

STATE OF MADHYA PRADESH

A

v.

SURBHAN

APRIL 15, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

B

*Criminal Trial*

*Murder Trial—Child witness—Evidence of—Not consistent with medical evidence—High Court not placed implicit reliance on it—If excluded from consideration, no other evidence supports prosecution case—Hence accused rightly acquitted by High Court.*

C

*Evidence Act : S.118 - FIR Not to be used as a substantive or corroborating a statement of third party—Can be used either to corroborate or for contradiction of its maker—Criminal trial.*

D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 593 of 1996.

From the Judgment and Order dated 28.6.90 of the Madhya Pradesh High Court in CrI. A. No. 53 of 1987.

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Uma Nath Singh for the Appellant.

R.K. Maheshwari for Respondent.

The following Order of the Court was delivered :

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Delay condoned.

Leave granted.

We have heard learned counsel on both sides.

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This appeal by special leave arises from the order of acquittal passed by the High Court of Madhya Pradesh, Jabalpur Bench in Criminal Appeal No. 53 of 1987 on June 28, 1990. The case of the prosecution is that on July 11, 1986, at about 6.30 p.m. while the deceased was returning after taking water from the tank, the respondent-accused came from behind and

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A gave a blow with 'falia' and went away. P.W. 2, Ratan Singh, son of the deceased who is an eye-witness to the occurrence raised an alarm upon which P.W.3, Vesta, P.W. 4, Nawal Singh, P.W. 5, Amar Singh and others came to the scene of occurrence whereat Ratan Singh, P.W. 2 narrated that the accused came from behind and attached the deceased. The deceased was taken to the hospital and was declared dead. The FIR was lodged at 9.30 p.m. on the same day. After investigation, the accused was apprehended and after all the witnesses were examined, the trial Court convicted the respondent-accused for offence of murder under Section 302, IPC and sentenced him to undergo life imprisonment. On appeal, the High Court acquitted the respondent. Hence this Appeal.

C The question for consideration is : whether the evidence of P.W.2, a child eye-witness to the incident is consistent with the medical evidence? The medical evidence indicates as under :

D "Three incised wounds were found, viz., (1) oblique incised wound about 5" x 2" bone deep, bral spine present over antero-lateral aspect of left side neck upto nape of the neck, body, lamine and spine of the chakeal spine were cut; (2) incised wound about 1-1/2" x 1" deep upto mandible over left cheek ad [3] incised wound about 2-1/2" x 1/4" over posterelateral aspect of left side elbow joint, on dissection, internal injury was found and spine lamine and vertebral body in almost completely set at like level of 7th cervical vertebral spine and is almost completely several at this site".

F A reading of the medical evidence clearly indicates that three incised wounds were inflicted upon the deceased, one on the nape of the neck, another on the left side of mandible and third on the left side of the elbow joint. In other words, there are three separate injuries inflicted upon the deceased, by three separate blows but PW 2 does not speak of the accused having inflicted those three injuries. prosecution case is that the accused-respondent had inflicted the injury one once and that too from behind. The single blow cannot cause three incised injuries of different dimensions at three different places. Under these circumstances, the High Court had not placed implicit reliance on the evidence of P.W. 2 If the evidence of P.W. 2 is excluded from consideration, we do not find any other evidence to support the prosecution case.

H It is contended that the FIR mentions the names of above persons

who were specifically mentioned and it lends corroboration to the evidence of P.W. 2 We find no substance in this contention. The FIR cannot be used as substantive evidence or corroborating a statement of third party, i.e., P.W. 2 FIR cannot be used to corroborate the evidence of P.W. 2 It can be used either to corroborate or for contradiction of its maker. A

It is then contended that P.Ws. 3 to 5 have consistently spoken the version narrated to them by P.W.2 but there is nothing to establish from their evidence of the offence. It may be that P.W. 2 had narrated that the accused had attacked the deceased. If the evidence of P.W.2 is excluded from consideration, the evidence of P.Ws. 3 to 5 does not remain to be of much assistance to the prosecution since it is not their case that they had seen the accused running away from the scene of occurrence. In these circumstances, we do not find any compelling reason to disagree with the finding of the High Court leading to order of acquittal. B C

The appeal is accordingly dismissed.

G.N.

Appeal dismissed. D