
(2018) 01 MP CK 0196
In the Madhya Pradesh High Court
Case No : 119 of 2000

Babloo @ Om Prakash

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 05-01-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#),
[Section 201](#), [Section 34](#) -
Punishment for murder - Causing disappearance of evidence of offence or giving false information to screen o

Citation : (2018) 01 MP CK 0196

Hon'ble Judges : S.K. Gangele, Anurag Shrivastava

Bench : Division Bench

Advocate : Sankalp Kochar, Satish Chaturvedi, Sameer Seth, Pradeep Singh

Judgement

1. These appeals have been filed against a common judgment dated 05/11/1999 passed in Sessions Trial No. 270/1998.
2. Criminal Appeal No. 119/2000 has been filed by the accused Babloo @ Om Prakash. He is convicted for commission of offence punishable under Section 302 and 302/34 of IPC and awarded sentence of life and fine amount of Rs. 5000/-.
3. Criminal Appeal No. 3180/1999 has been filed by appellants Raju and Rajesh. Both the appellants have been convicted for commission of offence punishable under Section 302 of IPC and awarded sentence of life.
4. Criminal Appeal No. 3123/1999 has been filed by the accused Balli @ Shamsul Hassan. He has been convicted for commission of offence punishable under Section 201 of IPC and awarded sentence R.I. for three years and fine amount of Rs. 10,000/-.
5. Prosecution story, in brief is that, on 23/05/1998 Sunil Sahu was going to the

residence of his brother-in-law (Jija) on his scooter. The deceased was sitting behind the scooter. He was pillion rider. When they come back from the residence of brother-in-law at around 9.15 in the night, near Dal Mill accused Babloo Sahu, Rajesh Basod and Raju Pal pushed them and thereafter Babloo inflicted injuries by Gupti on the person of the deceased, Raju and Rajesh had also inflicted injuries by knife on the deceased. After hearing cry of the deceased, complainant Sunil, Kanhaiyalal, Prakash, Sukharam and Dwarka Vishwakarma reached at the spot. The deceased was taken to police station where complainant lodged report Ex. P/1. Thereafter deceased was referred to Hamidiya Hospital where he was declared dead. Station House Officer Incharge conducted investigation. After investigation the police filed charge sheet. The allegation against the accused appellant Balli is for commission of Offence punishable under Section 201 of IPC. The appellants abjured their guilt during trial. The trial court held the appellants guilty and awarded the sentence.

6. There are three eye witnesses in the case PW/1 Sunil Sahu, PW/2 Kanhaiyalal and PW/3 Gyarsilal @ Guddu.

7. PW/1 Sunil Sahu deposed that on 23/05/1998 I along with deceased Jamna Sahu had gone to the house of his sister on Bajaj Scooter.

Deceased was sitting behind me when we reached, at the back of Dall Mill, Babloo, Raju and Rajesh had beaten the deceased. Babloo was

armed with gupti, Raju and Rajesh were armed with Knife. All the three persons had inflicted injuries on the person of the deceased by gupti and

knife. After hearing my cry Kanhaiyalal, Prakash, Sukharam and Dwarka Vishwakarma reached at the spot. Thereafter, accused persons ran

away. The deceased was taken to the police station where I lodged report Ex. P/1. Deceased was referred to Hamidiya Hospital where he was

declared dead. The appellants had beaten the deceased on account of old rivalry. The Police prepared spot map which is Ex. P/2 and I signed the

same. Red earth and plain earth was also collected vide Ex. P/3, I signed the same. Police seized handle of gupti vide memo Ex. P/4. Scooter was

also seized vide seizure memo Ex. P/4 I signed the same. I also signed dead body panchnama Ex. P/5. There is a lengthy cross examination of this

witness, however, the evidence of this witness is natural and reliable. There is no

major contradiction and omission in the statement of this witness.

8. PW/2 Kanhaiyalal brother of the deceased, deposed that I was at my kirana shop in the night. I heard cry and reached at the spot which is 20

footsteps away from my shop. I saw that Babloo was armed with gupti, Raju and Rajesh were armed with knife. They were beating my brother. I

also cried and thereafter other persons reached on the spot. Naveen Basod instigated the accused persons. The police prepared spot map which

is Ex. P/2, I signed the same. I also signed seizure memo Ex. P/3 by which plain and red earth was seized. I also signed dead body supurdginama

Ex. P/7. He further deposed that 3-4 years before Babloo had beaten Ganeshram and a case was registered under Section 307 of IPC. In the

aforesaid case my brother helped the family members of Ganeshram that is why the accused persons had ill will against the deceased.

9. PW/3 Gwarsilal @ Guddu, deposed that I had a tea shop at Chhola Naka. At the time of incident I was at a distance of 10 footsteps. I was

present at the shop, I heard the cry coming from Dall Mill and thereafter I reached on the spot. I saw that Babloo was armed with gupti, Raju and

Rajesh were armed with knife had been beating the deceased. The deceased received many injuries. On raising alarm the accused persons ran

away from the spot. Kanhaiyalal also reached on the spot. Thereafter deceased was taken to the police station where report was lodged. The

deceased was referred to Hamidiya Hospital where he was declared dead. The evidence of all the three witnesses is natural.

10. PW/9 Dr. P.S. Jain, deposed that on 24/05/1998 I was posted at Medico Legal Institute, Bhopal. I performed postmortem of the deceased. I

noticed following injuries on the person of the deceased.

VERNACULAR MATTER OMITTED

Incised wounds were caused by sharp and hard edged weapon and all punctured wounds by penetrating sharp edged weapon. Injuries could be

caused by gupti and knife which were recovered from the accused persons.

11. PW/4 Jagdish deposed that police had taken me and they had taken my signature on three or four papers. I signed arrest memo Ex. P/8,

memorandum of Bablu Ex. P/9, memorandum of Rajesh Ex. P/10 and memorandum of Raju Ex. P/11, seizure memo Ex. P/12, Ex. P/13 and

P/14. He further deposed that before me the appellants had not given any

information neither any articles were seized before me. He was declared hostile.

12. PW/5 Ganesh who is also a witness of seizure and memorandum, turned hostile. He denied the fact that the appellants were arrested before me and he had given any memorandum and seizure memo had made before me. He further deposed that police had taken some signature on blank paper at the police station.

13. PW/6 Harishankar also declared hostile. PW/11 Mohd. Saleem, PW/12 Naseer Khan and PW/14 Kasim Khan also declared hostile.

14. PW/13 R.S. Vishwakarma is the Investigating Officer deposed that on 23/05/1998 I was posted as Station House Officer In-charge Gautam

Nagar Bhopal. At around 9.45 Sunil Sahu lodged a report Ex. P/1 which was registered by me and I signed the same. After that I immediately

reached at the place of incident and prepared spot map Ex. P/2 and signed the same. I seized plain earth and red earth vide seizure memo Ex. P/3.

I also seized Scooter No. M.P. 04-X-0342 vide seizure memo Ex. P/4 and handle of gupti vide seizure memo Ex. P/3 I signed the same. I

reached at Hamidiya Hospital and prepared panchanama of dead body Ex. P/5. Thereafter I recorded statements of Kanhaiyalal, Sunil Sahu,

Guddu @ Gyarasilal, Sukhram, Harishankar, Mohd. Kareem, Narayan Prasad, Rajendra Sharma, Masroor, Mohd. Salim. Mohd. Naseer,

Bhoopendra Solanki and Kaluram Sahu. I arrested the accused persons on 25/05/1998 and thereafter recorded the memorandum of accused

persons. Accused Babloo in his memorandum given information that he had kept knife at the residence of Balli. A Maruti Van was also kept at the

residence of Balli, I prepared the memorandum. Accused Rajesh in his memorandum deposed that I had kept knife and clothes which I was

wearing at the time of incident at the residence of Balli I prepared memorandum Ex. P/10. I signed the same. Similarly Raju in his memorandum

informed that I had kept knife and clothes at the residence of accused Balli. I prepared memorandum Ex. P/11. Thereafter, I went at the residence

of Balli and seized a gupti without handle and shirt full pant vide seizure memo Ex. P/12, I signed the same. A knife was also seized and certain

clothes vide seizure memo Ex. P/13. Similarly another knife vide seizure memo Ex. P/14 was seized and certain clothes and maruti Van was seized

from the residence of Balli vide seizure memo Ex. P/16. The accused persons were arrested. Seized articles were sent to FSL Gwalior for

analysis. Report of the FSL, Gwalior is Ex. P/30.

15. From the evidence of eye witness PW/1 who was with the deceased and travelling with the deceased and PW/2, PW/3 who immediately

reached at the spot both had their shops near the place of occurrence this fact has been established that all the three accused persons had been

beating the deceased. Babloo was armed with gupti, Raju and Rajesh were armed with knife. From the evidence of doctor who performed

postmortem. This fact has been established that the deceased had received number of injuries caused by gupti and knife. Most of the injuries were

on the vital parts of the body. Looking to the number of injuries, this fact has been established that the accused persons had used sufficient force to

kill the deceased and their intention was to kill the deceased. They were armed with deadly weapons and they had assaulted the deceased in the

night. FIR of the incident Ex. P./1 was lodged promptly. Time of incident is 9.30 pm and FIR was lodged at about 9.45 pm. The names of the

accused persons have been mentioned. Hence in our opinion, the trial court has rightly convicted the appellant Babloo @ Om Prakash for

commission of offence punishable under Section 302 and 302/34 of IPC and awarded sentence of life and fine amount of Rs. 5000/-, appellants

Raju and Rajesh for commission of offence punishable under Section 302 of IPC and awarded sentence of life.

16. In regard to conviction of appellant Balli @ Shamshul Hassan. He has been convicted for commission of offence punishable under Section 201

of IPC and awarded sentence R.I. for three years and fine amount of Rs. 10,000/-. The trial court has relied on the evidence of I.O. There is no

evidence of independent witness. The witnesses of seizure PW/4 and PW/5 turned hostile. They deposed that police had taken their signature on

blank paper, hence, this fact has not been proved that the seized articles i.e. knife, gupti and clothes were seized from the residence of accused

Balli. The seizure witness of Maruti Van turned hostile. There is no evidence that the accused persons have entered into a conspiracy for

concealment of dead body. Section 201 of IPC as under:-

201. Causing disappearance of evidence of offence, or giving false information to

screen offender.-Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false; if a capital offence.-shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life.- and if the offence is punishable with 1[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; if punishable with less than ten years" imprisonment.- and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both

In the present case, the prosecution did not prove the fact that the seized articles i.e. gupti and knife were recovered from the house of appellant

Balli because witnesses of seizure PW/4 and PW/5 turned hostile. Apart from this there is no evidence that the appellant has involved actively in

participation of crime. Hence, the trial court has committed an error in convicting the appellant Balli @ Shamshul Hassan for commission of offence

punishable under Section 201 of IPC and awarded sentence R.I. for three years and fine amount of Rs. 10,000/-.

17. On behalf of the appellant Babloo @ Omprakash in Cr. A. No. 119/2000 an application has been filed by learned counsel for the appellant. It

is mentioned in the application that the appellant is detained in another offence also.

18. Consequently, Criminal Appeal No. 3180/1999 and Criminal Appeal No. 119/2000 are hereby dismissed. The conviction of appellants Raju,

Rajesh and Babloo @ Om Prakash and sentence awarded by the trial court is hereby upheld. Appellant Raju is absconding, police have to take

steps to arrest him.

19. Criminal Appeal No. 3123/1999, filed by appellant Balli @ Shamshul Hassan is hereby allowed. His conviction and sentence awarded by the trial court is hereby set-aside. The appellant Balli @ Shamshul Hassan is on bail, his bail bonds are hereby discharged.