
(1991) 08 MP CK 0039

In the Madhya Pradesh High Court

Case No : Criminal A. No. 1206 of 1987

Girjaprasad Dhaniram Choube and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 29-08-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Evidence Act, 1872 — Section 118

Citation : (1992) 37 MPLJ 365 : (1992) MPLJ 365

Hon'ble Judges : S.K. Seth, J;S.K. Chawla, J

Bench : Division Bench

Advocate : Rajendra Singh and A.K. Jain, for the Appellant; A.S. Jha, Government Advocate, for the Respondent

Judgement

S.K. Chawla, J.

The appellants numbering eight have been convicted u/s 302/149, Indian Penal Code for committing the murder of one Prem Singh in prosecution of their common object and also u/s 148/147, Indian Penal Code for rioting and have been sentenced to imprisonment for life for the first offence and to R. I. for 1 year for the second offence by 3rd Additional Sessions Judge, Damoh by judgment dated 1-12-1987. Aggrieved by their convictions and sentences, the appellants have filed the present appeal.

The prosecution story briefly stated was that on 21-11-1986 at about 7.15 p.m. deceased Prem Singh was taking tea outside the hotel of one Baddan in a market place (referred to as Bajariya) of the town of Hindoriya, P.S. Hindoriya, district Damoh. All the eight appellants came in a body at that time and surrounded the deceased. Some time earlier appellant No. 7 Ganga Prasad had come to verify about the presence of deceased Prem Singh and had returned back only to bring the remaining appellants with him to the place of the incident. Appellant Ganga Prasad also exhorted the other appellants to kill the deceased. Thereupon appellant No. 1 Girja Prasad inflicted knife blows on the chest of deceased Prem

Singh, appellant No. 2 Tampu fired a Katta (country made pistol) and appellant No. 4 Rajjan hurled a hand grenade at the deceased. This caused a great scare in the entire market area with the result that shopkeepers at once closed their shops and ran away from the place. It was further the prosecution story that deceased Prem Singh sustained injuries. The appellants 3 and 8 i.e. Gampu and Ayodhi also hurled hand grenades. The deceased was forcibly taken to some distance near a medical shop of one Shikharchand in that market place where he fell down. After the incident the appellants ran away. Some of them were seen running away on a motor-cycle and some on a moped.

The deceased's brother Komal Singh (P.W.I) and his companions Narayan (P.W.2) and Ganga Singh (P.W.3) were taking betel leaves in a nearby Pan shop at the time of the incident. They picked up injured Prem Singh from near the medical shop and carried him on a hand-cart to Hindoriya Police Station where Komal Singh (P.W.I) lodged a report (Ex.P-1) about the incident at 7.45 p.m. The deceased was rushed to Damoh Hospital where he was declared to be dead at 8-15 p.m.; vide report of the doctor on Ex.P-6A. In post mortem examination the deceased was found to have sustained the following injuries as per report Ex.P-25 : -

- (i) Incised stab wound 1" x 1/2" x bone deep on left side of the chest near the nipple between 5th and 6th intercostal space.
- (ii) A lacerated wound on sternum with blackening 1" x 0.2" x muscle deep.
- (iii) A lacerated wound on sternum with blackening 0.6"x 0.2" x muscle deep.
- (iv) A lacerated wound with blackening around on right side of the sternum, 0.8" x 0.2" x muscle deep.
- (v) A lacerated wound in right side of chest 0.6" 0.2" x skin deep.
- (vi) A lacerated wound on left hip region 0.9" x 5" x muscle deep.
- (vii) Abrasion on right elbow joint 0.5" x 0.5".
- (viii) Abrasion on right side of the back 1" x 0.75" and
- (ix) Abrasion on right thigh 1.5" x 0.75".

The incident had taken place because previous enmity existed between the parties. There existed dispute about irrigation water between Komal,Singh (P.W.I) and appellant No. 7 Ganga Prasad. Some time prior to the present incident, appellants Girja Prasad, Premshankar and Rajjan because of that water dispute had assaulted Komal Singh (P.W.I) and his son Babu Singh (P.W.I5); vide roznamcha reports Exs.P-33A and P-34A dated 11-9-1986. The police had also arrested those appellants acting on those reports. The present incident had taken place after they were let out on bail.

The defence taken by the appellants was that of total denial of the incident. They denied that they were in any way concerned in the alleged incident. The learned

Additional Sessions Judge, Damon, after trial, held the prosecution story to be completely established and accordingly convicted and sentenced the appellants in the manner already indicated.

Shri Rajendra Singh, learned counsel for the appellants, argued that first information report, Ex.P-1, was not a promptly recorded document as it purported to be. It was really brought into existence a day subsequent to the incident, i.e., on 22-11-1986 at Damoh, while the document purported to have been recorded on the date of incident itself, i.e., on 21-11-1986 at Hindoriya Police Station. It was argued that this had the effect of not only depriving the document of its evidentiary value but also showed that investigation in the case had not been carried out faithfully, vitiating the entire prosecution evidence. Reliance was sought from the observations made by the Supreme Court in para 21 of the decision *Rahim Beg and Another Vs. State of U.P.*, It was also argued that seizure memoranda Exs.P-9, P-10 and P-12, purporting to be of the date 22-1-1986, showing the registration of the crime u/s 302 of the Indian Penal Code, were also documents subsequently prepared by the Investigating Officer Shri B. D. Tripathi (P.W.21) because the latter admitted that registration of the crime from Section 307 to 302 was altered only on 23-11-1986 and not before that. It was further argued that alleged eye-witnesses Komal Singh (P.W.1) and his cronies and servants Narayan (P.W.2) and Ganga Singh (P.W.3) were interested witnesses inimically disposed towards the accused persons. Their evidence was contrary to medical evidence. They had also told lies on material points. Their evidence was therefore totally unworthy of credit. The real fact was that killing of deceased Premsingh was the handiwork of two unknown hired assassins, as was the evidence of some of the witnesses for the prosecution itself, namely, Ramkumar (P.W.9), Ratanlal (P.W.10), Siddsingh (P.W. 11), Damodar Prasad (P.W.12) and Sarjoo (P.W.19). Finally, it was argued that alleged evidence about exhortation said to have been done by appellant No. 7 Ganga Prasad was an unsatisfactory kind of evidence on which no reliance could be placed. Such trite evidence is often spicy but little credence could be attached to the same. Reference was made to observations of the Supreme Court in para 23 of the decision *State of U.P. Vs. Ram Swarup and Another*, and in para 7 of the decision *Dhanabal and Another Vs. State of Tamil Nadu*,

We find that the first information report (Ex.P-1) was lodged by deceased's brother Komal Singh (P.W.1), who also claimed himself to be an eye-witness. The police-statement (Ex.P-5) of this witness was also recorded. On the evidence of A. S. I. Dinesh Singh Parihar (P.W.7) he had recorded that police statement at Damoh Kotwali Police Station on 22-11-1988, i.e., a day subsequent to the date of incident. The first information report (Ex.P-1), purports to have been recorded on 21-11-1986 at 7.45 p.m. at Hindoriya Police Station by S. O. Hindoriya Shri Tripathi (P.W.21). It does appear from the evidence of Komal Singh (P.W.1) that he gave conflicting answers indicating that report, Ex.P-1, was recorded at Damoh Police Station on 22-11-1986, i.e., a day subsequent to its purported date; but also indicating the contrary viz. that report, Ex.P-1, was really recorded

at Hindoriya Police Station on the purported date and time and that what was really recorded at Damoh Police Station on the subsequent date was his Police Statement, Ex.P-5. Thus, whereas at one stage Komal Singh admitted in paras 47 and 63 of his deposition that report, Ex.P-1, was recorded at Damoh Police Station and also signed by him there, he stated contrary things in paras 71, 74, 78 and 79 of his deposition to the effect that the report, Ex.P-1, was recorded at Hindoriya Police Station and also signed by him there. He stated at one stage that report was recorded at Hindoriya Police Station by a Head Constable but subsequently he corrected himself by saying that for as much as one hour, the arrival of Sub-Inspector was awaited and after the latter arrived at Hindoriya Police Station that the report was then recorded. The witness did not stick to this version thereafter but again took somersaults. It appears to us that the witness was really confused about what was his report and what was his police statement. He confused one for the other. The conflicting answers which he gave not once but at different stages stemmed from this confusion only. Two things, however, stand out in his evidence, which support the prosecution case that the first information report, Ex.P-1, was a genuine document which had not been antedated. Firstly, it was the unshakable version of the witness that he did visit Hindoriya Police Station before going to Damoh. Secondly, it was also his version that he had disclosed the circumstances of the crime at Hindoriya Police Station. These two things make it very likely that what was recorded at Hindoriya Police Station was report, Ex.P-1. This is not a case where the maker of the report had not at all visited the police station at which his report was shown to have been recorded. We find that there is no foundation for the argument that the first information report, Ex.P-1, was an ante dated or subsequently recorded document.

So also there is no foundation to accept the argument that seizure memoranda, Exs.P-9 to P-12, were subsequently prepared. No doubt, the registration of crime in these documents, bearing the date 22-1-1986, was shown to be u/s 302 of the Indian Penal Code whereas the registration of the crime was changed from Section 307 to Section 302 of the Indian Penal Code only on 23-11-1986 as per the admission of Investigation Officer Shri Tripathi (P.W.21). Shri Tripathi explained that he showed the registration of the crime u/s 302 in the above said seizure memoranda because he had come to know about death of deceased Prem Singh on 22nd itself. But the registration of the crime was changed only after receipt of inquest papers and case diary from Damoh Police Station on 23-11-1986. The witness might have thought that change of registration of the crime in the case diary was a technical matter which could be done only after receipt of formal papers and not before that. This would not show that the papers relating to seizure etc. prepared by him previous to the change of registration of the crime were subsequently prepared by him. A perusal of seizure memoranda, Exs.P-9 to P-12, would also show that they evidenced seizure of various articles from the spot. There is intrinsic indication in the evidence of S. I. Shri Tripathi (P.W.21) and panchas Narayan Singh (P.W.5) and

Chandan Singh (P.W.6) that Shri Tripathi had visited the spot on the day following the date of incident i.e., he had visited the spot on 22-11-1986 and had prepared seizures. In other words, the seizure memoranda in question bear proper dates and were not subsequently prepared documents. In a word, there is no foundation for the argument that investigation in this case was not conducted in a faithful and fair manner.

Coming now to the prosecution evidence on the point of the incident, there is no difficulty in accepting that part of the same which shows that blasts by hand grenades had taken place in the market place of Hindoriya on the date and time in question i.e. on 21-11-1986 at about 7.15 p.m., during which deceased Prem Singh had sustained injuries, of which he shortly died. Small pieces of papers, pebbles and glass pieces were recovered from the place in front of Baddan's Hotel, where the incident had initially taken place; vide seizure memo Ex.P-10. On the report of Chemical Examiner, Sagar (Ex.P-30A), those articles contained traces of explosive substances and were parts of a crude hand grenade. A sample earth seized from a place in front of Shikhar Medical Store vide seizure memo Ex. P-9, where the deceased had ultimately fallen in an injured condition, was found to contain human blood; vide a combined reading of the reports of Chemical Examiner and Serologist, Exs. P-31 and P44. A hand grenade seized from an open ground in front of municipal office in Hindoriya vide seizure memo Ex.P-11, was found to be a live country made hand grenade, vide report of F.S.L., Sagar Ex.P-30A. It was further proved on the evidence of Dr. Sharma (P.W.18) who had conducted post mortem examination of the deceased, that the deceased had sustained one incised stab wound on his left chest and as many as 3 lacerated wounds accompanied with blackening, which were blast injuries, also on the chest, vide post mortem report Ex.P-25. The deceased had in fact sustained a total of 9 injuries. According to Dr. Sharma (P.W.-18) stab wound appeared to have been caused by some sharp pointed object while three lacerated wounds on the chest were blast injuries. The death had occurred because of shock due to haemorrhage from chest injuries. The stab injury was by itself sufficient to cause death while blast injuries were cumulatively sufficient to cause death. It was however not established that any Katta was fired because no gun shot injury was found on the deceased nor any pellets or empty cartridges or their remnants recovered from any place. In a word, the factum, manner and venue of crime were clearly established.

The controversy in the present case therefore gets limited and centres round the question of proof with regard to complicity of the appellants in the crime. The prosecution story rests in this regard on the eye-witness account given by as many as eight witnesses. They are Komal Singh (P.W.I), Narayan (P.W.2), Ganga Singh (P.W. 3), Ramkumar (P.W.9), Ratanlal (P.W.10), Siddh Singh (P.W.II), Damodar Prasad (P.W.12) and Sarju (P.W. 19). Of these witnesses, all except the first three turned hostile and did not support the prosecution. The version of hostile witnesses broadly speaking was that two unknown strangers had come near Baddan's Hotel to deceased Prem Singh. There was sharp exchange of

words between them on the one hand and the deceased on the other, whereafter powerful blasts were heard. Those two strangers were then seen running in the direction of medical shop of Shikharchand and deceased Premsingh was seen chasing them. This is all that they deposed. It is clear that the incident of blasts had caused a great scare in the market. It was the handiwork of desperate lawless elements with whom no unconcerned person would want to get involved by deposing against them. This is the reason why these witnesses were suppressing the truth. They were contradicted with their contrary police statements, in which they had named the miscreants who had committed the crime.

This leaves for consideration the evidence of witnesses Komal Singh (P.W.I), Narayan (P.W.2) and Ganga Singh (P.W.3), on whose testimony the prosecution depended for its proof. Komal Singh (P.W.I) is brother of deceased Prem Singh. It has appeared in the record of the case that Narayan (P.W.2) had worked as a labourer with Komal Singh. Ganga Singh (P.W.3) had worked as a servant of deceased Prem Singh. Komal Singh (P.W.I) further admitted that both Narayan (P.W.2) and Ganga Singh (P.W.3) were in some manner related to him. The evidence of these witnesses was naturally assailed by the defence as the evidence of interested and partisan witnesses who entertained hostility towards some of the accused persons. But it is wrong to reject outright the testimony of such kind of witnesses. What is only needed is that evidence of such witnesses should be carefully scrutinised to ensure that no innocent persons are convicted along with guilty ones. It has to be realised that related and interested witnesses would be the last persons to screen the real culprits and falsely substitute innocent ones in their places. But is not unlikely that such witnesses may name the real culprits and at the same time add the names of other persons not involved because of enmity. It is for this reason that the evidence of such witnesses needs to be scrutinised with more than ordinary care and caution.

The evidence of the above three witnesses was that the crime in question was committed by nine persons, out of whom seven of the eight appellants were expressly named by them while two culprits were said to be strangers whom they said they could identify, if shown to them. One of them; namely, appellant No. 6 Ashish belonging to Damon was put up for test identification and was identified by them vide test-proceedings, Ex.P-4. He was also identified by them in Court. It is not known who was the 9th man because the police could not apprehend and get him identified.

Speaking about specific part played by each of the culprits, the aforesaid three witnesses deposed that appellant No. 1 Girja inflicted 3 or 4 knife blows on the chest of the deceased, appellant No. 2 Tampu fired a Katta at the deceased, appellant No. 4 Rajjan hurled a hand grenade and subsequently appellants 3 and 8 Gampu and Ayodhi also hurled hand grenades. As has already been seen, while discussing medical evidence, only one injury on the chest, which could be knife-injury, was caused to the deceased and further no gun-shot injury at all was

sustained by the deceased. No doubt, the deceased had also received three blast injuries on his chest. In the context of this medical evidence, the evidence of the aforesaid witnesses that appellant Girja Prasad had dealt 3 or 4 knife blows on the chest of the deceased could be no more than mistaken impression on their part. It has to be borne in mind that powerful blasts had occurred during the course of the incident which must have caused a lot of commotion and confusion. The time of the incident was also either dusk or early night when darkness must have already set in. The aforesaid witnesses had seen the incident from certain distance. The distance must have increased when during the course of the incident, they hid themselves behind a cover. It is therefore not surprising if they got an impression that more than one knife blow had been dealt. By deposing that more than one knife blow was dealt by the same accused, they did not stand to gain anything because implication of the accused persons did not increase thereby. So also the evidence of these witnesses that appellant No. 2 Tampu had fired a Katta could also be their mistaken impression. But benefit thereof deserves to be given to appellant No. 2 Tampu by holding in his favour that it is not proved that he did any specific act in the course of the assault on the deceased. The further mentioning of specific acts that appellant No. 4 Rajjan had hurled hand grenade and subsequently appellants 3 and 8 Gampu and Ayodhi had also hurled hand grenades, deserves to be accepted. That account is in line with what was disclosed by Komal Singh (P.W.I) at the earliest opportunity, in his first information report, Ex.P-1. True enough, the F.I.R., Ex.P-1, expressly names all the -appellants except Ashish, as the assailants in an omnibus manner. But the F.I.R. describes specific acts of only some of the appellants. It is proper to treat F.I.R. as corroboration only with respect to those accused whose specific acts are mentioned therein. It is only in that way that innocent persons are not convicted along with guilty ones can be ensured on the testimony of interested and partisan witnesses. The use of F.I.R. as corroboration with respect to only those accused whose specific parts are described in it, was approved by the Supreme Court in the case of Ram Manorath and Others Vs. State of Uttar Pradesh,

The evidence of the aforesaid three witnesses that appellant No. 7 Ganga Prasad did any kind of exhortation before the assault actually commenced, is discrepant, since it is not known whether he had uttered the words "Maro" or "Mar Dalo". Moreover, such kind of evidence is often given but is weak and rarely give any credence. The evidence that this appellant Ganga Prasad had some time earlier come to verify about the presence of deceased Prem Singh could also be a mistaken impression. It is quite possible that being a market place, appellant No. 7 Ganga had come there innocently and had returned back.

Taking a very careful and cautious approach, the evidence of the aforesaid three witnesses deserves to be accepted only to the extent that appellant No. 1 Girja Prasad was seen by them inflicting knife injury on the chest of the deceased and that appellants Nos. 3, 4 and 8, Gampu, Rajjan and Ayodhi hurled hand grenades actually causing blast injuries to the deceased. The other appellants might have

been present at the time of incident but it will be unsafe to hold that they participated in the incident or were members of unlawful assembly responsible for causing the incident.

On the above finding, it can safely be held that appellants 1, 3, 4 and 8; namely, Girja Prasad, Gampu, Rajjan and Ayodhi, by making a concerted attack on the deceased had killed him by the use of knife and hand grenades and had thus committed the offence u/s 302/34, Indian Penal Code. At the same time, it is proper to give benefit of doubt to the remaining appellants namely to appellants 2, 5, 6 and 7 Tampu, Premshankar, Ashish and Ganga Prasad. They deserve to be acquitted.

In view of the foregoing discussion, the appeal is partly allowed. The conviction of appellants 1, 3, 4 and 8, namely, Girja Prasad, Gampu, Rajjan and Ayodhi for the offence u/s 302/149, Indian Penal Code, is altered to one, u/s 302/34, Indian Penal Code. The sentence of imprisonment for life imposed on these appellants for the said offence is maintained. The conviction and sentence of these appellants for the offence u/s 148, Indian Penal Code are however set aside. The convictions and sentences of remaining appellants 2, 5, 6 and 7 Tampu, Premshankar, Ashish and Ganga Prasad for the offences u/s 302/149 and Section 148/147 Indian Penal Code, are set aside. They are acquitted of the said offences. They shall be set at liberty forthwith, if not required in any other case.