
(2012) 02 MP CK 0120
In the Madhya Pradesh High Court
Case No : Cr.A. No. 2191 of 2008

Buddhu Pal and Another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(v)

Citation : (2013) CriLJ 1693 : (2012) ILR (MP) 774 : (2012) 4 MPJR 1

Hon'ble Judges : Rakesh Saxena, J; N.K. Gupta, J

Bench : Division Bench

Advocate : Vasant Daniel, for the Appellant; Nirmala Nayak, Public Prosecutor
Respondent/State, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice N.K. Gupta

1. The Judgment of the Court was delivered by : N.K. Gupta, J:- Being aggrieved with the judgment dated 30.9.2008 passed by Special Judge under SC/ST (Prevention of Atrocities) Act, 1989 (hereinafter it is mentioned as "the Act"), Damoh, by which both the appellants were convicted for offence punishable u/s 302 read with section 34 of IPC and sentenced for life imprisonment with fine of Rs. 2,000/-. In default of payment of fine an additional imprisonment of six months, for each of them. Prosecution's case, in short, is that, on 13.4.2007 at about 6.00 p.m., the complainant Indrani (P.W. 1) was working with her husband Kaluram (the deceased) in making a stake of raw bricks on the land of one Malthu at village Deori, Police Station Tendukheda, District Damoh. Witness Nanhi Bai was also helping the complainant. Appellants Buddhu and Bhurru arrived at the spot having stick and farsa respectively and directed the deceased Kaluram not to make Bhatta on that place. The complainant told them that land

belongs to her and therefore, they could not interfere. However, appellants started assaulting the deceased Kaluram by farsa and sticks. The appellant Bhurru gave three strokes of farsa on head of deceased Kaluram, whereas the appellant Buddhu Pal assaulted the deceased Kaluram by sticks on various parts of his body. By such assault, the deceased fell down on the Earth. On shouting of the complainant Indrani (P.W. 1) and witness Nanhi Bai (P.W. 9), Narayan (P.W. 2) and Onkar (P.W. 5), sons of the deceased, arrived at the spot. They tried to save their father. The appellants ran away from the spot. The deceased was taken to the Police Station Tendukheda in a bullock cart with the help of Bhagwat Singh and others. Uttam Pal had also accompanied with the complainant and the injured deceased. Since the injured Kaluram was unable to speak, FIR was lodged by the complainant Indrani (P.W. 1). The deceased Kaluram was referred for his medical examination to Govt. hospital, Tendukheda. Dr. Rajesh Namdeo (P. W. 6) at about 9.15 p.m. in the night examined the deceased Kaluram and found that he had three incised wounds on his head and two blunt injuries on left arm and right eye. He referred the injured person to Medical College, Jabalpur. After 2-3 days treatment of the deceased, he succumbed to injuries. The dead body of the deceased Kaluram was referred for post-mortem.

2. Dr. Mukesh Agrawal (P.W. 4) has examined the dead body of the deceased Kaluram and gave the post-mortem report, Ex. P/7. He found two small abrasions on right elbow, one laceration on chin and six injuries on his head. Due to external injuries, both parietal bones were found fractured. He had also found a hole in the left side of the chest having dimension of 1 X1/4 inch. He found that the deceased Kaluram died due to shock and coma because of head injury. In investigation, police seized one farsa from accused/appellant Bhurru and one stick from accused/appellant Buddhu. However, in forensic examination, no human blood was found from the stick but, human blood was found on farsa. Investigation officer examined various eye witnesses u/s 161 of Cr.P.C. and also found that the deceased had given his dying declaration before the witness Onkar (P.W. 5), Babulal (P.W. 10) and Bhura (P.W. 11). After due investigation, challan was filed before the concerned Magistrate, who committed the case to the Special Judge for trial.

3. The appellants abjured their guilt but, no specific defence was taken by them. They recalled Patwari Bahadur Singh (P.W. 3) to prove the distance between the place of incident and the place where the well was dug by Pancham Sen.

4. Learned Special Judge after considering the evidence adduced by the prosecution, acquitted the appellants for offence punishable u/s 3 (2) (v) of the Act but, convicted them for offence punishable u/s 302 read with section 34 of IPC and sentenced as mentioned above.

5. Heard the learned counsel for the parties at length.

6. Learned counsel for the appellants has submitted that there was no eye witness in the case. The deceased Kaluram was found injured at the spot and till

his death, he could not speak anything. Witness Nanhi Bai has turned hostile, whereas it is proved that Narayan (P.W. 2) and Onkar (P.W. 5) were 3/4 kms away from the spot at the time of incident and therefore, neither they could hear any shout nor they could come to the spot at the time of incident. Similarly, Indrani (P.W. 1) was also not present at the spot. It was mentioned in the FIR that Indrani took the bullock cart of one Bhagwat Singh accompanied by Uttam and therefore, there was no possibility of giving dying declaration by the deceased to the witness Babulal (P.W. 10) or Bhura (P.W. 11). There is a lot of contradiction between the statements of various witnesses relating to dying declaration. Remaining chain of circumstances is broken. The deceased has enmity with so many persons and therefore, he was an easy target of so many persons but, the police has falsely implicated the appellants. It is also submitted that learned Special Judge wrongly convicted the appellants for offence punishable u/s 302 read with section 34 of IPC.

7. On the other hand, learned Govt. Advocate appreciated the evidence of various eye witnesses and oral dying declaration observed by witnesses Babulal (P.W. 10) and Bhura (P.W. 11). It is submitted that the testimony of these two witnesses could not be impeached and therefore, conviction directed by the learned Special Judge is correct.

8. There is no challenge from any of the side to the fact that death of the deceased Kaluram was homicidal. Dr. Mukesh Agrawal (P.W. 11) found as many as five injuries on the head of the deceased. Due to those injuries both the parietal bones of the deceased were found fractured and the deceased died due to brain hemorrhage. Therefore, it is apparent that injuries caused on his head were fatal in nature and sufficient to cause his death in due course. Therefore, looking to the nature of injuries, death of the deceased Kaluram appears to be homicidal.

9. Prosecution has examined four eye witnesses in the case namely Indrani (P.W. 1), Narayan (P.W. 2), Onkar (P.W. 5) and Nanhi Bai (P.W. 9). Out of these witnesses, Nanhi Bai turned hostile. She has stated that at the time of incident, she was working at her home. Narayan and Onkar have claimed that they ran from their place of work to the spot after hearing shouts of their mother and father but, witness Narayan and Onkar accepted that they were at Panchu's place to dig a well. Patwari Bahadur Singh (P.W. 3) in para 7 of his cross-examination has accepted that Panchu's place was 3/4 kms away from the place of incident. Similarly, witness Indrani (P.W. 1), mother of the witnesses Narayan and Onkar has accepted in para 6 that Narayan and Onkar were working at place of Panchu Khawas and that place was half a kilometer away from the spot. Narayan and Onkar have also admitted that no any other companions came to the spot with them after hearing shouting of their mother and father. Looking to the evidence given by these witnesses, it appears that Narayan and Onkar were not in a position to hear shouting of their mother and father. They did not come to the spot after hearing their shouting otherwise, their companions must have

followed them. Similarly, to cover a distance of half a kilometer by running, approximately 10 to 20 minutes are required and looking to the various injuries of the deceased Kaluram, it would be clear that such injuries could be caused within five to ten minutes. Indrani (P.W. 1) mother of the witnesses Onkar and Narayan has accepted in para 7 that when Narayan came to the spot, accused persons had already left the spot. Onkar (P.W. 5) has accepted that he went to the spot with his brother Narayan and therefore, it is apparent from the evidence of complainant Indrani that Onkar and Narayan could reach the spot after the incident and they were not the eye witnesses.

10. Looking to the contradictions between the statements of Onkar and Narayan with their previous statements u/s 161 of Cr.P.C., it appears that they are now informing the Court so many new things by claiming themselves to be eye witnesses but, they did not see the incident. Under such circumstances, now only testimony of the complainant Indrani is to be assessed, being an eye witness.

11. Indrani (P.W. 1) has stated that appellant Bhurru assaulted the deceased Kaluram by farsa for three times and Buddhu assaulted him by stick for 2-3 times but, in FIR, Ex. P/2 she has informed about one stroke of farsa given by appellant Bhurru and three strokes of Lathi given by appellant Buddhu, If she was the eye witness then, she could see the entire incident. In FIR, she did not allege about three strokes of farsa given by Bhurru but, after MLC of the deceased was recorded, she improved her statement and in her case diary statement, she has stated that accused Bhurru gave three strokes of farsa. Also, Dr. Agrawal (P.W. 4) in PM report, EX. P/7 found five visible injuries on the head of the deceased but, no narration was given by the complainant Indrani (P.W. 1) as to how the deceased sustained more than three injuries on his head.

12. Initially, Indrani claimed that she was working with her husband at the spot. The deceased Kaluram was making stake of wood for preparation of Bhatta to make bricks, whereas she was helping in making stake of Kandas (cow dung cakes) but, in her cross examination she has admitted in para 6 that at the time of incident, she was collecting the cow dung at Kudariya Nala, which was 300 to 400 meters away from the spot. It appears difficult to hear the shouting of her husband from 300 to 400 meters, whereas so many trees are grown in gardens of so many persons in between those two places as per her admission. Similarly, if it is presumed that she heard the shouting of her husband then, she should have taken at least 15 minutes time to reach the spot and in that time, the assailants must have completed their assaults etc. Indrani herself has admitted in para 6 that she saw the appellants for the first time when they were running from the spot and she could see the back of the assailants. Again she changed her version and told that the appellants ran towards the direction from where, she was approaching to the spot. If the accused persons were running towards Indrani then, Indrani could see the faces of the accused persons but, she has categorically admitted that she saw the backs of the appellants. Therefore, her version cannot be accepted that the assailants ran towards her at that time when

they were leaving the spot.

13. When a person approaches from a distance then such person could see a particular place from a distance at least of 70-80 feet and therefore, when the complainant Indrani saw the assailants for the first time, they must be 70 to 80 feet away from Indrani. From such a distance, it is not possible for anyone to identify any person by seeing his back. Under such circumstances, it appears that witness Indrani (P.W. 1) could not see the incident at all, whereas she claims that she saw the backs of two persons from a distance.

14. If testimony of witness Indrani is not believable then, it is a case of no ocular evidence and therefore, remaining evidence is to be examined to see as to whether the chain of circumstantial evidence is complete or not or if any part of the testimony of Indrani is accepted then, it should be seen as to whether it is corroborated by other evidence.

15. Indrani (P.W. 1) had lodged an FIR, Ex. P/1 before the police. FIR was lodged after 2 hours and 45 minutes, whereas, the place of incident was 11 kms away from the Police Station. However, in arranging a bullock cart and calling for the assistance, sufficient time was required by the complainant and therefore, prima facie it cannot be said that FIR was delayed but, at the same time it is apparent from the evidence that she had an opportunity to consult with so many persons namely Bhura, Babulal etc. Result of the consultation is visible in the FIR. Indrani has accepted in the Court that she did not see any incident, whereas in FIR. She has claimed herself to be an eye witness. Since she was not an eye witness, she could not know that according to the MLC report, the deceased sustained three injuries on his head caused by sharp cutting weapon and therefore, in FIR, Ex. P/1 it was mentioned that the appellant Bhurru gave one blow of farsa on the head of the deceased and therefore, witness Indrani improved her statement when she was examined u/s 161 of Cr.P.C. Similarly, she could not know that Dr. Agrawal found five visible injuries on the head of the deceased and therefore, no explanation could be given about those injuries in the statement of the complainant Indrani in the trial Court Under such circumstances, FIR is lodged after due consultation and therefore, it cannot be said that it is a true account of the incident, no corroboration can be obtained by the complainant from the FIR lodged by her.

16. Indrani (P.W. 1). has not stated that she saw any weapon in the hands of the appellants at the time when they were running from the spot and therefore, it cannot be presumed that the appellants have assaulted the deceased by farsa and stick. Police has seized one farsa from the appellant Bhurru and one stick from the appellant Buddhu. It is submitted by learned counsel for the appellants that witnesses relating to seizure memo Ex. P/11 and Ex. P/12 namely Gopi and Narayan were not examined before the trial Court. No reason has been shown as to why the independent witnesses were not examined which were related to seizure. DSP Shri A.K. Shrivastava (P. W.7) has shown the seizure of weapons from the appellants without recording their memo u/s 27 of Evidence Act. On the

contrary, Shri Shrivastava had admitted in para 5 that seizure took place after two months of the incident. Therefore, it appears that police has arranged one stick and farsa and it is shown to be seized from the appellants. Looking to the evidence of Shri Shrivastava, contention advanced by learned counsel for the appellants appears to be acceptable. No independent witness relating to seizure is examined. No memo u/s 27 of Evidence Act was recorded and a plain seizure is shown against the appellants. It also appears that seizure memo Ex. P/11 and Ex./12 is prepared by someone else and Shri Shrivastava placed his signature on the seizure memo. Therefore, by the statement of Shri Shrivastava, it cannot be said that either farsa or lathi was seized from any of the appellants.

17. Both weapons were sent for their forensic analysis. FSL report was received by the Court on or after 26.7.2008 and therefore, neither it was referred in the questions prepared by the learned Additional Sessions Judge u/s 313 of Cr.P.C. nor the report was exhibited and therefore, that report cannot be read against the accused persons at present. However, if any portion which is favourable to the accused persons then, it should be read because it is a prosecution document on which prosecution relies. In that FSL report, it is mentioned that no blood was found on the stick seized from Buddhu and therefore, recovery of the stick from Buddhu does not create any evidence against him. Similarly, when FSL report cannot be read against the appellant Bhurru then, no reference can be taken from the FSL report that human blood was found on the axe seized from the appellant Bhurru. Therefore, circumstances relating to seizure of weapon have no evidentiary value in the case.

18. Looking to the statements of Indrani and her sons it would be clear that there was a dispute of land between the parties. Initially the land was of Thippa and Ram Singh and they were cultivating the disputed land. In Panchayat, the deceased was directed to return the money to Thippa and Ram Singh and consequently they would leave the land. Actually the land was taken by Baliram, father of the accused Bhurru and uncle of accused Buddhu. Baliram returned the land as per the decision given by Panchayat but, Indrani has admitted in para 11 of her statement that money was not given either to Thippa, Ram Singh or Baliram. She states that money was returned to one Milan and she was not aware as to whether Milan gave that money to Thippa or Baliram. However, she has admitted that Milan absconded with money. She has also admitted that Baliram was always blaming the deceased that he did not receive the money. Under such circumstances, it appears that there was enmity between Baliram and the deceased relating to the payment of money towards the disputed land. Enmity is a doubled edged weapon and appellants could kill the deceased due to enmity or they could be falsely implicated on the basis of enmity.

19. Witness Narayan (P.W. 2) has also accepted that the deceased had a dispute with one Chunnilal in the past. He also had a dispute with Jugara and Hulasi and therefore, contention of the learned counsel for the appellants may be accepted that there is a possibility that the deceased could be killed by anyone else.

However, there was motive with the appellants to kill the deceased because of non payment relating to the disputed land.

20. Witness Bhura (P.W. 11), Babulal (P.W. 10) and Narayan (P.W. 2) have stated that the deceased Kaluram had stated himself that he was assaulted by the appellants Bhurru and Buddhu by farsa and stick respectively. They have claimed that when they took Kaluram in the bullock cart then, in the way to the Police Station, Kaluram stated about the incident. Witness Babulal is real younger brother of the deceased Kaluram. Bhura (P.W. 11) has stated in para 9 that at the spot Kaluram did not inform anything but, immediately he took a somersault. He has stated that the deceased Kaluram informed about the incident at the spot. He was talking to them till they reached the village Budela, whereas witness Babulal has stated that Kaluram did not say anything at the spot. At village Budela, Kaluram became conscious and told the story and thereafter he became unconscious. Narayan (P.W. 2) has stated in para 12 that Kaluram told the story in the way. On the contrary, Onkar (P.W. 5), son of the deceased has stated in para 15 that he tried to talk to his father but, he could not speak at the spot because he was unconscious. Similarly, Indrani (P.W. 1) who went with the deceased up to the police station and lodged the FIR has stated in para 19 that her husband was unconscious from the very beginning when he was found at the spot and he remained unconscious till his death. Looking to the evidence of Indrani, wife of the deceased, it appears that the deceased has not given any information about the incident to anyone and therefore, it appears that witness Narayan, Bhura and Babulal are telling a falsehood about hearing a dying declaration from the deceased Kaluram.

21. Witness Indrani (P.W. 1) has stated that Sarpanch Bhagwat Singh had provided his bullock cart and the deceased was taken by Bhagwat Singh and Uttam with this witness. She has admitted in para 9 that ex-sarpanch Uttam came to the spot and he went up to the hospital. In this respect, FIR lodged by the complainant may be perused in which it was mentioned that she went to the police station with sarpanch Uttam Pal and Bhagwat Singh. It is no where mentioned that either Bhura or Babulal accompanied the bullock cart or the bullock cart was brought by Onkar. Indrani (P.W. 1) has stated that bullock cart was brought by her sons but, she has admitted in para 10 that she was accompanied by Uttam, Bhura and Onkar when she went to the police station from the spot. She did not say anything about the presence of Babulal in the bullock cart. Similarly, the witness Onkar (P.W. 5) has stated that it was his brother Narayan who went with his father and mother, whereas Indrani does not confirm the presence of witness Narayan in the transit from the spot to the police station. Under such circumstances, where it appears that neither Narayan nor Babulal went to the police station by bullock cart then, there was no possibility that they could hear any word from the deceased. Onkar and Indrani did not claim that they heard anything from the deceased and therefore, statements of Bhura relating to dying declaration cannot be believed. Under such circumstances, it is not proved beyond doubt that the deceased said anything

about the incident.

22. If the entire evidence other than ocular evidence is considered collectively then, following pieces of chain of circumstances are proved. (1) There was enmity between the appellants and the deceased, hence the appellants had a motive to do such crime. (2) The deceased was a target of so many persons. (3) Death of the deceased was homicidal. On the other hand it is not proved that the appellants were seen with the deceased just before the incident. No quarrel took place on the day prior to the incident. No dying declaration of the deceased was proved. No extra judicial confession of the appellants is on record. Seizure of various weapons from the appellants could not be proved beyond doubt. Under such circumstances, chain of circumstantial evidence is broken and by available circumstances, it cannot be said that the appellants were the culprits who assaulted the deceased by farsa and stick.

23. Learned Govt. Advocate has urged that human blood was found on the farsa seized from the appellant Bhurru and therefore, it was for the appellants to explain as to how the human blood was there on his farsa. However, seizure is not proved beyond doubt, FSL report not shown to the appellants, therefore, it cannot be used against the appellants. Also, chain of circumstantial evidence is broken and therefore, on the basis of blood found on a weapon, conviction cannot be directed on the sole basis of such blood spots. In this connection, judgment passed by Hon"ble the Apex Court in the case of Kansa Behera Vs. State of Orissa, may be referred, in which it is laid that the evidence about the blood group is only conclusive to connect the blood stains with the deceased. If such cognate evidence is absent then, such conclusion cannot be drawn against the accused.

24. Learned counsel for the appellants invited the attention of this Court to Para 32 (n) of the judgment passed by Hon"ble the Apex Court in case of "Kuldip Yadav Vs. State of Bihar" [AIR (2011) SC 1736] to show that in what manner eye witness may not be believed or remaining circumstantial evidence may be considered. Relating para of that judgment is as under:-

32. (n) The version given by eye-witnesses who were also interested witnesses on account of their relationship with the deceased and being inimically deposed against the accused persons is highly exaggerated, contrary to each other and not fully corroborated with medical evidence and there are discrepancies about the number of accused persons, weapons and ammunitions carried by them and they are not in tune with what (P.W.-9) informant has stated in his deposition. In other words, the prosecution has not presented true version on most of the material parts and therefore, the witnesses and material placed on their side does not inspire confidence and cannot be accepted on its face value.

25. On the basis of aforesaid discussion and in the light of observation made in case of Kuldip (supra), it would be clear that no eye witness is believable, so as to prove that the appellants assaulted the deceased by farsa and stick and killed

him. Similarly, there is no cognate circumstantial evidence available on record by which it can be said that the appellants were the persons who assaulted the deceased by such weapons causing his death. Under such circumstances, the appellants could not be convicted for offence punishable u/s 302 of IPC either directly or with the help of section 34 of IPC or for any inferior offence of the same nature. Learned Special Judge has erred in believing the eye witnesses of the case and therefore, he erred in convicting the appellants for offence punishable u/s 302 of IPC. The appeal filed by the appellants appears to be acceptable and therefore, appeal is allowed, Conviction and sentence directed against the appellants are hereby set aside. The appellants are acquitted from all the charges appended against them. The appellants are in custody at present and therefore, they be released forthwith.