Supreme Court of India
Banti @ Guddu vs State Of Madhya Pradesh on 4 November, 2003
Bench: Doraiswamy Raju, Arijit Pasayat

CASE NO.:
Appeal (crl.) 713 of 2003

PETITIONER:
BANTI @ GUDDU

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 04/11/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:

JUDGMENT 2003 Supp(5) SCR 119 The Judgment of the Court was delivered by ARIJIT PASAYAT, J. The tribe of roadside Romeos and eve teasers is fast increasing and their insane infatuations of grave depravity condescend to such condemnable proportions causing serious onslaught on the decency and sanctity of public life. Innocent women are the victims, and the fate of good Samaritans like Pravin Pathak (hereinafter referred to as 'deceased') is untimely departure from this earth. Gone are the days when people used to wish that the tribe of good Samaritans like Abu Ben Adhem would increase. On 30.9.1991, deceased was allegedly stabbed to death by appellants Bantia Guddu and Teekaram (hereinafter referred to as the accused by their respective names.

Prosecution version in a nutshell is as follows :

The occurrence took place in the street of Nagar Nigam Dholi Buwa Ka Pul on 30.9.1991 at 9.15 p.m. For that complainant Kamal Pathak (PW-1) lodged complaint in Janakganj police station on the same day at about 10.10 p.m. in which it was stated that, at the time of occurrence the complainant and Laxuman Das (DW-1) were coming form market. At that time they heard the sound of altercation. They saw that accused Bantie Guddu and Teekaram 'were assaulting deceased with knives; they with the intention to kill were assaulting on his face, chest, stomach and thigh as a result of which blood was oozing form injuries. Deceased fell down after crying and became senseless. The accused persons after assaulting ran away, towards Dholibuwa. He and Laxuman took Pravin on two wheeler to Hospital. Then on the way, they met Diwan (police constable) and with his help they took deceased to hospital and in the hospital doctor declared Pravin dead.

The reason of this occurrence was that the accused persons used to move in the locality and were teasing the girls and due to this just about 4-5 days previous of this incident, deceased Pravin had beaten the accused person near Madhay College and the accused persons became inimical towards him and due to this they committed the murder of Pravin. On the basis of complaint, Janakganh Police Station, registered Crime No. 303/91 under Section 302/34 IPC. Spot map was prepared. Panchnama of dead body was prepared and post mortem of dead body done. Cause of death was

found to be blood haemorrhage and heart attack due to multiple injuries. Blood-stained soil and footwear of deceased was seized from the place of occurrence. Accused persons were arrested on 2.10.1991 and their statement under Section 27 of the Indian Evidence Act, 1872 (for short the 'Evidence Act') was recorded on same day and on the basis of their disclosure statement, weapons of assault were recovered from their possession. All the seized articles were sent to Forensic Science Laboratory, Sagar for chemical examination where from report received. After investigation challan was filed and the case was committed on 6.1.1992 to the Sessions Court for trial.

The accused persons pleaded innocence and false implication. They pleaded that complainant Kamal Pathak (PW-1) is brother of the deceased and witness Trilokinath (PW-2) is a friend of the deceased, and they have with mala fide intent implicated them. They examined one Laxuman Das (DW-1) to content that the so called eye-witnesses (PWs 1 and 2) could not have witnessed the occurrence as claimed and, therefore, they are entitled to acquittal. Learned First Additional Sessions Judge, Gwalior found the accused appellants guilty and convicted each one of them for offence punishable under Section 302 of the Indian Penal Code, 1860 (for short the 'IPC') and sentenced each to undergo imprisonment for life. In appeal, Division Bench of the Madhya Pradesh High Court, Bench at Jabalpur confirmed the conviction and the sentence. The two appeals are directed against the said judgment.

In support of the appeals, Dr. T.N. Singh, learned senior council submitted that the approach of the trial Court and the High Court is erroneous and contrary to law. It was pleaded that no notice was taken of the evidence of DW-1 which unerringly rules out the presence of so-called eye-witnesses at the time of occurrence. His presence was admitted by the prosecution witnesses, but they have given a twist to show as if he had originally named the appellants to be the authors of the crime. Since there was no consideration of DW-l's evidence, the judgments of the trial Court and the High Court are indefensible. It was also submitted that though the occurrence was on 30.9.1991, most of the so-called eye-witness and important witnesses were examined on 2.10.1991. No explanation has been given for such delayed examination.

Additionally, the presence of many persons was indicated by the prosecution witnesses, but they have not been examined thereby attaching vulnerability to prosecution case. Presence of PW-2 is also doubtful as he has not specifically explained as to how he happened to be at the spot of occurrence as claimed. Since the alleged motive for which the killings were claimed to have taken place has not been established by any record or concrete material, the prosecution case has been weakened.

In response, learned counsel for the State submitted that the defence of DW-1 is clearly make to believe as there is no trustworthiness. The prosecution has highlighted as to why he had reasons to depose falsely in spite of having been present throughout along with PW-1 and subsequently resile from what he originally did. His evidence in respect of all essential contours corroborates prosecution version to a great extent, except to the departure made by him by saying that he was not present at the time of lodging the FIR and also he had not identified the assailants. The extent to which he has gone in disowning his signatures in various documents and the fallacious stand that his signatures were taken on blank paper clearly shows that he is not speaking the truth as to the

actual and real involvement of the accused. The non-examination of the witnesses cannot be a factor to completely throw out the prosecution version when otherwise reliable witnesses have established it. According to him, both the trial Court and the High Court considered the evidence of DW-1, analysed the entire evidence on record and have come to a conclusion that the prosecution has established its case.

Since much stress was laid on the evidence of DW-1, we have gone through it carefully. Several features which attract our notice establishes that he is a compulsive liar who was made to somersault to help the accused. He claimed to have seen the assailants in a dim light of his scooter. He tried to rule out the presence of light facilitating identification by stating that though electric poles were existing around place of occurrence, there was electric failure. Interestingly, he has at the same time made a statement that he can identify the assailant. This even does not appeal to common sense. If the light was so dim and he could see the stabbing with the scooter light it is not only improbable but impossible that he would be in a position to identify the assailant who was a stranger as he claimed. On an overall reading of his evidence, it appears that his evidence to the extent he has gone out of the way to oblige the accused is not truthful. In the first information report itself, the fact that he had accompanied the complainant has been specifically mentioned. It has also been mentioned that he accompanied the complainant and the deceased to the hospital. DW-1 accepts that he had accompanied that deceased to the hospital, but thereafter denies to have gone to the police station. His statement that his signatures were taken on blank paper appears to be a cock and bull story. It is true, the evidence of defence witness is not to be ignored by the courts. Like any other witnesses, his evidence has to be tested on the touchstone of reliability, credibility and trustworthiness particularly when he attempts to resile and speak against records and in derogation of his earlier conduct and behaviour. It after doing so, the Court finds it to be untruthful, there is no legal bar in discarding it.

Coming to the plea that the presence of PWs 1 and 2 at the spot of occurrence is doubtful, it is to be noticed that both PWs 1 and 2 were cross-examined at length. Nothing infirm has been elicited to cast doubt on their vercacity. If the lack of motive as pleaded by the accused appellants is a factor, at the same time it cannot be lost sight of that there is no reason as to why PW-1 would falsely implicate the accused persons. There was no suggestion of any motive for such alleged false implication. Merely because PW-1 is a relation of the deceased, and PW-2 was known to him, that per se cannot be a ground to discard their evidence. Careful scrutiny has been done of their evidence and it has been found acceptable by both the trial Court and the High Court. We find no reason to take a different view.

Next plea is regarding non-examination of certain persons who were stated to be present.

In trials before a Court of Session the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code of Criminal Procedure, 1993 (for short 'the Code') enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence the proposes to adduce for proving the guilty of the accused. If he knew at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the Court that fact. Alternatively, he can wait further and obtain direct

information about the version which any particular witness might speak in court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.

When the case reaches the stage envisaged in Section 231 of Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear form the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the persecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved form repetition depositions on the same factual aspects. That principle applies when there are too many witnesses cited, if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice.

The situation in a case where the persecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other consisting of witnesses who have no such relation, the Public Prosecutor's duty to the Court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that any one among that category would not support the prosecution version he is free to state in court about that fact and skip the witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court.

A four-Judge Bench of this Court had stated the above legal position thirty five years ago in Masalti v. State of U.P., AIR (1965) SC 202. It is contextually apposite to extract the following observation of the Bench :

"It is not unknown that where serious offences like the present are committed and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses, and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the Court".

The said decision was followed in Bava Hajee Hamsa v. State of Kerala, [1974] 4 SCC 479. In Shivaji Sahabrao Babade v. State of Maharashtra, [1993] 2 SCC 793 Krishna Iyer J., speaking for a three-Judge Bench has struck a note of caution that while a Public Prosecutor has the freedom "to pick and choose" witnesses he should be fair to the Court and to the truth. This Court re-iterated the

same position in Dalbir Kaur v. State of Punjab, [1976] 4 SCC 158 and in Hukam Singh and Ors. v. State of Rajasthan, [2000] 7 SCC 490.

As regards delayed examination of certain witnesses, this Court in several decisions has held that unless the Investigation Officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therform. It cannot be laid down as a rule of universal application that it there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the examination offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion [See Ranbir and Ors. v. State of Punjab, AIR (1973) SC 1409 and Bodhraj @Bodha and Ors. v. State of Jammu and Kashmir, [2002] 8 SCC 45]. Consequently, we find no justifying reason or ground substantiated on behalf of the appellants to interfere with the concurrent findings recorded by both the courts based on relevant, cogent and trustworthy evidence adduced by the prosecution to prove the guilt of the appellants beyond reasonable doubt.

The inevitable result of the appeals is dismissal, which we direct.