

(2018) 08 MP CK 0232

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.379 Of 2008

Bharosa alias Rambharosa (dead) and Shivcharan & two Ors	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision : 29-08-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 374
Indian Penal Code, 1860 — Section 34, 302, 323
Evidence Act, 1872 — Section 134

Citation : (2018) 08 MP CK 0232

Hon'ble Judges : Sheel Nagu, J;Vivek Agarwal, J

Bench : Division Bench

Advocate : A.K. Jain, S.S. Dhakad

Judgement

Vivek Agarwal, J

This appeal has been filed under Section 374 of the Criminal Procedure Code against the judgment of conviction and sentence passed by the Second

Additional Sessions Judge, Ashoknagar on 30.04.2008 in Sessions Trial No.242/2006, whereby all the appellants have been convicted under Section

302 of the Indian Penal Code (for short â??IPCâ??) with life imprisonment and fine of Rs.10,000/- each and in default of payment of fine, further

R.I. of three monthsâ?? each. They have also been convicted under Section 323/34 of IPC with three monthsâ?? R.I. and fine of Rs.5,00/- and in

default of payment of fine, further R.I. of 15 days.

2. At the outset, the learned counsel for the appellants as well as the learned Public Prosecutor admit that appellant no.1-Bharosa alias Rambharosa

son of Baldev Chidar has died and, therefore, this appeal stands abated for appellant no.1-Bharosa alias Rambharosa son of Baldev Chidar.

3. Prosecution story in brief is that on 26.08.2006 at about 7.00 PM at Village Depalkhedi, Pollice Station Nai Sarai, District Ashoknagar when

husband of the complainant, namely, Ghutta, was returning from his work from the house of Patel of Village Megona, complainant Vineeta Bai (PW1)

was standing outside her house at a distance of about 100-125 feet when she saw appellant no.1-Bharosa, his son Rajesh and wife Geeta Bai armed

with axes and Shivcharan son of Bharosa armed with farsa attacking on her husband when she shouted and ran for help, her husband had fallen down

and all four accused persons had caused grievous injuries to her husband on his head, hand, face, neck, which were profusely bleeding with the help of

farsa and axe. When she reached the place of the incidence, Shivcharan caught hold of her hand and Bharosa hit her with farsa from reverse side

causing injuries in her limbs, resultantly she had fallen down. They had run away and then she saw her husband, who had died. Upon hearing her

cries, Amar Singh and Santosh had reached the place of incidence. In the FIR (Ex.P/1), she had categorically mentioned that about a month prior to

the incident, Shivcharan had shown undue indulgence with her, which was reported by her at the Police Station and as a result of such enmity, all the

four accused had committed murder of her husband.

4. Based on such report, FIR was lodged on 26.08.2006 at about 23.00 hours at Police Station Nai Sarai by naming all the four accused persons.

5. As per the FIR, Amar Singh and Santosh were the first to reach there. Amar Singh is PW4 whereas Santosh has not been examined by the prosecution.

6. It is the case of the appellants that PW4 Amar Singh has turned hostile and PW1 is not a reliable witness, therefore, all the four appellants deserve acquittal.

7. Learned counsel for the appellants submits that PW4 Amar Singh has deposed in his examination-in-chief that he is a hearsay witness as Vineeta

(PW1) had informed him that Bharosa had killed her husband. In his examination after being declared hostile, he has not supported the prosecution

case. Even testimony of PW1 Vineeta Bai is not very reliable inasmuch as in para 8 of her cross-examination, she admits that she is not in a position

to explain as to which of the accused had caused which injury on which part of the body. In para 9, she has admitted that none of the persons present

tried to catch hold of the accused as her husband was killed by unknown persons. But later on, she has improvised and has submitted that she could not understand the question and, therefore, could not answer it properly. She denied suggestions that relatives of her previous husband had killed her present husband as her previous husband Ramkrishna was not knowing and liking the relationship between the complainant and the deceased.

8. It is further submitted that PW1 Vineeta Bai has admitted that the distance, at which her husband was beaten, was about 100-125 steps from her house. She further admitted in her cross-examination that at temple every evening, prayers are offered and people do visit such temple. She also admitted that there was an old enmity with Shivcharan.

9. One child witness Rajeev (PW2) has also been examined, but he too is a hearsay witness and is not a reliable witness because neither he is an eye-witness nor he had seen the incident taking place in front of him. In view of such submissions, the learned counsel for the appellants submits that this is a fit case for acquittal.

10. Learned Public Prosecutor, on the other hand, submits that as far as Bharosa and Shivcharan are concerned, their conviction can be upheld on the basis of corroboration between the evidence of eye-witness PW1 Vineeta Bai and Ex.P/26, which is a report of Forensic Science Laboratory, Gwalior, dated 30.03.2007. It is submitted that on axe Article-C, wielded by appellant no.1-Bharosa and on farsa Article-D, wielded by Shivcharan, there were human blood stains of Group-B so also on the clothes of the deceased, namely Pant Article G-1, Shirt G-2 and under-pant. It is also submitted that even in the case of a sole eye-witness conviction can be upheld because there is nothing on record to show that the testimony of such sole eye-witness is doubtful.

11. In view of such facts and circumstances so also on the basis of the evidence, which has come on record, the testimony of PW1 Vineeta Bai is to be re-appreciated alongwith the other witnesses.

12. PW1 Vineeta Bai wife of the deceased has admitted in para 1 of her examination-in-chief that Amar Singh and Santosh had reached the spot when she tried to save her husband after reaching the spot when she was hit by Bharosa from reverse side of farsa. She has admitted that Amar Singh and Santosh had arrived at the spot, then probably they had seen the

incident. She further deposed that accused Shivcharan had teased her about a month back and at that time, she had lodged a report against Shivcharan. In para 3, she has deposed that Bharosa was having an axe, Shivcharan a farsa and Rajesh as well as Geeta Bai were armed with axes. However, in cross-examination, she has admitted that at the time of the accident, it was dark, it was rainy season and heavy rain had taken place before and after the incident. She admitted that before marrying Ghutta, she was married to Ramkrishna, who is still living in Village Depalkhedi. She had left Ramkrishna about two years back on account of some dispute as he was causing nuisance after consuming liquor and he was jealous of her. She also admitted that she had left Ramkrishna and joined Ghutta. She expressed her ignorance about past conduct of Ghutta that about one and half year's prior to such incident, he had sold daughter and wife of Hari Om Mehtar at Indore. She admitted that adjacent to her house, there is house of Batru Khangar and Heeralal Mehtar and their families are residing in such house. She admitted in para 8 that she is not aware as to which of the accused caused which injury to her husband. In para 9, she admitted that nobody had gone to catch hold of the accused persons because her husband was killed by unknown persons, but later on she corrected herself and submitted that she had not understood the question and the accused persons had killed her husband. She admitted that the distance between the place where her husband was murdered and her house, is about 100-125 steps. She admitted that there is a Hanuman temple and aanganwadi about 200-250 steps ahead of the spot and in the evening, there was crowd at Hanuman temple, but she had not visited the temple for any help. She also admitted that there was old enmity with Shivcharan. She further admitted that PW5 Jagdish had visited Police Station alongwith her to report the incident.

13. It is true that PW2 Rajeev, who is son of elder brother of the deceased, is not an eye-witness. Similarly, PW3 Ram Singh brother of the deceased has not deposed that PW1 Vineeta Bai had given mere intimation about death of his cousin brother Ghutta. PW4 Amar Singh has turned hostile. He deposed that PW1 Vineeta Bai had informed him that Bharosa had beaten her husband. PW5 Jagdish Singh also turned hostile. PW6 Dr.

P. Bunkar found following injuries on the body of the deceased :-

3- mlds 'kjhj ij fuEu pksVsa FkhaA

1& dVk ?kko ftldk vkdkj] 6 lsehX2lseh gMMh rd xgjk tks dVh FkhA

2& ysQV esaXthyjh fgLLs ij $\hat{A}^{\frac{1}{4}}$ duiVh $\hat{A}^{\frac{1}{2}}$ ij dku ds uhps rd fLFkr Fkka

3& dVk ?kko] 6 lsehX1lseh iwjh eksVkbZ esa dVk gqvk] ysQV vijfyi ij fLFkr Fkk tks fd eqg ds vUnj [kqyrk Fkka 3& dVk ?kko vkdkj 2-5 lseh X 0-6

lseh ekl dh xgjkbZ rd ok;s lqizkvksjohVy fgLLs ij fLFkr Fkka

4& dVk ?kko ftldk vkdkj 2lsehX 0-5 lseh Ropk dh xgjkbZ rd] ok;s vksjohVy fgLLs ij pksV dz0 3 ds uhps Fkka 5& dVk ?kko vkdkj 6 lseh X2-5 lseh ekl

,oa gMMh dks dkVrk gqvk xnZu ij ok;h gksj fLFkr Fkka

6& dVk ?kko vkdkj 2lsehX1@2lseh ekl dh xgjkbZ rd lhus ds $\tilde{A}$...ij xnZu ij uhps dh rjQ fLFkr Fkka

7& dVk ?kko vkdkj 6lsehX4lseh Ropk] ekl ,oa gMMh ;k dVh gqbZ ck;ha dykbZ ij ihNs rd Fkka

8& dVk ?kko vkdkj 6X2lseh] ekl vksj gMMh dks dkVrk gqvk ok;s gkFk ij ihNs dh vksj fLFkr Fkka

9& rhu QVs ?kko vkdkj 1 lseh ls 1X2 lseh yEck] 1 lseh pkSMk o gMMh dh xgjkbZ rd ok;h Vkax ij vkxs dh vksjA

10& $\hat{A}$ [kjksp dk fu'kku vkdkj 1-5 lsehX1@2lseh nkfgus Vkax ij $\tilde{A}$...ij ds 1@2 fgLLs ij vkxs dh vksj fLFkr gSA

11& $\hat{A}$ QVk ?kko 3X1 lseh Ropk dh xgjkbZ rd nkfguh dksguh ij ihNs dh vksj fLFkr Fkka

$\hat{A}$ 'koijh{k.k& [kksiMh ljokbdy oVha ck dVh gqbZ Fkh] efLr""d dh foYyh dutLVSM Fkh o efLr""dHkh dutLVSM FkhA iynk] ilyh] nkfguh] ok;k

QsQMk LoLFk FksA lkal uyh esa CyM Hkjk Fkka eqag esa [kwu Fkka isV esa [kkuk ekStwn Fkk] NksVh vkar esa v/kipk [kkuk cMh vkar esa

ihdy esVj Fkka lHkh pksVs e`R;q iwoZ dh Fkh

4& e`rd ds diMs isaV] 'kVZ]pMMh] [kwu ls lus ls lhy dj iqfyl dks ns fn;s FksA vfHker&5& e`rd dh e`R;q xnZu ij vkbZ pksV dz05 ds dkj.k gqbZ

FkhA e`R;q dk izdkj gR;kRed Fkka e`R;q dk le; 6 ?k.Vs ls 18 ?k.Vs rd ds vUnj dk Fkka esjh fjiksVZ izn'kZ ih&5 gS ftl ij , ls esjs gLrk0 gSA e`rd dks

vkbZ pksV dz0 5 izdzfr ds lk/kkj.k dze esa e`R;q ds fy;s i;kZIr FkhA $\hat{A}$ $\hat{A}$ $\hat{A}$

He admitted that the nature of the injuries was homicidal and proved his MLC report Ex.P/5. He also proved post-mortem of deceased and MLC of

Vineeta Bai, who had suffered four contusions on her body. He further deposed

that none of the weapons were produced before him to corroborate the nature of the injuries with the weapons.

14. PW8 Vivek Sharma, SHO, Police Station Nai Sarai admitted that he had seized blood stained axe from Bharosa vide Ex.P/17, one blood stained axe from Geeta Bai vide Ex.P/18 and one axe from Rajesh Singh vide Ex.P/21. He also seized one blood stained farsa from Shivcharan vide Ex.P/23.

In para 8 of his cross-examination, he has admitted that axe recovered from Rajesh was not having any blood stains and farmers usually keep an axe in rural household. He has admitted in para 13 that the temple is close to the spot of incidence and in the evening daily Aarti is performed. He also admitted presence of house of Batru Khangar and Heeralal Mehtar in the neighbourhood. He also admitted of not sending the weapons of assault to the Doctor for corroboration. He admitted that on one of the paths leading to Hanuman Mandir, there is 'aabadi' at 20-25 steps and there were several criminal cases registered against deceased Ghutta.

15. In the case of Kusti Mallaiah v. State of Andhra Pradesh as reported in (2013) 12 SCC 680, the Supreme Court has dealt with the issue of number of witness and has held that under Section 134 of the Evidence Act, there is no legal hurdle in convicting a person on sole testimony of a single witness if his version is clear and reliable. Evidence has to be weighed and not counted. However, in case of a single witness whose testimony is neither wholly reliable nor wholly unreliable, Court has to be circumspect and has to look for corroboration in material particulars by other reliable evidence, direct or circumstantial before acting upon testimony of such a single witness.

16. In the present case, as has been discussed above, PW1 Vineeta Bai is the sole eye-witness. She has admitted that she has not seen as to which of the accused had caused which of the injury on the body of the deceased. At one place, she has swayed to say that murder was caused by unknown persons, but later on she corrected. Therefore, this witness will fall in the category of one whose testimony cannot be said to be either wholly reliable or wholly unreliable. Therefore, her testimony is to be corroborated from the other evidence direct or circumstantial. None of the witnesses have supported the prosecution case. PW8 Vivek Sharma, SHO though in his examination-in-chief deposed that he had recovered a blood stained axe from

Rajesh, but admitted in cross-examination that there were no blood stains on the axe. Similarly, FSL report (Ex.P/26) opines that the spots on Articles-

E and F, namely the axes recovered from accused Rajesh and Geeta Bai had disintegrated spots and, therefore, the result was inconclusive. Since

there is no other eye-witness to corroborate their involvement and the direct evidence of weapons seized from their possession does not support the

prosecution story, this is a fit case to acquit appellant no.3-Rajesh Singh and appellant no.4-Geeta Bai as chain of events has not been completed.

There are omnibus allegations against them and prosecution has failed to corroborate such omnibus allegations.

17. Complainant, PW1 Vineeta Bai has admitted her old enmity with Shivcharan and her testimony to the extent of involvement of Barosa and

Shivcharan is corroborated through the evidence of RFSL as contained in Ex.P/26, this Court is of the opinion that conviction recorded by the learned

Sessions Judge against Bharosa and appellant no.2-Shivcharan does not call for any interference. Accordingly, their conviction is maintained.

18. However, for the reasons stated above, as testimony of the sole eye-witness could not have been termed as wholly reliable or wholly unreliable,

therefore, since the weapons seized from appellant no.3-Rajesh Singh and appellant no.4-Geeta Bai are not corroborated to have been used in the

report from RFSL, it appears to be a case of false accusation against appellant no.3-Rajesh Singh and appellant no.4-Geeta Bai. Thus, in view of

appreciation of the evidence mentioned above, the appeal for appellant no.3-Rajesh Singh and appellant no.4-Geeta Bai is allowed as there is no

material on record to convict them under Section 302 of IPC and also there is no evidence to such effect. Accordingly, the conviction and sentence of

appellant no.3-Rajesh Singh and appellant no.4-Geeta Bai are set aside and they are acquitted from the offences under Sections 302 and 323/34 of

IPC. Their bail bonds are discharged.

19. As stated above, appellant no.1-Bharosa and appellant no.2-Shivcharan were convicted and sentenced by the trial Court. Their conviction and

sentences are hereby affirmed. Since appellant no.1-Bharosa has already expired, therefore, this appeal stands abated against him.

20. Appellant no.2 Shivcharan is directed to undergo the remaining part of jail sentence as ordered by the learned trial Court. His bail bonds shall stand

cancelled. If he is on bail, he will surrender before the trial Court to undergo the remaining part of his jail sentence.