

(1978) 09 MP CK 0009

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1094 of 1976

Budhwa alias Ramcharan and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 29-09-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 147, 149, 302

Citation : (1979) JLJ 117 : (1979) MPLJ 317

Hon'ble Judges : S.S. Sharma, J;N.C. Dwivedi, J

Bench : Division Bench

Advocate : Rajendra Singh, for the Appellant; M.V. Tamaskar and J.M. Sood for State, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Dwivedi, J.

In this appeal, the fifteen appellants have challenged their convictions under sections 147 and 302/149 of the Indian Penal Code for which each of them was sentenced to undergo one year's rigorous imprisonment and imprisonment for life respectively. Both the sentences have been ordered to run concurrently.

In this case the accused Arjun, Bhikham, Nanku and Parethan were not found guilty of the charges mentioned above and they were, therefore acquitted. The State has not preferred an appeal against their acquittal.

The prosecution case is this: The village Dabaha had two warring factions, one led by the family of the deceased Hanuwa and the other by the appellants. There have been reports against each other at the police station in the last 2-3 years.

On 11-7-1975 at about 8.30 a.m. when the deceased Hanuwa accompanied by his mother and sister Baiyanbai and Birjhabai respectively was going to Mungeli situated at the distance of 4 miles from their village for supply of milk and reached Ghatora near Nayagaon Village, the appellants armed with lathis and

Tabbals emerged out from hidings and attacked Hanuwa repeatedly with the result that he died then and there. Baiyanbai (P. W. 1) while intervening also received a lathi stroke. Baiyanbai (P. W. 1) sent Mst. Janki, daughter of Birjhabai (P. W. 5) to inform the village people. Thereafter, she went to the Mungeli police station and lodged the first information report (Ex. P-1) at 12 noon the same day.

An inquest was held over the dead body of Hanuwa as per Panchanama, Ex. P-6. Dr. Keshwani (P. W. 20) performed the post-mortem examination and as per report Ex. P. 26, found seven external injuries on his person-situated on occipital region of scalp, right upper area, scapular region etc. On internal examination, the following injuries were noticed:

(i) Depressed fractures of right parietal bone and right side of occipital bone were present. Parietal bone was broken into multiple pieces. These injuries correspond to the external injuries Nos. 1 and 2.

(ii) Tear of right parietal lobe of the brain along with its membranes was present. The arteries supplying right parietal lobe were also torn. This corresponds to injury No. 2 (external injury No. 2).

(iii) Tear of right side of occipital lobe of the brain along with its membranes was present. Arteries supplying were also torn. This corresponds to external injury No. 1.

Dr. Keshwani opined that the death took place due to shock as a result of excessive haemorrhage. The injuries were ante mortem in character and were caused within 24 hours of the post-mortem examination. The injuries could be caused by a sharp pointed object and a bard and blunt object. Injuries Nos. 1 and 2 were sufficient individually to cause the death in the ordinary course of nature. All the injuries cumulatively were sufficient in the ordinary course of nature to cause the death.

Dr. Keshwani (P. W. 20) examined Baiyanbai (P. W. 1) and as per report Ex. P-30A, found an incised wound in between right thumb and right index finger which could be caused by a hard and sharp object.

A number of seizures were made from the spot and also from the appellants as per seizure memoranda Exs. P-7 to P-15 which included earth, articles lying on the spot, lathis, tabbals and clothes.

The reports of the Chemical Examiner (Ex, P-33) and the Serologist (Ex. P-34) show that none of these articles were found stained with human blood.

The appellants abjured their guilt and pleaded false implication due to long standing enmity. They further contended that the prosecution has deliberately corrected the time of incident from 11.30 a.m. to 8.30 a.m. because they had gone to Bilaspur to attend the Court and were present there after 11 a. m.

Shri Rajendrasingh, counsel for the appellants, did not dispute that Hanuwa was dead and that his death was homicidal. In fact, besides the evidence of the

mother (P. W. 1) and sister (P. W. 5), there is other oral evidence to establish that Hanuwa was dead. The report (Ex. P-26) of Dr. Keshwani (P. W. 20) shows numerous external and internal injuries on the person of the deceased which established beyond doubt that the death of Hanuwa was homicidal.

Point for decision in this appeal is whether the appellants formed an unlawful assembly with the object of committing the murder of Hanuwa and in prosecution of that common object they committed his murder. Another point for decision would be whether the appellants were at Bilaspur at the time of the incident and were falsely implicated due to enmity.

We will proceed to discuss the prosecution evidence. Baiyanbai (P. W. 1) stated that at about 7.30 or 6 a.m., she along with her son the deceased followed by her daughter Birjhabai (P. W. 5) were going to Mungeli. When they reached Ghatora near Nayagaon, the appellants emerged out of hiding armed with lathis and tabbals and simultaneously attacked her son Hanuwa. When she went to intervene, the appellant No. 2 Parsadi gave a blow on her hand. She was raising a hue and cry for saving her son when Dr. Sanilal (P. W. 2) came there. The daughter of Birjhabai (P. W. 5) by name Janki was sent to fetch people who after knowing of the incident, came to the spot. She went to the Mungeli police-station and lodged the first information report (Ex. P-1) at 8.30 a.m. In paragraph 8, she stated that the marpit took place at about 10 or 11 a.m. On this Shri Rajendrasingh built up an argument that there is correction of the time of incident in the first information report (Ex. P-1) and this has been deliberately corrected to wipe out the defence of some of the appellants that they had already left for Bilaspur which is situated at a distance of 51 kms. from Mungeli. Whether the timing in the first information report has been corrected or not will be discussed later on, but it will suffice to state that rustic people have no sense of time and that they at the most give out approximate time which could be an hour or two on either side.

In this connection reference may be made to Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, which runs as under:

The sluggish chronometric sense of the country-side community in India is notorious since time is hardly of the essence of their slow life, and even urban folk make mistakes about time when no particular reason to observe and remember the hour of minor event like taking a morning meal existed. Too much play on such slippery facts goes against realism so essential in a testimonial appraisal.

(Para. 11.)

Thus, the timing mentioned in paragraph 8 of the evidence of Baiyanbai does not in any way discredit her evidence. She herself is an injured person and, therefore her presence at the place of incident could not be doubted.

In *Balwat Singh v. State of Harayana* (1972) 3 SCC 193 Supreme Court it is held

that injured witnesses would not spare their real assailants and falsely involve innocent persons.

In *Rajendra Rai and Others Vs. The State of Bihar and Another*, , it is held that injuries on the witnesses confirmed their presence and where their testimony was consistent with that of other eye-witnesses, reliance rightly could be placed on their evidence.

Thus, the injured witness Baiyanbai (P. W. 1) was definitely present at the time of occurrence, a fact proved not only by the presence of injuries on her person but also the fact that she promptly lodged the first information report (Ex. P-1) naming the appellants. She would not normally spare the assailants of her son and will not involve innocent persons.

No doubt, she is a relation and a partisan witness. She and the appellants have been on long standing inimical relations and that will require a cautious scrutiny and corroboration to the evidence of such witness.

In *Bava Hajee Hamsa and Others Vs. State of Kerala*, , it is held as under:

In such cases where large number of persons are involved and in the commotion some persons cause injuries to others and the evidence is of a partisan character, it is often safer for the Judge of fact to be guided by the compass of probabilities along the rock-ribbed contours of the case converging on the heart of the matter. Once the Court goes astray from the basic features of the case, it is apt to lose itself in the labyrinths of immaterial details, desultory discussion and vacillation arising from unfounded suspicions.

In *The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh*, it is held that the fact that the eye-witnesses belong to the party of deceased and some of them are close relatives of the deceased would only make the Court scrutinize the evidence of these witnesses more closely. It is most difficult to believe that they would spare the real assailants and falsely mention the names of innocent persons as having caused the injuries to the deceased persons.

In *Charan Singh and Others Vs. State of Punjab*, it is held that as the ocular evidence consists of persons two of whom were close relatives of the two deceased persons, it is not likely that the eye-witnesses would spare the real assailants. At the same time, the Court must guard against the possibility of implication of an innocent person along with the actual culprits. The need of this precaution becomes all the more obvious when it is kept in view that the ocular evidence is of a partisan nature. It is in such a situation that a duty is cast upon the Court to separate the grain from the chaff.

As stated in *State of Punjab v. Jagir Singh, Baljit Singh and Karam Singh (supra)*, it is thus:

A Criminal Trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the

accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is *ex facie* trustworthy on grounds which are fanciful or in the nature of conjectures.

In the light of the observations stated above, we have to consider the evidence of Baiyanbai (P. W. 1) and her daughter Birjhabai (P. W. 5). What is necessary is to have cautious scrutiny and in doing so, we find no serious omission or contradiction in the evidence of Baiyanbai (P. W. 1). The statement in paragraph 24 that some of the appellants were putting on cloth on their faces could not mean that they had covered their faces in such a way to avoid their being recognised by the witnesses. In the same paragraph, she categorically stated that she had recognised the assailants who were known to her and belonged to her own village. Therefore, at about 8 or 8.30 a. m. when there is sufficient light, there is clear perception and opportunity to recognise the known persons. Further, the evidence of Baiyanbai (P. W. 1) is fully corroborated by the promptly lodged first information report (Ex. P-1). We place complete reliance on the testimony of Baiyanbai (P. W. 1) and find that it fully implicated the appellants in the lathi and tabbal assault on her son Hanuwa, the deceased.

Dr. Sanilal (P. W. 2), referred to in the evidence of Baiyanbai (P. W. 1), turned hostile. He was confronted with his case diary statement (Ex. P-2). It is apparent that he was suppressing the truth.

Bisahuwa (P. W. 3) is the brother of the deceased Hanuwa. He stated the deceased accompanied by his mother and niece Jankibai had gone to Mungeli for supply of milk. He had gone to graze cattle. When he returned back, he learnt of the incident and went to the place of the incident where his mother Baiyanbai (P. W. 1) told him that about 18 or 19 persons had killed his brother Hanuwa. To him, Baiyanbai (P. W. 1) narrated the names of the appellants which further corroborated the version of Baiyanbai (P. W. 1). No doubt, he omitted to name Birjhabai (P. W. 5) the sister accompanying his brother and mother but that by itself will not discredit Baiyanbai (P. W. 1) and Birjhabai (P. W. 5). His evidence thus lent corroboration to the evidence of eye-witness Baiyanbai (P. W. 1) and established that immediately after the occurrence, Baiyanbai (P. W. 1) had named the appellants as the assailants of her son.

Mangal (P. W. 5) is an independent witness. He stated that while going to his field, he saw the appellants No. 2 Parsadi, No. 3 Baran, No. 5 Bhagan and No. 15 Karan armed with tabbals and lathis going towards Mungeli. Thereafter, he saw the deceased accompanied by his mother and niece Janki going towards Mungeli. In the cross-examination he stated that he had seen the appellants going at

about 8 a. m. He confirmed that Baiyanbai (P. W. 1) was accompanied by Birjhabai (P. W. 5). Therefore, his omission of the name of the sister in the earlier part of his evidence is a slip of memory. Whether the appellants went first or the deceased first will be immaterial contradiction. This can be explained on the ground of slip of memory, but the fact remains that the deceased and his relations and some of the appellants duly armed were seen following each other at about 8 a. m. while going to Mungeli. His evidence being of independent nature deserves acceptance.

Birjhabai (P. W. 5) is the sister of the deceased. Her evidence shows that she is not only an interested but also a partisan witness. Therefore, her evidence would need cautious scrutiny and there would be need for corroboration. She has implicated all the appellants in the attack on her brother. She stated that three or four persons were armed with tabbals and others were armed with lathis. Contradictions pointed out from her case diary statement (Ex. D-4) are not of consequence and do not in any way affect her version. Her presence is mentioned in the first information report (Ex. P-1). We find no material to hold that her name was subsequently added or that the first information report read as a whole does not establish her presence. Even accepting the defence version that she was not present, that will not in any way affect the remaining prosecution evidence which by itself is sufficient to implicate the appellants in the attack on Hanuwa.

Dilasabai (P. W. 6) is a witness related to the deceased and known to the appellants who belonged to her own village. She identified the appellants Parsadi (No. 2), Baran (No. 3), Bhagan (No. 5) and Karan (No. 15) and stated that these persons were armed with tabbals and lathis. She saw them near village Ghatora following the deceased from a distance of one furlong. She testified to the presence of Birjhabai (P. W. 5) at the scene of occurrence. She confirmed that Birjhabai (P. W. 5) was also following the deceased and her mother. She had gone to sell milk at Mungeli and was returning. In paragraph 4, she stated that it was 8 or 9 a. m. when she was returning. Her evidence could not be discredited on the basis of her statement in paragraph 5. The distance between the deceased and the appellants was not much and a man with quick walk can cover both the deceased and the appellants. She is a truthful witness because she stated that she had not witnessed the assault. Had she been an interested witness, she could have posed herself as an eye-witness. An independent witness like Dilasabai (P. W. 6) practically fixed the time of incident between 8 or 9 a. m. and saw the appellants Parasadi (No. 2), Baran (No. 3), Bhagan (No. 5) and Karan (No. 15) armed with lathis and tabbals following the deceased. We see no reason to disbelieve her version.

Madho (P. W. 8) is a hostile witness so also Surajbai (P. W. 9). But the evidence of Surajbai (P. W. 9) and her husband Sunderlal (P. W. 15) conclusively clinched the time of incident and falsify the defence version that the incident took place at 10 or 11 a. m. which was deliberately brought down to 8 or 8.30 a. m. to

overcome the defence version that some of the appellants had gone to Bilaspur to attend the Court hearing. According to Surajbai (P. W. 9), the appellants Rajaram (No. 8) and Bhuwan (No. 7) came to her in the morning and deposited their lathis as section 144 of the Code of Criminal Procedure was promulgated in the city of Bilaspur. In paragraph 3, she admitted that some of the appellants were related to her and this explained her hostile attitude. Though she had not given fixed or approximate time of the deposit of lathis, yet the evidence of her husband Sunderlal (P. W. 15) clinched the time.

Sunderlal (P. W. 15) stated that he had returned from Bilaspur at about 9 or 9.30 a. m. and thereafter, after taking meals, he went to perform his duties. If it were true that some of the appellants had deposited lathis prior to 9 or 9.30 a. m., Surajbai (P. W. 9) as a dutiful wife would have naturally disclosed the fact to her husband but queerly enough, she keeps mum and informs this fact to her husband after he returned from the duty in the evening. This shows that till 9.30 a.m. none of the appellants had reached the house of Surajbai (P. W. 9) to deposit lathis. The evidence of these two witnesses conclusively established that the incident took place prior to 9 or 9.30 a.m. and the appellants definitely reached her house (Surajbai) thereafter. This would nullify the defence version that the incident took place at about 10 or 11 a.m. and the timing of the incident has been deliberately brought down to 8 or 8.30 a.m.

Shri Rajendrasingh, counsel for the appellants, drew our attention to the over figuring in the first information report (Ex. P-1) and the postmortem requisition (Ex. P-25). Sub-Inspectors Summersingh Dhurve (P. W. 22) and Madan Mohan (P. W. 23) while admitting some over-writing disputed that the time 11 a.m. was deliberately brought down to 8.30 a.m. A perusal of other documents would show that the Sub-Inspector Summersingh Dhurve (P. W. 22) was in the habit of over-writing and, therefore, the time 8.30 a.m. appears to be a pencil over-writing. A reference may be made to the summons (Ex. P-5) where the word "Mrutak" and the name of Panch "Suraj" have over-writing. Similarly, in Ex. P-6 the word "Min" has over-writing. So is the case with word "Bans" in Ex. P-7. In Ex. P-11, there is again overwriting in the name of the person from whom seizure was made. So there is over-writing in the figure "3" in Ex. P-12. Thus, the Sub-Inspector is habituated to over-writing and making deep impressions with a pencil or ink of a particular figure or word. Therefore, the over-writing in the first information report (Ex. P-1) and the requisition for post-mortem (Ex. P-25) could not be said to be a subsequent addition. Even in Ex. P-25, the figure "7" and the word "Parikshan" had the similar over-writing. In the aforesaid circumstances, when the oral evidence itself is sufficient to fix the time of the incident between 8 or 9 a.m., the over-writing loses significance. Further, it could be presumed that persons who go to the city for supply of milk will go early in the morning to reach the city to make their milk available in the morning time to the customers. In view of the above evidence, we are definitely of the view that the over-writings in Exs. P-1 and P-25 were not subsequent corrections.

Some of the appellants contended that they had gone to attend the Court at Bilaspur. In support of this contention, the appellants have produced Exs. D-10 and D-11. Neither the Magistrate nor the reader nor the advocate appearing for the appellants was examined to prove the time when these cases were taken up. Cases are normally taken up between 11 a.m. to 5 p.m. It is usual for the Courts to await arrival of the accused persons for sometime. There is thus no evidence in support of the appellants' contention that they had reached the Court exactly at 11 a.m. or immediately thereafter. The record contained bus-tickets (Exs. D-17 and D-18) but the appellants have not examined the motor transport owner to show the schedule timings of the departure of his bus nor have examined the conductor who had actually issued these tickets to show the timings of the particular bus.

In view of the above, bare statement of the appellants that they had reached Bilaspur at 11 a.m. or thereafter could not be accepted. As discussed above, the timing of the incident has been fixed by oral evidence at about 9 a.m. and the written documents (Exs. P-1 and P-25) confirmed the time at about 8.30 a.m. The appellants after the incident could reach Mungeli, a distance of four miles and then catch a bus for Bilaspur where they could reach before 12 noon. Thus, even after commission of the offence both at about 8.30 a.m. according to the prosecution or at 10 or 11 a.m. according to the defence, it was possible for the appellants to reach Bilaspur during the course of the day. Thus, the documents (Exs. D-10 and D-11) are insufficient in the absence of other evidence to conclusively establish the plea of alibi raised on behalf of the appellants.

We are, therefore, of the view that the prosecution evidence in spite of some of the omissions and contradictions conclusively established the connection of the appellants in the tabbal and lathi attack on Hanuwa. We further find that the time of the incident is proved to be between 8 or 9 a.m. and there is no deliberate over-writing in Exs. P-1 and P-25 to change the time of the incident. The plea of alibi raised on behalf of the appellant is palpably false because the presence of some of the appellants at or near the scene of incident has been testified even by Mangal (P. W. 4) and Dilasabai. (P. W. 6.)

The evidence of Dr. H. M. Keshwani (P. W. 20) shows that the deceased had sustained two incised wounds, two contusions and three bruises. The incised wounds were situated on the occipital and the right parietal regions of scalp and were brain deep. A defused contusion was on the right scapular region. There were a depressed fractures of right parietal bone and right side of occipital bone. Parietal bone was broken into multiple pieces. A tear of right parietal lobe of the brain along with its membranes was present. The arteries supplying right parietal lobe were torn. A tear of right side of occipital lobe of the brain with its membranes was present. The arteries supplying were torn. The injuries were ante-mortem in nature and were caused by a sharp pointed and a hard blunt objects. Injuries Nos. 1 and 2 were sufficient individually and all the injuries cumulatively were sufficient in the ordinary course of nature to cause death.

Thus, simultaneous attack by lathis and tabbals by number of persons is corroborated by Dr. Keshwani (P. W. 20). The use of tabbals and lathis on vital parts of the body with force indicated that the assailants had the intention to finish off their victim.

It was urged that there was a discrepancy in the use of weapons and also a discrepancy in the narration of the order in which the strokes were launched. It will be sufficient to mention that when a number of persons are involved in the quarrel, it is natural for the witnesses to make mistakes in the narration of minor facts. Even persons attacked by a common object may change weapons or may not use them. When the evidence in this case conclusively established that the appellants duly armed and with premeditation had followed the deceased Hanuwa and had opened a simultaneous attack, whether they were in hidings or emerged out suddenly cannot amount to material contradiction because if the appellants emerged out suddenly unnoticed, the witnesses naturally describe that the appellants were in hidings. In any way, the prosecution evidence is consistent on the main aspect of the case and deserves complete acceptance. We are, therefore, of the view that the convictions of the appellants with sentences thereon are in order and call for no interference. See : Sampat Tatyada Shinde Vs. State of Maharashtra, and Bharat Singh Vs. State of U.P.,

For the reasons given above, the appeal fails and is hereby dismissed. The convictions of fifteen appellants under sections 147 and 302/149 of the Indian Penal Code with sentences of one year's rigorous imprisonment and imprisonment for life respectively awarded to each of them; both the sentences to run concurrently are confirmed.