos. 1 to 4 caused on the head were possible by it. In his cross-examinations, he deposed that the sharp cutting injuries were possible with the iron rod which had a turn.

16. The recovery of the weapons of assault from the place of occurrence stands established from the evidence of PW-4 and PW-5 who had not denied their signatures on the seizure memo and neither have they said that they were coerced into signing the seizure memo. Cumulatively, in view of the nature of evidence available, the absence of any FSL report with regard to finger prints on the seized weapons is considered irrelevant.

17. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW-2 and PW-10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that *muddamal* no.5 was a simple iron rod without noticing the evidence that it had a sharp turn edge.

18. The aforesaid discussion leads us to the conclusion that the acquittal by the High Court is based on misappreciation of

the evidence and the overlooking of relevant evidence thereby arriving at a wrong conclusion. It is not a case where two views are possible or the credibility of the witnesses is in doubt. Neither is it a case of a solitary uncorroborated witness. The conclusion of the High Court is therefore held to be perverse and irrational. The acquittal is therefore held to be unsustainable and is set aside. In the nature of the assault, Section 304 Part II, IPC has no application. The conviction of respondent nos. 1 to 4 by the Trial Court is restored.

19. The respondent nos. 1 to 3 are directed to surrender within two weeks to serve out the remaining period of their sentence. The Director General of Police, State of Gujarat shall take all necessary steps to apprehend the absconding, fourth accused and bring him to justice. A report shall be submitted to this Court in this regard within a period of 8 weeks when the present matter shall be listed for that limited purpose.

20. The appeal is allowed.

.....J.
(NAVIN SINHA)

.....J.
(R. SUBHASH REDDY)

NEW DELHI,
July 26, 2021