Vinay Kumar vs State Of M.P on 2 December, 1993

Equivalent citations: 1994 AIR 830, 1994 SCC SUPL. (1) 559, AIR 1994 SUPREME COURT 830, 1994 AIR SCW 158, 1994 SCC (SUPP) 1 559, (1994) 1 CHANDCRIC 43, (1994) 1 ALLCRILR 22, 1994 CRILR(SC&MP) 50, (1994) 1 CURCRIR 3, 1994 CRILR(SC MAH GUJ) 50, (1993) 3 CRIMES 1055, 1994 SCC (CRI) 719

Author: G.N. Ray

Bench: G.N. Ray

PETITIONER:
VINAY KUMAR

Vs.

RESPONDENT:
STATE OF M.P.

DATE OF JUDGMENT02/12/1993

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1994 AIR 830 1994 SCC Supl. (1) 559
JT 1993 Supl. 166 1993 SCALE (4)567

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by G.N. RAY, J.- This appeal is directed against the judgment of the Division Bench of Madhya Pradesh High Court in Criminal Appeal No. 15 of 1979 by which the judgment of acquittal passed against the appellant, Vinay Kumar, by the learned Additional District and Sessions Judge, Khurai, in Sessions Trial No. 12 of 1978, was reversed by the

High Court and the appellant was convicted for an offence under Section 302 Indian Penal Code and was sentenced to suffer imprisonment for life. It may be stated here that the learned Additional Sessions Judge acquitted both the accused, namely, Vinay Kumar and Anil Saxena and the appeal of the State against Anil Saxena was dismissed by the High Court but the appeal against the acquittal of Vinay Kumar was admitted and disposed of as indicated.

2. The prosecution case in short is that Vinay Kumar had been bearing grudge against the deceased Surendra Kumar and his father and on October 19, 1977 at about 6.30 p.m. the deceased had gone to the Railway Station, Bamora Mandi. The Amritsar Express arrived by then and was at the platform. The appellant, Vinay Kumar, and the co-accused, Anil Saxena, came there. While Anil Saxena caught him, Vinay Kumar gave a knife blow which went deep into the abdominal cavity. The train whistled to move and Vinay Kumar boarded the train with the knife in his hand and Anil Saxena also ran after him and also boarded the train. The said infliction of the knife injury was witnessed by a number of persons present at the platform. Surendra Kumar was immediately taken to the local hospital and Dr Nema gave the first aid to the deceased and finding the condition serious he recorded Surendra's dying declaration (Ex. P-25). It is the case of the prosecution that the Sub-Inspector, Hemraj Shukla (PW 9) after obtaining report about the said incident given by Dayachand also reached the hospital and after ascertaining from the doctor that Surendra was conscious and in a fit state to give statement, he also recorded the statement of Surendra which is Ex. P-9. On the advice of Dr Nema, Surendra Kumar was shifted to Bhopal Medical College Hospital immediately by stopping Lucknow Bombay Express at the said railway station with the help of Assistant Station Master but despite surgical operation, Surendra Kumar died on October 22, 1977. On October 23, 4977, both Vinay Kumar and Anil Saxena were arrested from Bina and it is the prosecution case that a knife was recovered from the possession of the appellant, Vinay Kumar. The prosecution examined six eyewitnesses, namely, Gulabchand (PW 8), Rajendra Kumar (PW 16), Hafiz Mohammad (PW 20), Rajkumar (PW

17), Mohammad Khan (PW 25), Ratanchand (PW 26). Out of the said six eyewitnesses Rajendra Kumar (PW 16) and Ratanchand (PW 26) were declared hostile. The learned Additional Sessions Judge after considering the evidences adduced in the case inter alia came to the finding that the complicity of the co-accused Anil Saxena could not be established. Accordingly, he was acquitted by the learned Sessions Judge. So far as the appellant, Vinay Kumar, is concerned, the learned Additional Sessions Judge inter alia came to the finding that both the dying declarations recorded by the Sub-Inspector of Police and by Dr Nema could not be believed and the statements of the eyewitnesses also could not be believed. Accordingly, he acquitted Vinay Kumar by giving him benefit of doubt. As aforesaid, the State preferred an appeal against the said order of acquittal but the appeal against Anil Saxena was dismissed and the appeal against the appellant, Vinay Kumar, was allowed by the Division Bench of Madhya Pradesh High Court.

3. It has been found by the High Court that Dr Nema was independent and respectable witness who had recorded the dying declaration in a proper manner and had deposed that the deceased was conscious and was in a fit state of mind to make the said statement and in the dying declaration the patient had categorically stated that Vinay Kumar had stabbed him at the railway platform. The High Court has also held that the doctor had taken precaution to see that no one had prompted or

given suggestion to the deceased before making the dying declaration and the doctor had not permitted the mob collected at the hospital to come in the examination hall. The High Court has further held that the incident had taken place at the railway station when Amritsar Express had arrived and the platform was thronged by travellers and visitors. It was, therefore, natural to expect that the incident could not go on unnoticed. It has been held by the High Court that in any event the person standing near the victim must have seen the assailant fleeing or boarding the train with knife in hand and the victim raising alarm. It has also been noted by the High Court that the victim did not immediately collapse or become unconscious and being conscious he must have immediately disclosed the name of the assailant and there could not be any mistake on the identity of the assailant. The High Court has noted that Ratanchand (PW 26) was declared hostile but he has admitted that when the injured was being picked up, he saw Rajkumar (PW 17) and Hafiz Mohammad (PW 20) at the spot. Rajkumar (PW 17), Hafiz Mohammad (PW 20) Mohammad Khan (PW 25), Gulabchand (PW 8) have stated that they had seen Vinay Kumar inflicting the knife blow on Surendra Kumar.

4. The High Court has further held that the delay in recording the statements of eyewitnesses by the Investigating Officer, Ratansingh (PW 28) on October 24, 1983 has been properly explained in view of the fact that the Sub-Inspector (PW 9) did not record the statement of the eyewitnesses because he had no jurisdiction to act as Investigating Officer because the crime was committed within the jurisdiction of the Railway Police. The said Sub- Inspector, Shukla, therefore, had registered the offence at 0 number and had forwarded the same to the S.O., G.R.P. and the offence was investigated by the Railway Police thereby causing delay in interrogating the eyewitnesses. Considering the aforesaid circumstances, the High Court inter alia came to the finding that the order of acquittal passed by the learned Additional Sessions Judge in favour of the appellant was wholly unjust and against the weight of the evidences and the High Court, therefore, set aside the said order of acquittal and convicted the appellant under Section 302 IPC and sentenced him to life imprisonment.

5. It has been very strongly contended by the learned counsel for the appellant at the hearing of the appeal that the learned Additional Sessions Judge had taken pains in analysing the evidences in detail and had given very cogent reasons as to why the dying declarations should not be accepted and why the depositions of the alleged eyewitnesses were not free from doubt and should not be accepted. It has been contended that the law is well-settled that if on the basis of the evidences adduced in a case, a reasonable and plausible view is taken by the learned Additional Sessions Judge and acquittal is based on such reasonable and plausible view, as a matter of prudence, the appellate court should not embark on appraising the evidences afresh and to come to a different conclusion for the purpose of setting aside the order of acquittal and to pass an order of conviction. It has been contended that if on the basis of the evidences adduced in a case two views can be reasonably taken, then on the ground of prudence and expediency, the view taken in favour of the accused should not be interfered with. The learned counsel for the appellant has submitted that unfortunately in the instant appeal the High Court ignored the settled law on the subject and made an independent assessment of the evidences adduced in the case and came to the finding that the appellant was guilty for the offence of murdering deceased, Surendra Kumar. It has been contended that it is an admitted fact that Surendra Kumar's father and some of the eyewitnesses had enmity with the

appellant, Vinay Kumar and his family members and they therefore were interested witnesses whose evidences are required to be considered with much care and caution. The learned counsel has contended that the learned Additional Sessions Judge had analysed the evidences of the eyewitnesses in great detail and have shown the inconsistency in their evidences and had, therefore, rightly discarded the same. So far as the dying declaration is concerned, it has been contended by the learned counsel for the appellant that the alleged dying declaration recorded by the Sub-Inspector of Police should not be taken into consideration at all and as a matter of fact, the High Court has not also placed reliance on the same. The other dying declaration, namely, Ex. P-25 recorded by Dr Nema also should not be accepted for the good reasons indicated by the learned Additional Sessions Judge. The statement of Dr Nema stands contradicted by the statement made by Gulabchand (PW

8) inasmuch as he had contradicted Dr Nema that at the time of recording the dying declaration excepting Harbhajan Singh and Suhagmal Jain, no other person was present. It has also been contended by the learned counsel for the appellant that admittedly, the deceased was vitally injured in the vital organ. It was quite likely that he would have lost his sense and could not make the statement. The learned counsel for the appellant has also contended that in a busy railway platform when an important train like Amritsar Express was standing and number of persons were present, it is most unlikely that the appellant known to the deceased would commit the crime before the eyes of a number of persons at the risk of being apprehended then and there. It has been submitted by the learned counsel for the appellant that a false case has been fabricated by the prosecution in order to falsely implicate the appellant because the family of the deceased had grudge against the appellant and his family members for a number of incidents as recorded by the learned Additional Sessions Judge. The learned counsel for the appellant has, therefore, submitted that this appeal should be allowed and the order of conviction and sentence passed by the High Court should be set aside and the order of acquittal passed against the appellant should be upheld by this Court.

6. Such contention, however, has been opposed by the learned counsel for the State. It was contended that since the finding made by the learned Additional Sessions Judge was completely against the weight of the evidences adduced in the case, the same was wholly unreasonable and unacceptable. The High Court is quite justified in reversing the improper finding and to award the conviction and the sentence against the appellant. The learned counsel has contended that there is a clear and positive evidence that the deceased was fully conscious after sustaining the injury and he immediately stated at the railway platform itself that the appellant had stabbed him and such statement was also made by him before Dr Nema who was a respectable doctor having no enmity against the appellant. He has submitted that the High Court has clearly indicated the reasons which showed on the face of it that the finding made by the learned Additional Sessions Judge was wholly unjust and perverse. It has been contended by the learned counsel that the prosecution case cannot be discarded because one of the eyewitnesses was known to the deceased and the family members and may be treated as interested witness. The evidence of such eyewitness stands fully corroborated by the deposition of other eyewitnesses. He has, submitted that the Additional Sessions Judge unnecessarily highlighted minor discrepancies not affecting the veracity of the eyewitnesses. The learned counsel therefore, submitted that no interference is called for in this appeal and the same should be dismissed.

7. After giving our anxious consideration to the facts and circumstances of the case and the evidences adduced in the case, it appears to us that the High Court has taken a very reasonable view after analysing the evidence on record and we approve the finding of the High Court that the order of acquittal passed by the learned Additional Sessions Judge was wholly unjustified and against the weight of the evidences adduced in the case. In our opinion, it has been rightly held by the High Court that the dying declaration recorded by Dr Nema should not be discarded. Dr Nema, a disinterested and respectable doctor, has specifically stated that he had ensured that the deceased was not tutored or assisted by anyone present and the deceased was fully conscious and in a proper state of mind to make the dying declaration. There is no evidence to the effect that the deceased in view of the injury sustained by him could not have made any statement or dying declaration. There is positive and reliable evidence that he was conscious for quite some time after receiving the injury and was in a position to communicate. As a matter of fact, even the learned Additional Sessions Judge has also held that Ex. P- 25, the dying declaration recorded by Dr Nema, was recorded in proper manner containing the thumb impression of the deceased, Surendra Kumar and the same was otherwise a dying declaration in the true sense. The presence of some of the eyewitnesses at the railway platform witnessing the occurrence has also been admitted by one of the hostile witnesses as recorded by the High Court. We do not find any reason to hold that the said persons had deposed falsely and their evidences deserve to be discarded. The said witnesses had said in no uncertain terms that the appellant inflicted the injury and with the knife in hand immediately rushed and boarded the train. It appears to us that the learned Additional Sessions Judge gave undue importance to minor discrepancies which did not affect the prosecution case by and large. In the aforesaid circumstances, we do not find any reason to interfere with the judgment passed by the High Court. This appeal, therefore, fails and is dismissed.

8. The appellant was granted bail by this Court by order dated November 20, 1986. The accused/appellant therefore, should be taken into custody to serve out the sentence passed against him.