



2024 INSC 390



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 467/2024

HANNA

.....APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH

.....RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 468/2024

J U D G M E N T

ABHAY S. OKA, J

1. The appellants are accused who have been convicted by the Trial Court for offences punishable under Sections 302 and 323, read with Sections 149, 147, and 148 of the Indian Penal Code, 1860. The appellants have been sentenced to life imprisonment for the offence of culpable homicide amounting to murder punishable under Section 302, and separate sentences have been imposed for the other crimes. All sentences were directed to run concurrently.

2. The incident took place on 5th October 1995. PW-1 - Nanhi Bahu (mother of the deceased - Pappu @ Har Narayan) alleged that the appellants killed her son. The allegation is that the appellants were carrying different weapons, and they assaulted her son.

3. None of the material prosecution witnesses except PW-3 (Santosh), the deceased's brother, supported the prosecution. The rest of the alleged eyewitnesses were declared hostile. PW-1 was also declared hostile as she did not support the prosecution. However, after her recall, she supported the prosecution.

SUBMISSIONS

4. The learned senior counsel appearing for the appellants (accused no.2 to 6) in Criminal Appeal No.468/2024 pointed out that PW-1 did not support the prosecution. However, after a gap of 1½ years, she was recalled, and from her deposition after recall, it is apparent that the Police had compelled her to depose in a particular manner. Inviting our attention to the documents on record, the learned senior counsel submitted that the evidence of PW-1 must be disbelieved. Inviting our attention to the evidence of PW-3, he submitted that there are material omissions and contradictions brought on record in his evidence. For example, he pointed out that according to PW-3, he was sitting in his shop when the assault on the deceased was made. In the cross-examination, he stated that he had not shown the shop to the Investigation Officer. In the cross-examination, he accepted that he did not see the incident from his shop. The learned senior counsel also pointed out that the *mahazar* of the site drawn by the Investigation Officer shows that the shop was not in existence. He also pointed out that paragraph 9 of his cross-examination shows that the prosecution could not establish the alleged motive.

5. The learned counsel appearing for the State submitted that while appreciating the evidence of PW-1, it must be remembered that she is a rustic woman who had lost her son. He submitted that when her evidence was earlier recorded, she was under a threat by the accused. He submitted that after she was recalled, she told the truth. His submission is that the Court should not discard the testimony of PW-1 as, ultimately, it is the testimony of a woman who has lost her son as a result of a brutal murder. He also pointed out that PW-1 is an injured eyewitness and, therefore, her testimony should not be discarded. He submitted that the Investigation Officer is not highly educated. Consequently, it is always possible that he would make mistakes while drawing the mahazar, showing the situation at the site where the offence occurred. Thus, too much importance should not be attached to the fact that he has not shown the shop's existence on the map drawn by him. Lastly, he submitted that it is a case of brutal murder and looking at the findings recorded by the Courts; leniency should not be shown to the appellants.

OUR VIEW

6. We have carefully examined the material on the Trial Court's record, including the testimonies of the witnesses. The Trial Court has supplied a translated version of the record. PW-1 stepped into the witness box on 2nd May 1997. She did not support the prosecution. Therefore, she was declared hostile on the prayer made by the learned Public Prosecutor. In the cross-examination made by the Public Prosecutor, she stated that she did not report the

incident as she was unconscious. When confronted with the report, she stated that it was written by one Ramprakash Tiwari at Kotwali which bears her thumb impression. Surprisingly, the prosecution has not examined Ramprakash Tiwari as a witness. What is important is what she stated in paragraph 6 of her cross-examination made by the Public Prosecutor. Paragraph 6 reads thus:

"6. These 6 men are detained in jail since 1.5 years. I was having rivalry with them, so I mentioned their names. I had wrongly mentioned names of accused. I did not complain to anyone that accused are wrongly detained on my report. It is wrong to say that me and my son had taken Rupees Eighty thousand from the accused and is not stating correctly in collusion with them. It is also wrong to say that accused present in Court had killed my son before me with axe, spear and sticks. It is also wrong to say that when I tried to save my son, accused Babu assaulted me."

(underlines supplied)

7. As stated earlier, her evidence was recorded on 2nd May, 1997. After that, there were two curious events. The first is that Malti Bai, the widow of the deceased, applied on 11 September 1998 to the Trial Court stating that she was an eye-witness, but the prosecution has not included her name in the list of witnesses. Therefore, she prayed that she may be examined as a witness. At this stage, we may note that in the evidence of PW-3, which was recorded on 19th December 1998, though he claimed that the widow of the deceased was present when the assault was committed, this statement is an omission. PW-1, after recall, did not depose about the presence of the widow of the deceased near the place of the incident. The prosecution did not take any steps to examine Malti

Bai, the widow of the deceased, who was claiming to be an eyewitness. Even the trial court did not direct the police to record her statement and to examine her before the Court. The prosecution offered no explanation for not examining Malti Bai as a witness. Therefore, the only conclusion that can be drawn is that the prosecution withheld the evidence of a material witness from the Court, which may be a ground for drawing an adverse inference against the prosecution.

8. The second event is that on 5th February 1999, nearly 01 year and 09 months from the date on which her deposition was recorded, PW-1 made an application to the Court stating that her statement given to the Police was true, but as the accused had threatened to kill her and PW-3, she did not support the prosecution. She stated that she desires to tell the truth before the Court. She filed an affidavit in support of her application on the same day. The Police made no investigation into the alleged threat administered by the accused to PW-1. As noted earlier, in her earlier deposition, in paragraph 6, she stated that the accused continued to be in jail for 1½ years. Her statement indicates that the accused were in jail till the day of her deposition. There is another crucial aspect. Two months before PW-1 submitted the application, PW-3 was examined before the Court on 19th December 1998. Though PW-1 claimed that the accused had threatened to kill PW-3, surprisingly, PW-3 did not depose about any such threat administered to him.

9. After the recall, PW-1 stepped into the witness box. What she stated in the witness box is very material. In paragraph 7, she stated thus:

"7. My statement was recorded earlier in this District Court. I had stated correctly at that time. I was threatened after that. Accused had threatened me. I had given statement after that. Policemen had threatened me after that statement that why did you give wrong statement. I have come to give statement again on saying again by the police. After that, witness was told that say what you want. Witness stated "Hanna was carrying spear, Kappu had axe, Gaya had stick, Duli had stick, Prakash had stick, Babu had stick, Gaya held him and Hanna hit 4-5 times with spear, hit with axe, hit struck 4-5 times, hit 4-5 times with stick. Assaulted him in the middle of the road. Assaulted at Kailgawa. Had gone towards the river after assaulting. Killed my son when he had gone to defecate. We mother in law and daughter in law had gone to fetch water, killed him in 3 minutes. My son's head was in west side and feet were in east side when he died."

(underlines supplied)

10. It is very difficult to accept the prosecution case that PW-1 was threatened by the accused, and therefore, she did not support the prosecution on 2nd May 1997 when her evidence was recorded. The reasons for discarding the case of threat administered to PW-1 and PW-3 can be summarized as follows:

(a) On 2nd May 1997, PW-1 deposed that the accused were in jail for 1½ years;

(b) After a long gap of 01 year and 09 months, on 5th February 1999, for the first time, she came out with a case that threats were administered by the accused way back in May 1997;

(c) Notwithstanding the statement of PW-1 in her application dated 5th February 1999 and the affidavit filed in support thereof on the same day, the Police made no investigation into the allegation made by PW-1; and

(d) Though on 5th February 1999, PW-1 claimed that the accused had threatened to kill PW-3, in his evidence recorded on 19th December 1998, PW-3 did not depose anything about the threat administered to him.

11. What is more material is that PW-1 specifically stated after her recall that a threat was administered to her by the Police as she did not support the prosecution in her earlier evidence. Secondly, she stated that she had come before the Court to give a statement at the instance of the Police. Considering what we have held earlier, her statement before the Court after recall that she was threatened by the accused, cannot be believed. The only conclusion which can be drawn is that after recall, she was compelled by the Police to depose in a particular manner. The Trial Court and the High Court should have discarded her evidence recorded after the recall. In fact, the Trial Court should have seriously taken note of the threat administered by the Police to PW-1 and directed the Police Officials to look into the role played by the Policemen who were associated with the case.

12. Now, we turn to the evidence of PW-3. In paragraph 3 of his examination-in-chief, he stated that accused Kappu owed his family a sum of Rs.6,000/- (Rupees Six Thousand). As he had asked the

accused - Kappu, to pay the money, the accused had beaten him. His specific case is that the accused murdered his brother because of this hostility. However, in paragraph 9 of his cross-examination, he stated that he did not tell the Police that accused - Kappu was liable to pay his family a sum of Rs.6,000/- (Rupees Six Thousand). Thus, the motive stated by PW-3 in his examination-in-chief is a significant omission which is so material that it amounts to contradiction. Therefore, the prosecution's case about the existence of motive has to be discarded. In paragraph 3 of his examination-in-chief, PW-3 also stated that one Ramprakash Tiwari wrote the report of the incident. As stated earlier, the said Ramprakash Tiwari has not been examined.

13. In the cross-examination, PW-3 stated that the accused killed his brother a few steps away from his shop, and he was in his shop when the assault was committed. He claimed that his mother (PW-1), sister-in-law (Malti Bai), and other witnesses were present. The statement that Malti Bai was present is an omission, as is evident from paragraph 6 of his cross-examination. Moreover, the shop from which the witness had allegedly seen the assault is not shown to be in existence in the sketch of the scene of the offence drawn by the Police. PW-3 admitted that he had not shown his shop to the Police. Later, he stated that he did not see the incident from his shop. Therefore, PW-3's evidence is full of material omissions and contradictions. It is very difficult to believe PW-3's testimony.

14. Therefore, it follows that the prosecution has not proved the guilt of the accused. Therefore, the Appeals must succeed. We set

aside the impugned judgments dated 26th August 2022 and 6th December 2007 passed by the High Court and the Trial Court. We set aside the conviction and sentence of the appellants.

15. The Appeals are allowed accordingly.

16. The appellant in Criminal Appeal No.467/2024 is on bail. His bail bonds stand cancelled. As far as the appellants (accused nos.2 to 6) in Criminal Appeal No.468/2024 are concerned, we direct that they shall be immediately set at liberty.

.....J.
(ABHAY S.OKA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
MAY 01, 2024.