[2024] 4 S.C.R. 234 : 2024 INSC 272

Manikandan
v.
State by the Inspector of Police

(Criminal Appeal No. 1609 of 2011)

05 April 2024

[Abhay S. Oka* and Pankaj Mithal, JJ.]

Issue for Consideration

Matter pertains to the tutoring of the material witnesses by the police and its effect on the prosecution case.

Headnotes

Evidence – Witnesses – Tutoring of the material witnesses by the police – Effect:

Held: This is a blatant act by the police to tutor the material prosecution witnesses-interested witnesses – It amounts to gross misuse of power by the police machinery – Police cannot be allowed to tutor the prosecution witness – On facts, the appellants convicted and sentenced u/ss. 302/34 IPC – Day before the evidence of the prosecution witnesses was recorded before the trial court, witnesses were called to the Police Station and were taught to depose in a particular manner – Their evidence will have to be discarded as there is a distinct possibility that the said witnesses were tutored by the police on the earlier day – This conduct becomes more serious as other independent eyewitnesses, though available, were withheld – Furthermore, defence of the accused was that they were not present at the place of the incident at the time of the incident – One of the prosecution witness admitted that accused was working in another village – Thus, serious doubt created about the genuineness of the prosecution case – Benefit of substantial doubt to be given to the appellants – Before the appellants were enlarged on bail, they had undergone incarceration for more than 10 years – Thus, the courts below erred in convicting the appellants – Impugned judgments and orders set aside, and the appellants acquitted of the offences alleged against them. [Paras 8, 9]

Judicial deprecation – Blatant act by the police to tutor the material prosecution witnesses at the police station:

Held: This amounts to gross misuse of power by the Police machinery – This kind of interference by the Police with the

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judicial process is shocking – Director General of Police of the State to cause an enquiry to be made into the conduct of the police officials of tutoring the witnesses at the concerned Police Station – Appropriate action to be initiated against the erring officials in accordance with the law. [Paras 8, 10]

Case Law Cited

No.15138812Y L/Nk Gursewak Singh v. Union of India & Anr. [2023] 10 SCR 1139 **: 2023 SCC OnLine SC 882 : [2023] INSC 648;** *Ram Manohar Singh v. State of Uttar Pradesh* **(2023) SCC OnLine SC 1084;** *Ghapoo Yadav & Ors. v. the State of M.P.* [2003] 2 SCR 69 **: (2003) 3 SCC 528;** *Sukhbir Singh v. State of Haryana* [2002] 1 SCR 1152 **: (2002) 3 SCC 327;** *Sandhya Jadhav v. State of Maharashtra* [2006] 3 SCR 632 **: (2006) 4 SCC 653;** *Prakash Chand v. State of H.P.* [2004] Supp. 3 SCR 389 **: (2004) 11 SCC 381;** *Pulicherla Nagaraju v. State of A.P.* [2006] Supp. 4 SCR 633 **: (2006) 11 SCC 444 – referred to.**

List of Acts

Penal Code, 1860.

List of Keywords

Evidence; Witnesses; Tutoring of witnesses by police; Interested witnesses; Misuse of power by the police machinery; Eye witnesses; Incarceration; Judicial process.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1609 of 2011

From the Judgment and Order dated 15.09.2009 of the High Court of Madras in CRLA No. 250 of 2009

With

Criminal Appeal No. 407 of 2019

Appearances for Parties

G. Sivabala Murugan, Mailysamy, Selvaraj Mahendran, C.Adhikesavan, P.V. Hari Krishnan, P. Soma Sundaram, R Nedumaran, B Ragunath, Mrs. N.C Kavitha, Vijay Kumar, Advs. for the Appellant.

Dr. Joseph Aristotle S., Ms. Shubhi Bhardwaj, Ms. Vaidehi Rastogi, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECTS

1. The appellant in Criminal Appeal No. 407 of 2019 is the accused no.1, and the appellant in Criminal Appeal No.1609 of 2011 is the accused no.2. The Trial Court convicted both the appellants for an offence punishable under Section 302, read with Section 34 of the Indian Penal Code, 1860 (for short, 'the IPC'). By the impugned judgment, the High Court has confirmed the conviction and life sentence of the appellants.

2. We are referring to the prosecution case in brief. The name of the deceased is Balamurugan. He was staying with his parents – PW-I Mahalingam and PW-2 Veerammal. According to the prosecution case, the deceased had instructed accused no.1 to deliver idlis at his home. On 4th October 2007, at about 9 pm, the deceased came home and enquired with his mother PW-2 whether accused no.1 had delivered the idlis. On learning that accused no.1 had not delivered the idlis, he immediately went out and reached the house of accused no.1. It appears that there was a commotion due to his altercation with the accused no.1. According to the prosecution case, after hearing the commotion, PW-2 and PW-3 (the brother-in-law of the deceased) rushed to the spot. Accused no.2 was present at the spot. After that, accused no.1 entered his house, brought with him a billhook and assaulted the deceased with the billhook. The first blow fell on the right index finger of the deceased. Thereafter, the deceased ran away to the nearby garden of one Karunanidhi. The accused followed him. The accused no.2 held the deceased, and accused no.1 assaulted the deceased with the billhook on his neck. Both the accused fled after that. According to the prosecution case, PW-2, PW-3, PW-4 (sister of PW-1), and PW-5 (son of PW-4) witnessed the incident.

SUBMISSIONS

3. The learned counsel appearing for the appellant pointed out that the first information report shows that the incident occurred at

10.30 pm. However, from the approximate time of death mentioned in the post-mortem notes, it appears that the incident must have happened before 7 pm. His second submission is that though other independent eyewitnesses were available, the prosecution had chosen to examine only the witnesses closely related to the deceased who were interested and tutored witnesses. Therefore, their testimony deserves to be discarded. Without prejudice, his further submission is that it was the deceased who went to the house of accused no.1 to enquire about the failure of accused no.1 to deliver idlis at his home. The fight started only because the deceased went to the house of accused no.1. He submitted that the post-mortem notes show that the deceased sustained one cut injury on his neck and one minor injury to his finger. He further submitted that there was a sudden fight between the deceased and the accused no.1, and in their sudden fight, without any premeditation, the accused no.1 assaulted the deceased. He would, therefore, submit that this is a case where Exception 4 of Section 300 of IPC will apply, and thus, it will amount to an offence under Part 1 of Section 304 of IPC. He relied upon various decisions of this Court in the cases of:-

(i) ***No.15138812Y L/Nk Gursewak Singh v. Union of India & Anr.***[1]

(ii) ***Ram Manohar Singh v. State of Uttar Pradesh***[2]

(iii) ***Ghapoo Yadav & Ors. v. the State of M.P.***[3]

(iv) ***Sukhbir Singh v. State of Haryana***[4]

(v) ***Sandhya Jadhav v. State of Maharashtra***[5]

(vi) ***Prakash Chand v. State of H.P.***[6] ***and***

(vii) ***Pulicherla Nagaraju v. State of A.P.***[7]

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1 [2023] 10 SCR 1139 : 2023 INSC 648 : 2023 SCC OnLine SC 882

2 2023 SCC OnLine SC 1084

3 [2003] 2 SCR 69 : (2003) 3 SCC 528

4 [2002] 1 SCR 1152 : (2002) 3 SCC 327

5 [2006] 3 SCR 632 : (2006) 4 SCC 653

6 [2004] Supp. 3 SCR 389 : (2004) 11 SCC 381

7 [2006] Supp. 4 SCR 633 : (2006) 11 SCC 444

4. The learned counsel appearing for the respondent - State urged that the evidence of PW-2 to PW-5 is free of any material contradictions and omissions and, thus, inspires confidence. He submitted that the fact that accused no.1, after a dispute with the deceased, entered his house, brought billhook and then assaulted the deceased shows that there was a clear intention on his part to assault the deceased. Learned counsel submitted that after one blow was given by the accused no.1 on the index finger of the deceased, the deceased attempted to run away. Both the accused chased the deceased; the accused no.2 held the deceased, and after that, accused no.1 gave a fatal blow to the neck of the deceased with Billhook. He urged that Exception 4 of Section 300 of IPC will not apply in this case.

OUR VIEW

5. We have perused the evidence of the material prosecution witnesses. PW-1 is the father of the deceased, who had admittedly not seen the incident. PW-2 is the mother of the deceased. PW-2 in her examination-in-chief stated thus:

> "About one year ago, my son came at 9.00 P.M. to house. My son asked me whether the 1st accused Siva had given idli to me. I told him Siva did not give idli. Immediately thereafter he said that he will go and ask Siva why he did not give idli and went from there. Thereafter, after sometime we heard a sound from the side of Siva's house. I ran and saw there. By that time, the 1st accused Siva had cut my son with the billhook. That cut fell on the index finger. Immediately my son escaped and ran towards the tract of Karunanidhi. Immediately Siva and Manikandan chased my son and ran behind him and Manikandan had held my son. Siva had cut my son on his neck. My son inclined and fell down. I ran and screamed 'Ayyo, Ayyo'. By hearing my noise, Annappattu, Ganesan, Arivazhagi, Velayudham came there running. The accused had thrown the billhook in their hands. After I saw my son, and lifted him, I came to know that my son was dead."

6. In her examination-in-chief, she attempted to make out a case that the accused had spoken ill about her daughter-in-law. Admittedly, she did not say so in her statement recorded by the police. Most importantly, in the cross-examination by the advocate for accused

no.1, she stated, "Yesterday, I, my husband and other witnesses went to Haridwarmangalam Police station. There, the police authorities taught us how to adduce evidence." It is pertinent to note that the evidence of PW-1 to PW-5 was recorded on 20th November 2008. Thus, it is apparent that on 19th November 2008, the first five interested witnesses, PW-1 to PW-5, who were closely related to the deceased, were called to the Police Station and were taught by the police how to depose against the accused. It is pertinent to note that the prosecution did not put questions to the witness by way of re-examination on this aspect. The investigation officer did not offer any explanation for this. Therefore, we must proceed on the footing that the first five witnesses were "taught" at the Police Station how to depose. This happened a day before the day their evidence was recorded before the Court.

7. PW-3 is the brother-in-law of the deceased. He deposed that he was residing near the house of the accused no.1. His version in the examination-in-chief about the incident is the same as the version of PW-2. PW-4 knew the family of the deceased and the accused, as he stated that the accused were residing in the same colony in which he was residing. His version of the incident in the examination-in-chief is the same as that of PW-2 and PW-3. PW-5 also knew the accused and the family of the deceased as he was also staying in the same colony in which the accused were staying. His version of the actual incident of the assault is the same as the other three prosecution eyewitnesses. PW-3 to PW-5 were admittedly the relatives of the deceased. PW-5, in his cross-examination, stated that he, along with five persons, attempted to prevent accused no.1 from assaulting the deceased. The other five witnesses referred to by PW-5 have not been examined as witnesses.

8. Thus, the scenario which emerges is that precisely a day before the evidence of PW-1 to PW-5 was recorded before the Trial Court, they were called to the Police Station and were taught to depose in a particular manner. One can reasonably imagine the effect of "teaching" the witnesses inside a Police Station. This is a blatant act by the police to tutor the material prosecution witnesses. All of them were interested witnesses. Their evidence will have to be discarded as there is a distinct possibility that the said witnesses were tutored by the police on the earlier day. This kind of interference by the Police with the judicial process, to say the least, is shocking. This amounts

to gross misuse of power by the Police machinery. The Police cannot be allowed to tutor the prosecution witness. This conduct becomes more serious as other eyewitnesses, though available, were withheld. We are surprised that both the Courts overlooked this critical aspect. It is pertinent to note that the defence of the accused, as can be seen from the line of cross-examination, was that they were not present at the place of the incident at the time of the incident. PW-2 admitted that accused no.1 was working in another village called Tirrupur. Although available, independent witnesses were not examined by the Prosecution. Therefore, adverse inference must be drawn against the prosecution. Hence, there is a serious doubt created about the genuineness of the prosecution case. The benefit of this substantial doubt must be given to the appellants. Before the appellants were enlarged on bail by this Court, they had undergone incarceration for more than 10 years.

9. Therefore, in our considered view, both the Sessions Court and the High Court have committed an error in convicting the appellants. Hence, the appeals are allowed. The impugned judgments and orders are set aside, and the appellants are acquitted of the offences alleged against them. Their bail bonds stand cancelled.

10. The Director General of Police of the State of Tamil Nadu shall cause an enquiry to be made into the conduct of the police officials of tutoring PW-1 to PW-5 at the concerned Police Station. Needless to add, appropriate action shall be initiated against the erring officials in accordance with the law.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeals allowed.