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CASE COMMENT: MADHAV v. STATE OF MADHYA PRADESH- Ravishta Das¹**ABSTRACT**

In the modern society, politics, in one way or the other finds its way into every topic of daily discussion and deliberation. Applying for a seat in a college, getting better treatment in a hospital, applying for a loan in a bank- recommendations work everywhere. Therefore, it would not be wrong to state that power especially political, goes a long way to determine the outcome of any decision or situation. This also applies to crimes and criminal investigations. It is commonplace to notice the discrimination and partiality that is prevalent in the criminal justice system. One may even contend that two persons accused for the same crime would be treated very differently based on their position in the social ladder, influential connections and power. Here, the case we discuss is also similar wherein the police, who are supposed to be upholders of law, under political pressure, investigated the case to bury the truth fathom deep instead of trying to unearth the truth. The apex court very rightly and judiciously, considered all the evidence, circumstances and witnesses at hand to finally arrive at the decision to acquit the accused in the present case and the court, very aptly, also pointed out to several substantial facts and evidence which were missed and/or ignored by the High Court and the Sessions court while deciding upon the same matter. Also, the court answered some important questions of law which we will be discussing as we further analyse the apex court's judgement.

INTRODUCTION

Society wants to believe it can identify evil people, or bad or harmful people, but it's not practical. There are no stereotypes.

- Ted Bundy

True Crime is inherently 'evil'. It comprises those violations of the natural order which, if unchecked, make it impossible for men to live together.² Now, the question, what is a crime?

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is, a seemingly simple question. However, if one tries to provide a 'definition' for it, then in doing so, a series of inter-linked questions arises, which further make the given definition, somewhat less convincing. As Glanville Williams aptly pointed that the 'definition' of crime is one of the thorny intellectual problems of law.³ So, we find that the very definition and concept of crime is a variable and that it varies not only according to the values, ideals, faith, etc., of a particular society or group but also may depend upon the form of government, political and economic structure of the society and number of other factors.⁴ From this we find that at times, the crime and the criminal, can be shaped and distorted by the political influences rather than the truth. Here, we will discuss one such case where the informants of the crime were themselves made the accused owing to political pressure.

FACTS OF THE CASE

The accused involved in this case were, Smt. Sahodra Bai (hereinafter referred to as "A-2"), who is the appellant in one of these appeals, and is the sister of Shri Madhav (hereinafter referred to as "A-3") who is the appellant in the other appeal. Shri Raju Yadav who (hereinafter referred to as "A-1") is the husband of Sahodra Bai. The initial facts of the given case as per the prosecution are as follows. It was alleged that on the night of 13.05.2008, at about 22:30 hrs., all the three accused, in furtherance of the common intention of all, attacked one Pappu @ Nand Kishore (brother of A-1) with a knife and lathis which resulted in his death. Then with the intention of screening themselves from legal punishment for the same, A-2 took the victim to the Government hospital and then further sent a false information to the Police stating that the murderous assault on the victim was committed by two other persons by name Ruia Yadav (hereinafter referred to as PW-7) and Kailash Yadav (hereinafter referred to as PW-6). After examining the witnesses and evidence at hand, the Sessions Court convicted all the three accused for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as IPC) for life imprisonment along with a fine of Rs. 2500/- and the same was further upheld in the High Court. Therefore, challenging the punishment specified by the Sessions Court and confirmed by High Court of Madhya Pradesh, A-2 and A-3 filed a Special Leave Petition before the Supreme Court.

²K D GAUR, CRIMINAL LAW CASES AND MATERIALS (LEXIS NEXIS 2021).

³Glanville Williams, *Contemporary Legal Problems*, 107, 130 (1955).

⁴Id. at 1.

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ISSUES

- 1) Did the investigation in the instant case, instead of proceeding in pursuit of truth, proceed towards burying the truth?
- 2) Was there involvement of any external intervention during the investigation?
- 3) Whether the decisions, and therefore the punishment, given by the Sessions Court and the High Court were legally sustainable or not?

RULES

- 1) § 302 IPC: Punishment for murder
- 2) § 34 IPC: Acts done by several persons in furtherance of common intention

APPLICATION/ANALYSIS

The Supreme Court in the instant case allowed appeals of the appellants and the given conviction sentence was set aside. Now, let us further analyse the decision on the basis of the reasoning provided and facts and evidence available.

- o In the instant case, the prosecution mainly relied upon the following to establish the guilt of the accused:
 - i) The purported eye-witness account of PWs 4, 5, 6, 7 and 9
 - ii) The medical evidence regarding the cause of death, and
 - iii) The recovery of weapons namely, knife and lathis which were used for the commission of the offence from the houses of the accused and the report of the Forensic Sciences Laboratory (hereinafter referred to as FSL).
- o Now, although on the request of the prosecution, the Sessions Court declared PWs 4 and 5 (who were related to PWs 6 and 7) as hostile, the Sessions Court believed their testimony in part with respect to the presence of A-1 and A-2 at the spot of incident. However, the Sessions court disbelieved their evidence in relation to the assault on the victim by the accused. Interestingly, the High Court proceeded on the footing, without any rhyme or reason, as though PWs 4 and 5 were independent witnesses who corroborated the testimony of PW-9. Here, the High Court even overlooked the fact that the Trial Court declared them as hostile at the request of the prosecution. As it is evident from our discussion, in the First Information Report (FIR) No.331 of 2008

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registered on 13.05.2008, PWs 6 and 7 were named as the accused according to the statement given by A-2 from the hospital. Now, the Sessions Court disbelieved the evidence of PW-6 in entirety but accepted one portion on corroboration by one Smt. Radha Rani (mother of the victim). That said portion of evidence was relation to an argument which the victim had with his brother Raju (A-2) nearly two hours before his death which was due to non-repayment of an amount of Rs. 250/- borrowed by the deceased from Ruia Yadav (PW-7). The Sessions Court further examined PW-9, who was aged 16 years at the time of occurrence, as the 'star witness' and therefore, convicted all the accused as mentioned earlier. However, A-2 was acquitted of charges under Sections 211 and 194 IPC. It is pertinent to mention here that the statement of the so called "star witness" was recorded by the Police only after 21 days of the date of occurrence of the crime. Then as discussed, upon appeal, the High Court also upheld the decision given by the Sessions Court Relying mainly upon the testimony of the star witness PW-9 and the medical evidence regarding the cause of death. Consequently, A-2 and A-3 alone approached the Apex Court to seek relief.

o As the matter was heard in the Supreme Court, certain important aspects to the case were unearthed. Now, as emphasized by the Supreme Court, if we consider the sequence of events that happened from the date of occurrence of the crime, namely, 13.05.2008, would show that the investigation in this case, "instead of proceeding in pursuit of truth, had proceeded towards burying the truth". The sequence may be stated as follows:

i) Admittedly, when the FIR was filed it was on the basis of the information given by A-2 and received by one Shri G.P. Dwivedi (Assistant Sub-inspector) and contained PWs 6 and 7 as accused. Evidently, the investigation was taken over by another Assistant Sub- inspector by name R.K. Sen, examined as PW-14. Now, in the normal course, one would expect the investigation to proceed against PWs 6 and 7 (named as accused in the FIR). However, the investigation carried out by PW-14 proceeded in the "reverse gear" as the informant A-2 and her husband and brother were treated as the accused and the original accused as witnesses. One, for obvious reasons, would expect the Investigation Officer (hereinafter referred to as IO) to record the statements of the informant, visit the place of commission of the crime, secure the accused and collect evidence to find out the truth. However, the opposite was seen as

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the case was taken up against the informant and her family. The reason for this may be as given below.

- ii) During Cross-examination PW-14 admitted that there were demonstrations by political parties when the investigation was taken up by him on 14.05.2008 against Ruia and Kailash (PWs 6 and 7). Further, the IO obtained a medical report from the medical officer which stated that there were several abrasions on the back of A-1 which the IO concluded to have been caused during his scuffle with the victim, leading to the death of the victim.
- iii) After obtaining the said medical report, the IO effected the arrest of all the accused. Therefore, “within three days of the commission of the crime, persons named as accused in the FIR were made witnesses for the prosecution and the informant, her husband and her brother were made as accused.”
- o At this juncture, the court referred to the case of Kari Choudhary v. Mst. Sita Devi &Ors. Based upon the decision given by the Hon’ble Supreme Court in the said case, the court in the instant case asserted the following. “It happens at times that the real culprit lodges the first information against known or unknown persons, to misdirect the investigation of an offence. But even in such a case, it is only during the course of investigation into the first FIR that the case may take a U-turn.” If such a situation occurs, then informant may have to face additional charges. This is the very reason why, in the instant case, the prosecution charged A-2 for the offences punishable under Sections 194 and 211 IPC. But the Trial Court acquitted her of the charges under these two provisions.
- o The accused, from the beginning took the stand that they were made the scapegoat owing to political pressure. Let us examine how this statement of the accused is supported by the facts and evidence in this case.
 - i) The IO on the question of whether he arrested PWs 6 and 7 or not, he “feigned ignorance”. This can be found in his answer to this very question- “...I have not tried to arrest them.”
 - ii) The star witness, PW-9, who was just 16 years of age at the time of occurrence of the incident, claimed not have not only knowledge about the arrest of PWs 6 and 7 but also revealed “what happened thereafter”. This may be inferred from PW-9’s testimony- “It is true that after death of my MousaPappu, Police had taken into custody Rooiya and Kailash for murder...It is true that for

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taking into custody of Rooiya and Kailash there was strike in Mohalla...It is true persons of Yadav caste put pressure on police and leaving Rooiya and Kailash...”

- iii) This is further corroborated by another admission made by PW-14- “I was given verbal instructions by higher police officers that Kailash Yadav, Rooiya @ Bhagirath Yadav be impleaded as witnesses instead of accused. When I have started the investigation at that time Additional Superintendent of Police Tilak Singh has given me verbal order that Kailash & Rooiya be impleaded as witnesses instead of accused.”
- o According to the IO the weapons used in the purported criminal act were seized from the houses of the accused in the presence of witnesses and ‘seizure memos’ prepared. But those witnesses turned ‘hostile’. One of them, Dal Chandra they kept on reiterating the fact that no seizure of weapons was affected in his presence, despite the existence of his signature in the seizure memo and memorandum statement.
- o Further the Court relied upon several judgements when it came to the question of finding blood in and around the crime scene. And finally stated the following from the case of Balwan Singh v. State of Chhattisgarh, “there cannot be any fixed formula that the prosecution has to prove, that the blood groups match. But the judicial conscience of the court should be satisfied both about the recovery and about the origin of the human blood.”⁵ In the instant case the Court asserted that, “in the case on hand, even PW-1, who allegedly witnessed the seizure had turned hostile. Right from the beginning there has been an attempt on the part of the prosecution to shield the culprits named in the first FIR, on account of political pressure.” And also, as it was not conclusively proved that the blood on the weapons recovered was of the deceased himself, so the mere presence of blood in the weapons would not infer the commission of the crime on part of the accused. Lastly, it may also be mentioned here, that the investigation started with “a pre-determination that the informant, her husband and her brother were the culprits, and the original accused were innocent”. This may be inferred from a portion of evidence of the IO wherein he included that the statements of the original accused along with the statements of other ‘witnesses.’

CONCLUSION

⁵Balwan Singh v. State of Chhattisgarh, (2019) 7 SCC 781.

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The Supreme Court while deciding upon the matter, pointed towards the fact that as far as the prosecution's contention pertains with regards to the intention behind the death of the victim, A-1 had no reason to take up the cause of Ruia and go to the extent of "committing the murder of his own brother". Further, there was nothing on record to show that the blood stains said to have been present in those weapons, matched with the blood of the deceased. Also, the Hon'ble court recognised the fact that the accused were represented by amicus curiae in the High Court, for some reason. Therefore, the court asserted that, "As a result, the accused do not appear to have had the best of legal assistance. And, it is in such type of cases that the burden of the court is very heavy and unfortunately, the Sessions court and the High court did not discharge this burden properly." As it is clear and unambiguous from the evidence presented and witnesses heard, the Court stressed on the fact that the investigation, from the beginning was conducted "not with the intention of unearthing the truth, but for burying the same fathom deep, for extraneous considerations", which as evidently proved, was political pressure. The Apex Court restated the contention that the victim's brother murdering him by taking up PW-7's cause was totally "unbelievable". Further, it was held against the contention of prosecution that A-1 was not entitled to acquittal. The Supreme Court, in this regard, stated the following, "This is a case where we have disbelieved, in entirety, the story of the prosecution. Therefore, to deny the benefit of the said conclusion to A-1 merely on the ground of a technicality that he is not on appeal would be to close our eyes to a gross injustice, especially when we are empowered under Article 142 to do complete justice." Therefore, the appeals filed by the appellants were allowed and the conviction handed over previous decisions was set aside.