

(2018) 06 MP CK 0095

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.374, 456 Of 2006

Hukum Singh & Anr

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 22-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 294, 302, 307, 352, 364(A)
Madhya Pradesh Dakaity Avam Vyapaharan Prabhavit Kshetra Ahdiniyam, 1981 —
Section 11, 13

Citation : (2018) 06 MP CK 0095

Hon'ble Judges : J.K. MAHESHWARI, J;ANAND PATHAK, J

Bench : Division Bench

Advocate : A.R.Shivhare, Brijesh Sharma, Raghvendra Dixit

Final Decision : Partly Allowed

Judgement

Anand Pathak, J.

The judgment delivered in instant appeal (Cr.A. No.374/2006) shall govern the disposal of Cr.A.No. 374/2006 (Hukum Singh Vs. State of M.P.) and

Cr.A.No. 456/2006 as both these appeals have been filed against the common judgment of conviction and sentence dated 17/4/2006 passed by Special

Judge (MPDVPK Act), District Shivpuri in Sessions Trial No. 66/2005; whereby, appellant of Criminal Appeal No. 374/2006 namely Hukum Singh

has been held guilty of commission of offence under Section 302/34 of IPC and sentenced to undergo Life Imprisonment with fine of Rs. 5,000/-,

whereas, appellant of Criminal Appeal No. 456/2006 namely, Guddu alias Jangbahadur has been held guilty of offence under Sections 302/34 and 352

of IPC and sentenced to undergo Life Imprisonment with fine of Rs. 5,000/- and sentence of three months, respectively.

2. The case of the prosecution, in short, is that on the date of incident i.e. 27/7/2005, at about 8 pm, accused persons took deceased Ganesh Jatav with them on their motorcycle from his home and thereafter, at Devi Temple, situate at Nawab Sahab Road, Shivpuri accused Jangbahadur and other

accused persons inflicted Bakka (Billhook) blows over the deceased. Incident was witnessed by complainant Ramesh Chandra Sharma (Police Head

Constable) who was coming from his duty and tried to intervene in the matter but accused Jangbahadur abused him and tried to inflict Bakka blow

over him, which he evaded and informed the matter to Police Station, Shivpuri on wireless. When police reached on the spot, accused fled from it and

Dehati Nalishi report (Ex. P/9) was noted down. Injured Ganesh Jatav was taken to the hospital for treatment and an offence under Section 307 of

IPC was registered by Police at crime No. 355/2005. Later, Ganesh Jatav succumbed to the injuries, therefore, body was sent for postmortem and

statement of complainant and witnesses were recorded. After investigation, charge-sheet was filed by police Station on 25/10/2005 before the Court

below for offence under Section 302/34 and 364 (A), 294, 307/34, 352/34 of IPC and Section 11/13 of MPDVPK Act against accused Guddu alias

Jangbahadur, Hukum Singh and accused Bhagwanlal (who later on acquitted).

3. Appellants abjured their guilt. They did not take any specific plea but submitted that they were falsely implicated in the matter.

4. The Special Judge after considering the prosecution's evidence, convicted and sentenced the appellants and acquitted Bhagwanlal as mentioned

hereinabove. Therefore, the instant appeal is being preferred.

5. According to learned counsel for the appellants prosecution has falsely implicated the appellants. Eye witness account is not reliable. The

complainant Ramesh Chandra Sharma was seeking promotion in the department and therefore, at the instance of higher authorities, falsely implicated

the present appellants. The case was of blind murder and police could not able to trace real culprits, therefore, accused were falsely implicated.

Perusal of Dehati Nalishi indicates that appellant -Jangbahadur has been referred as nephew of Gulabsingh, who is an Assistant Sub Inspector in

Police, therefore, it is clear that he was known to complainant and therefore, he has been implicated as accused because of departmental rivalry. As

per the allegations, appellant -Guddu alias Jangbahadur tried to throw a heavy

stone over the face of the deceased but medical report does not

corroborate the same, because no such injury was found over face of the deceased and therefore, appellant be acquitted.

6. On behalf of appellant -Hukum Singh, it was urged that the eye witness account of Rameshchandra Sharma (PW/7); nowhere, disclosed the role of

appellant Hukum Singh in any manner. Eye witness Ramesh Chandra Sharma (PW-7) never referred the name and identity of present appellant -

Hukum Singh in the case. He has been falsely implicated only on the basis of evidence of mother of deceased PW/2-Lachchhobai. Since FIR, Ex.

P/26 refers only one aggressor, therefore, present appellant -Hukum Singh could not have been implicated on inadequate and improper testimony of

PW/2-Lachhobai, who in fact turned hostile and did not support the story of the prosecution. Presence of appellant -Hukum Singh was not proved

through eye witness account or through other account including medical report therefore, trial Court erred in convicting the appellant -Hukum Singh

under Section 302/34 of IPC.

7. On the other hand, learned counsel for the State opposed the prayer made by the appellants and on the basis of depositions of different witnesses,

medical reports and findings of trial Court, supported the impugned judgment. According to learned counsel for the State, eye-witness account is

sufficient enough to implicate the appellants. He prayed for dismissal of the appeal.

8. Heard the learned counsel for the parties and perused the record.

9. At the first instance, it is to be ascertained whether the death was homicidal in nature or not. The medical report refers the following injuries

inflicted over the deceased:-

1. Incised wound on the left neck 2-1/2 x 1/2 x 3 inch deep in tissue.

2. Incised wound on the right cheek, size of 1-1/2 x 1/4 x 1/2 inch on right cheek.

3. Incised wound on the right chest, size of 1 x 1/4 inch deep up to lung.

4. Incised wound on the right upper lid size of 1-1/2 x 1/12 and deep upto bone.

5. Incised wound on the right arm size of 1 x 1/2 inch and deep upto bone.

6. Incised wound on the right upper lip size of 1/2 x 1/4 inch deep up to gums.

7. Incised wound on the right mandibular area on inferior aspect size of 1 x 1/2

inch x deep upto bone.

8. Incised wound on the right lateral at the angle of mouth size of 1 x ¼ inch and deep.

9. Incised wound on the right renal area of back size of 1-1/2 x ½ x 1 inch deep.

10. Incised wound on the right side of back abdomen size of 1-1/2 x ½ x 1 inch deep.

11. Incised wound on the right iliac crest region size of 1 x ½ x deep up to bone.

12. Abrasion on the right cheek size of 5 x 3 inch area.

13. Abrasion on the left cheek size of 4 x 3 inch area.

14. Right upper incisors and right lower incisors absent.

10. Dr. M.L. Agrawal (PW-8) conducted autopsy over the deceased and in his medical report Ex.P-11 as well as in his court statement, he has

categorically given the information about the nature of death due to profuse bleeding; because of injury No.1 sustained due to incised wound over the

left side of neck. According to him, nature of death was homicidal. On perusal of medical report, duly corroborated by the court statement of Dr.

M.L. Agrawal, it is established that the death was homicidal in nature.

11. Since two appeals preferred by two different appellant/ accused are dealt with by the instant common order therefore, at the first instance, the

case in respect of appellant/accused- Guddu alias Jangbahadur (appellant of Cr.A. No.456/2006) is dealt with.

12. Dehati Nalsi (Ex.P-9) is the first information account of the incident, therefore, treated as FIR, scribe of it was Ramesh Chandra Sharma (PW-

7), who happened to be a Police Head Constable who was the eye witness also. In Dehati Nalsi, witness Ramesh Chandra Sharma has given specific

description of accused-Guddu alias Jangbahadur (hereinafter referred as Guddu) and the act of inflicting blows over the deceased by him while

wielding Bakka, whereby he killed the deceased. He also refers the course of events wherein he tried to help out the deceased but in return received

brutal retaliation of appellant-Guddu with verbal abuse. Witness Ramesh Chandra Sharma (PW-7) says in FIR that Guddu wielded Bakka for inflicting

injuries to the deceased. He identified Guddu in dock in the Court room. It is settled in law that dock identification is also a way of identification

therefore, his FIR statement as well as court statement remained un-rebutted

when he specifically made the statement that he knew Guddu with his other name Jangbahadur and has seen Guddu while having Bakka in his hand.

13. Lacchobai (PW-2), mother of deceased although turned hostile and did not support the story of the prosecution but in para 1, she makes statement

about the act of Guddu when he called his son to come along with him. Later, when prosecution declared her hostile and proceeded to cross-examine

her then in para 3 she conceded that she told the police about the involvement of Guddu in killing her son. The said statement in para 3 if read in

juxtaposition to para 1 as well as in juxtaposition to the deposition of witness Ramesh Chandra Sharma (PW-7) then it establishes the fact about the

involvement of Guddu in committing murder of deceased Ganesh Jatav.

14. Another glaring aspect is the defence tried to be taken by the accused that due to departmental rivalry, appellant Guddu was falsely implicated but

the said theory has been categorically rejected by the witness Ramesh Chandra Sharma (PW-7). Jaidev Singh Jatav (PW-17), who immediately

reached over the spot when informed by wireless by Ramesh Chandra Sharma (PW-7). Similarly, Uttam Singh Sikarwar (PW-19)-Sub Divisional

Officer of Police also supported the story of the prosecution. All three witnesses rejected the conspiracy theory tried to be established by the defence.

15. Witness Rakesh (PW-9) also identified Guddu in the dock therefore, dock identification of accused-Guddu was carried out by this witness also.

Although in respect of two other accused, he only says that he recognized them and knows their names but the witness does not say that these two

accused present in the Court Hukum Singh and Bhagwan Das are those accused persons, who were involved in the incident. Therefore, dock

identification of Hukum Singh was not made.

16. Witness Jaidev Singh Jatav (PW-17) Sub Inspector, who wrote down Dehati Nalsi also supported the version of Ramesh Chandra Sharma (PW-

7). What Jaidev Singh deposed, was on the basis of information given by Ramesh Chandra Sharma when Jaidev Singh reached on spot and it was in

tander with the deposition of Ramesh Chandra Sharma (PW-7). No variance between the two depositions exists.

17. One of the arrest and seizure witnesses -Sanjeev (PW/12) has also supported the story of the prosecution. He categorically stated about arrest of

Guddu vide arrest memo Ex. P/16 and the seizure memo Ex. P/18, regarding

seizure of Bakka and seizure memo Ex. P/19 regarding clothes, vest, t-shirt, etc. of accused -Guddu. The said witness also affirmed the story of the prosecution and in his cross-examination no dent was made by the defence. Therefore, the story of the prosecution gets affirmation from the arrest and seizure witness also.

18. The seized articles Ex. P/18 and 19, were chemically examined and Ex. P/32 (FSL Report), it is established that the human blood of group

â??Aâ? of deceased Ganesh Jatav was found over the clothes of Guddu, which were seized vide Ex. P/19. Therefore, this piece of evidence also supports the story of the prosecution.

19. The witness -Uttam Singh Sikarwar (PW/19) also supported the story and therefore, it can safely be inferred that the appellant -Guddu killed the

deceased Ganesh Jatav with his Bakka. Trial Court dealt this issue in detail and committed no error in coming to the conclusion on the basis of medical

evidence, eye-witness account and FSL report alongwith testimony of witness of seizure about the involvement of Guddu alias Jangbahadure as guilty

of murder of deceased Ganesh Jatav and rightly convicted him for offence under Section 302 of IPC.

20. So far as conviction of appellant-Guddu vis a vis offence under Section 352 of IPC is concerned, the said offence is not made out against Guddu

because Ramesh Chandra Sharma (PW-7) was not on duty when he saw the incident and interrupted. When Ramesh Chand Sharma (PW-7) tried to

save the deceased while intervening into the matter then he was in civil dress and not in uniform and besides that he was coming after completing his

duty and he was not performing duty at the time of incident. This fact was admitted by the witness Ramesh Chandra Sharma himself, that he was in

civil dress and was coming after completion of his duty. As a vigilant citizen, he proactively involved into the altercation but certainly he was not on

duty, therefore, it cannot be said that Guddu restrained or used force against Ramesh Chandra Sharma when he was performing his duty as public

servant. Therefore, accused-Guddu cannot be implicated for the offence under Section 352 of IPC. Therefore, conviction of appellant-Guddu under

Section 352 of IPC are hereby set aside and he is acquitted from the said charge.

21. Now the case in respect of another appellant/accused-Hukum Singh (appellant of Cr.A. No.374/2006) is to be determined.

22. Eye-witness account of Ramesh Chandra Sharma (PW-7) does not disclose the involvement of appellant -Hukum Singh. Dehati Nalishi (Ex. P/9)

also narrates the story about the role of Guddu and it nowhere reflects the name of appellant -Hukum Singh. The medical report also indicates that the

deceased succumbed because of the incised wound and for that the appellant - Guddu is already convicted for offence under Section 302 of IPC.

Dehati Nalishi (Ex. P/9) read with deposition of scribe -Rameshchandra Sharma (PW/7) reflect that the name of Hukum Singh nowhere figured in

the course of incident. It is only after the statement of Lachchhobai (PW/2) and Rakesh (PW/9) that name of present appellant Hukum Singh figured

as accused. From perusal of judgment of trial Court, it further appears that the appellant-Hukum Singh was arrested later on at the instructions of trial

court. PW/2-Lachchhobai also referred the name of appellant-Hukum Singh alongwith Bhagwanlal, but she turned hostile. Similarly, testimony of

PW/9-Rakesh makes a mixed texture of facts because at the one hand he says Guddu and Hukum Jatav taken Ganesh Jatav from his house but later

on includes Bhagwanlal also as accomplice alongwith them. He at the same time submits that when he saw Ganesh Jatav beaten up by the accused

persons then he went back to his house and did not go directly to the police station. The said conduct of this witness does not indicate common human

response. If the brother of any person is being beaten by the goons or assailants then the common human reaction should be to save his brother or to

shout for help rather than coming back and taking some friends for rescue because by that time things may over. This human response appears to be

a improvement in the case of prosecution for implication of Hukum Singh. In para 8 of his cross-examination, PW/9-Rakesh admits that all three

accused wielded Bakka in their hands, therefore, he did not try to rescue deceased Ganesh Jatav. The wielding of Bakka by every accused separately

is a new story cropped up by him.

23. The dichotomy of facts regarding wielding of Bakkas has substantive bearing. Eye witness account through Ramesh Chandra Sharma (PW-7)

indicates that Bakka was wielded only by Guddu whereas Rakesh (PW-9) in para 10 says that all three accused wielded Bakka. Testimony of Rakesh

(PW-9) in para 10 vis a vis testimony of Ramesh Chandra Sharma (PW-7) in para 2 about the use of weapon renders the story of the prosecution

doubtful in respect of Hukum Singh.

24. Appellant-Hukum Singh cannot be convicted on the basis of statements made by the family of the deceased just to implicate him at any cost by

making statement against him. Motorcycle of Hukum Singh was seized vide Ex.P-24. Seizure witness (PW-15) Data Ram who was one of the seizure

witnesses did not support the story of the prosecution and declared hostile whereas seizure witness of Bakka (Ex.P-18) Sanjeev (PW-12) seized from

Guddu, supported the story of the prosecution vis a vis involvement of Guddu but seizure witness of motorcycle belonging to Hukum Singh did not get

any support and therefore, Data Ram (PW-15) was declared as hostile by the prosecution. This renders the testimony of witness doubtful because

major inconsistencies were cropped up in different witnesses about the role of Hukum Singh. Beside that, no weapon has been seized from appellant

Hukum Singh and since no weapon has been seized from Hukum Singh, therefore, no blood stains could be found, therefore, statement of Rakesh

(PW-9) becomes further doubtful when he says that all three accused wielded Bakkas in their hands. Only one motorcycle, red colour, (Bajaj make)

was seized from the possession of appellant-Hukum Singh and witness to this seizure, PW/15-Dataram turned hostile and he did not support the story

of prosecution.

25. Beside that, it is highly improbable that three accused Guddu alias Jangbahadur, Hukum Singh and Bhagwandas took deceased Ganesh Jatav on

one motorcycle. Meaning thereby, four persons were moving over one motorcycle. This appears to be improbable and same is not properly explained

by the prosecution and its witnesses.

26. PW/9-Rakesh is a hearsay witness because he narrated the story on the basis of what his mother PW-2-Lachchhobai told him and his mother

turned hostile. When eye witness account is not available against the appellant-Hukum Singh in categorical terms and hearsay witnesses turned

hostile, then chain of circumstantial evidence is broken, which is otherwise, ought to have been completely interwoven to implicate appellant-Hukum

Singh. In the present case, circumstantial evidence also does not support the story of the prosecution vis-a-vis appellant/accused-Hukum Singh. The

prosecution could not prove its story beyond reasonable doubts. Therefore, on the basis of above cumulative analysis, appellant-Hukum Singh cannot

be held guilty for offence punishable under Section 302/34 of IPC.

27. Consequently, Criminal Appeal No. 374/2006 filed by appellant-Hukum Singh is allowed and impugned judgment dated 17/4/2006 convicting the

appellant-Hukum Singh for charge of offence under Section 302/34 of IPC and sentencing him to undergo life imprisonment with fine of Rs. 5,000/- so

far as it relates to appellant-Hukum Singh is hereby set aside and he is acquitted from charge of offence under Section 302/34 of IPC. He is on bail,

therefore, his bail bonds stand discharged.

28. As regards Criminal Appeal No. 456/2006 preferred by appellant-accused Guddu alias Jangbahadur is concerned, same is hereby allowed in part.

The impugned judgment so far as conviction and sentence of the appellant-Guddu alias Jangbahadur for offence under Section 302 of IPC is

concerned, it is hereby affirmed. However, he is acquitted from the charge of offence under Section 352 of IPC. Appellant is in jail, therefore, he is

directed to undergo remaining part of his jail sentence as awarded by the trial Court.

29. Resultantly, Criminal Appeal No. 374/2006 stands allowed and Criminal Appeal No. 456/2006 stands allowed in part and disposed of.

30. Copy of this order be kept in both the files for record.