

(2012) 12 MP CK 0063

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1321 of 2004 and Criminal Appeal No. 734 of 2005

Baban, Pramod

APPELLANT

Vs

State of Madhya Pradesh
 Vilas Vs The State of
Madhya Pradesh

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 302

Citation : (2012) 12 MP CK 0063

Hon'ble Judges : T.K. Kaushal, J;Rakesh Saxena, J

Bench : Division Bench

Advocate : Sangeeta Sharma in Criminal Appeal No. 1321/2004, Mr. V.P. Singh in Criminal Appeal No. 734/2005 and Criminal Appeal No. 905/2008, for the Appellant; Umesh Pandey, Government Advocate in Criminal Appeal No. 1321/2004, Criminal Appeal No. 734/2005 and Criminal Appeal No. 905/2008, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Saxena, J.—The aforesaid three appeals have been filed by the appellants challenging their conviction under Sections 302/149, 323/149 and 148 of the Indian Penal Code and sentence of imprisonment for life with fine of Rs. 100/-, rigorous imprisonment for six months and rigorous imprisonment for one year on each count respectively in Sessions Trial No. 32/2002 by First Additional Judge to the Court of First Additional Sessions Judge, Chhindwara. The judgment of conviction and sentence of appellants Babban, Pramod and Rajendra was passed by the learned Additional Sessions Judge on 31.7.2004 which has been challenged by them in Criminal Appeal No. 1321/2004. Since appellants Kailash and Vilas absconded on 25.3.2004, after their surrender the judgment of conviction against Vilas, appellant of Criminal Appeal No. 734/2005, was passed on 28.2.2005 and the judgment of conviction against Kailash, appellant of Criminal Appeal No. 905/2008, was passed on 7.10.2005.

2. Since appellants Vilas and Kailash had absconded at the stage of recording statements of accused, the prosecution evidence against them remained common. Therefore, this judgment shall govern the disposal of all the aforesaid three appeals.

3. In short the prosecution case is that in the night of 26.11.2001 at about 10.00 O'clock when Sumanbai (PW-16) was preparing food in her house in Piplanaryanwar Mohalla, she heard sounds of quarrel coming from the other side of river. Noticing cries of her son Anil she rushed and went across the river and saw accused persons viz. Kailash, Raju, Baban, Vilas and Pramod assaulting her son Anil with sticks, Kudali and Sabbal. Her younger son Purshottam was also there. Accused persons assaulted him too. Anil suffered many injuries on his head, chest, back, both hands and other parts of the body. She alongwith Purshottam and her husband Shankar went to lodge report at Police Station Lodhikheda. ASI R.K. Jaiswal (PW-18) registered Crime No. 179/2001 under Sections 147, 148, 149, 294, 323 and 307 of the Indian Penal Code against the accused persons.

4. Injured Anil was sent to Primary Health Centre Badchicholi for treatment where Dr. A.K. Bhagat (PW-7) found multiple injuries on his body. Since his condition was serious, he referred him to District Hospital, Chhindwara. While being taken to Community Health Centre Sonsar, on way he died. Dr. B.M. Andev (PW-9) declared him dead and sent an intimation (Ex. P/25) in regard to it to Police Station Sonsar. After conducting inquest proceedings, dead body of Anil was referred for postmortem examination. Dr. Parmanand Agrawal (PW-6) of Sonsar hospital conducted postmortem examination and vide his report (Ex. P/17) found more than 26 injuries on his body.

5. During investigation, spot map etc. were drawn and accused persons were arrested on 27.11.2001. On their information, sticks and other articles were seized. After completion of the investigation, charge sheet was filed and the case was committed for trial.

6. On charges being framed, all the accused persons abjured their guilt and pleaded false implication. According to them, deceased was a man of criminal antecedents therefore he had enmity with many people of village. It was suggested on behalf of accused persons to prosecution witnesses that a mob of village people caught deceased in the night and assaulted, but appellants were implicated because of enmity.

7. In support of its case, prosecution examined 18 witnesses. Accused persons also examined Aditya Maheshwari and Sawan in their defence.

8. Learned Additional Sessions Judge, after appreciating the evidence and upon trial, held the appellants guilty and convicted and sentenced them as aforesaid.

9. Aggrieved by their conviction and sentence appellants have filed these appeals.

10. Learned counsel for the appellants submitted that the conviction of

appellants rested on the evidence of alleged eyewitnesses Purshottam (PW-11) and Suman (PW-16). These witnesses were respectively the brother and mother of deceased. Though Shanker (PW-15), the father of deceased, was also examined as eyewitness, but his evidence was disbelieved by the trial court. Purshottam and Suman were not reliable witnesses. Learned trial judge misappreciated their evidence by ignoring material contradictions and omissions found in their evidence. It was impossible for Suman to have heard the cries of deceased in the night and to reach at the spot. It was apparent from the evidence of aforesaid witnesses that a mob of village people had assaulted deceased, but, on being prompted by police they named appellants in the first information report and in the trial. On the other hand, learned Government Advocate supported impugned judgments and justified conviction of appellants contending that the evidence of Purshottam (PW-11) and Sumanbai (PW-16) was reliable.

11. We have heard learned counsel for the parties and perused the impugned judgments and the evidence on record carefully.

12. It has not been disputed by the learned counsel for the appellants that Anil died out of injuries and that his death was homicidal. It is also apparent from the evidence of Purshottam (PW-11), Sumanbai (PW-16) and Sub Inspector A.K. Dahiya (PW-14) that Anil has died. Inspector Dahiya, after issuing notices to witnesses, conducted inquest proceedings and recorded memorandum (Ex. P/25). He sent the dead body of Anil for postmortem examination. Dr. Parmanand Agrawal (PW-6) conducted postmortem examination of the body in Community Health Centre Sonsar and found following injuries:-

1. Lacerated wound 5 cm x 1 1/2 cm x bone deep over right fronto parietal region.
2. Lacerated wound 5 cm x 2 cm x bone deep over right parieto occipital region.
3. Contusion 2 cm x 1 cm over base of nose.
4. Lacerated wound 2 cm x 1/4 cm x 1/2 cm deep over postero lateral aspect of lower 1/3rd of right arm.
5. Lacerated wound 2 cm x 1/2 cm x skin deep over lateral aspect of right elbow.
6. Contusion 8 cm x 2 cm oblique over lateral aspect of upper 1/3rd of right arm.
7. Contusion, irregular 4 cm x 2 cm over lateral aspect of lower 1/3rd of right arm.
8. Contusion 3 cm x 2 cm over dorsum of right hand with irregular diffused swelling.
9. Lacerated wound 2 cm x 1/2 cm x skin deep over medial aspect of lower 1/3rd right elbow.
10. Contusion 10 cm x 2 cm over antero lateral aspect of middle 1/3rd of right thigh.

11. Contusion 8 cm x 2 cm over antero lateral aspect of right knee.
12. Contusion 5 cm x 1 cm over right knee.
13. Lacerated wound 1 cm x 1/2 cm x skin deep over right shin in lower 1/3rd region.
14. Lacerated wound 1 1/2 cm x bone deep over middle 1/3rd of left leg.
15. Contusion 10 cm x 2 cm over medial aspect of lower 1/3rd of right thigh with obvious deformity suggesting fracture of underneath femur bone lower 1/3rd region.
16. Multiple contusions of various size and length over anterior and lateral aspect of left thigh, left knee and over upper 1/3rd of left leg overlapping each other and varying in direction.
17. Contusion 8 cm x 2 cm over posterior aspect of right knee.
18. Contusion 10 cm x 2 cm over posterior aspect of left calf.
19. Contusion 12 cm 2 cm over antero lateral aspect of upper left calf.
20. Contusion 4 cm x 1 cm over antero medial aspect of left arm.
21. Lacerated wound 3 cm x 1/2 cm x skin deep over 1/3rd of left arm.
22. Lacerated wound 1 cm x 1/2 cm x skin deep over left arm.
23. Contusion 10 cm x 2 cm over lateral aspect of middle 1/3rd of left arm.
24. Contusion 6 cm x 2 cm over lateral aspect of lower 1/3rd of left arm.
25. Contusion 10 cm x 2 cm over left upper arm.
26. Contusion 12 cm 2 over lateral chest wall. Crepitus felt underneath suggesting fracture of ribs.

On dissection, blood infiltration found in tissues surrounding injuries suggested them to be of ante mortem origin. Fractured ends of right femur bone and ribs were found congested.

Opinion:-Mode of death of deceased was syncope as a result of shock and haemorrhage because of extensive injuries which he received during his life time. Parietal bone was found fractured which had caused extra dural blood clots around the brain. Similarly, 5th, 6th and 7th ribs of left side were also found broken. Left lung was lacerated. The death was caused due to injuries on vital organs like lungs and head. His postmortem examination report is Ex. P/17.

From the above evidence, it stood amply established that the deceased Anil died a homicidal death.

13. Next question before us is whether accused/appellants caused death of deceased ? In this regard prosecution examined three eyewitnesses viz.

Purshottam (PW-11), Shanker (PW-15) and Sumanbai (PW-16).

14. Shankar (PW-15) was disbelieved by the trial court since he made improvements before the court by saying that he saw the incident. As far as the evidence of Purshottam (PW-11) and Sumanbai (PW-16) is concerned, learned counsel for the appellants contended that they are respectively the brother and mother of deceased. They have spoken false against the appellants because of enmity. Their evidence was discrepant and contradictory to each other indicating that they were not present at the place where incident occurred and they named the appellants because of suspicion as appellants had also reached the spot alongwith other persons subsequently.

15. Purshottam (PW-11), the younger brother of deceased, was of about 12-13 years of age at the time of occurrence. He stated that he alongwith his brother Anil had gone to sleep at Kotha of Nana. At about 10.00 O'clock in the night all the accused persons reached there and shouted calling Anil out, but Anil ran away. Accused persons caught him in the field of cauliflower and belaboured him with Lathis. Accused Raju and Baban also inflicted two Lathi blows to him (witness) and carried Anil by hanging in sticks towards Bazar Chowk. After the beating was over, village people and police reached there. He stated that he saw accused persons beating his brother in the light of electric bulb. Learned counsel for the appellants argued that since crops of millet was of about the height of witness it was not possible for him to have seen the incident and further that it was admitted by the witness that electricity supply used to remain off for several hours in the night. On perusal of the evidence of this witness it seems that in some part of the field there was millet crop and in rest of it there was cultivation of cauliflower. Therefore, it cannot be accepted that he could not have seen the incident especially when he was sleeping in the same room with the deceased. He firmly stated that he could see the faces of accused persons in the electric light. There appeared a minor contradiction in his evidence that in his police statement (Ex.D/1) he stated that he and his brother had taken meals at his house in the night at about 9.00 pm whereas in the court he stated that they took meals in the Kotha where they had gone to sleep.

16. Very frankly Purshottam (PW-11) admitted that a number of criminal cases were registered against the deceased. Since there were warrants against him, police used to come to his house to enquire about him. He stated that deceased had come home in that night after about 6-8 months and just thereafter accused persons alongwith police came to his house, but Anil escaped. It appears that out of fear of police deceased did not stay in his house and instead went to stay in the Kotha of Nana situated across the river in front of his house. The discrepancy about eating of food at his house or at Kotha was therefore not of material nature. PW-11 stated that at the time of mar-peat of Anil, except him none else was there and his mother came later when accused persons were carrying his brother hanging on the sticks. By that time 25-30 village people had also come. From the evidence of Purshottam it is revealed that there had been a committee

in his village members whereof used to catch the criminals. Accused persons happened to be the members of that committee. He categorically stated that there was electric light near the Kotha of Nana. Though learned counsel for the appellants contended that in the night there was no light in the village, but there appeared nothing on record to indicate absence of electric light at the time of occurrence. PW-11 further stated that when accused persons took Anil hanging towards Basti, he alongwith his mother went to Police Chowki where his mother reported the incident to police. He stated that in the night police took appellants in custody. Police took his brother to Chowki from Basti. He firmly denied that in the night police people assaulted his brother in the Chowki.

17. Learned counsel for the appellants referring to the evidence of PW-11 submitted that police people told to Suman that the appellants had beaten her son therefore she should name them, and because of it appellants were roped in. It appears that in the end of the cross-examination, PW-11 made this stray statement. PW-11 was a young boy of about 16 years of age when he appeared in the court. He was subjected to a vigorous cross-examination. It is quite possible that under the stress of cross-examination he made such a passing statement. In view of his total evidence, this part of his statement cannot be made basis for inferring that appellants were named merely on the suggestion by police and that he did not see them assaulting his brother. It has been observed by the Apex Court in case of State of Karnataka v. Shariff-2003 Cr.L.J. 1254 that the testimony of a witness which is fairly reliable on the factum of the incident cannot be discarded on account of a stray sentence in his cross-examination.

18. The evidence of Sumanbai (PW-16), in our opinion, corroborates the testimony of Purshottam (PW-11) to some extent. Though she stated that on hearing noise she went at the spot and saw accused persons assaulting Anil and saying that he should be killed, yet it appears from the evidence of PW-11 that she reached there after the assault was over. She was also contradicted by PW-11 on the point that Anil was not a criminal and was not absconding. According to her, he was living with her in the house. She stated that she saw the incident from the front of her house and then reached at the spot. When she reached, Anil was lying unconscious, persons who were watching the incident had run away and only accused persons remained there. As soon as she reached, police also reached there. Her evidence that she saw accused persons assaulting, in our opinion, cannot be accepted in view of the evidence of PW-11 that she reached subsequently and also in view of her own statement that she saw Anil lying unconscious. However, from her evidence it stood established that there was light near Kotha and that PW-11 was present at the spot at the time of occurrence. Purshottam (PW-11) as well as Sumanbai (PW-16) firmly denied that about 20-50 persons of the village or policemen assaulted the deceased.

19. Investigating officer R.K. Jaiswal (PW-18) deposed that Sumanbai came to police station and lodged a report (Ex P/32) in the night. On perusal of FIR (Ex.P/32) it is revealed that the report was lodged soon after the occurrence i.e.

11.00 O'clock in the night. In this report names of all the five accused were mentioned. No suggestion was given to Inspector Jaiswal that he prompted Sumanbai to name the accused persons as assailants. Inspector Jaiswal also denied that either he or other village people assaulted deceased. R.K. Jaiswal also stated that deceased was a habitual offender. Number of cases were pending against him in which he was wanted. There were warrants against him. Whenever police went to his house, he was never found there. In the evening, on the day of the occurrence also he went to search him at his house, but his mother and brother told that he was not in the village, but, in the night, at about 10.00-10.15 pm he brought him in injured condition from the place of occurrence with the help of 4-5 persons. Purshottam (PW-11) and Sumanbai (PW-16) stated that accused persons had carried deceased hanging on sticks, but Inspector Jaiswal could not say as to who brought deceased from the spot. According to him, he did not take deceased to Police Chowki, he sent him in a jeep to hospital, directly.

20. Aditya (DW-1) stated that in the night at about 10.00 pm he was in his hut. At that time there was no light, but by inverter a tube light and a fan was running in his hut. When he heard noise and went out of his hut, he found Inspector Jaiswal, some policeman and village people there. According to him, police persons told to him that people of village had assaulted Anil and they were investigating the matter. At that time about 100-150 persons were there and were running away after seeing police. He could not identify anybody because it was dark. In view of the more reliable evidence of Purshottam (PW-11) and Sumanbai (PW-16) we are unable to accept the evidence of Aditya (DW-1) that there was no light.

21. After a critical scrutiny of the evidence of Purshottam (PW-11) we find that his evidence is consistent, cogent and trustworthy. Despite a lengthy cross-examination he remained firm that appellants caught his brother in the field of cauliflower and assaulted him with Lathi and Kudali etc. He, though happened to be the brother of deceased, but he honestly admitted that his brother was a habitual offender and number of cases were pending against him. His presence at the spot stood established by the fact that he had also been assaulted in the incident and had suffered injuries. Though his injuries could not be proved in the court because it escaped notice of the prosecutor to question the doctor in respect of him, but the requisition by police Ex.P/28 sent to doctor in this regard was proved by Station Officer of Police Station N.P. Dwivedi (PW-17). The evidence of Purshottam stood further corroborated from the fact that he accompanied his mother when she went to lodge first information report (Ex.P/32) in the night at 11.00 pm, and also from the evidence of Dr. Parmanand Agrawal (PW-6) who conducted postmortem examination of the dead body and found more than 26 injuries caused by hard and blunt objects on it. Though some discrepancies were noted in the evidence of Purshottam, but they were not on material aspects of the occurrence. It has been held by the Apex Court in Kuria and another vs. State of Rajasthan-2012 Cr.L.J. 4707 that discrepancies or

the improvements which did not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to impartially and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case such discrepancy should not be attached the deposition. The improvements or variations must essentially relate to the material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness.

22. It is true that no specific evidence has been led by the prosecution to establish motive on the part of accused/appellants, but in view of the direct and reliable evidence of eyewitness Purshottam (PW-11) it becomes insignificant. It appears that appellants feeling themselves responsible for the security of the village being members of the village committee assaulted deceased in the night who happened to be a habitual offender. In view of the fact that they caused more than 26 injuries to deceased whereby his skull bones and ribs were fractured and there was excessive haemorrhage from the vital organs of his body, in our opinion, it stood established that appellants assaulted deceased with the intention of committing his murder.

23. For the reasons afore-recorded we find no substance in the aforesaid appeals. Accordingly, all the three appeals are dismissed. A copy of this judgment be placed in the record of Criminal Appeal No. 734/2005 and Criminal Appeal No. 905/2008.