

**(2020) 05 MP CK 0091**

**In the Madhya Pradesh High Court**

**Case No : Criminal Appeal No.45, 74 Of 2010**

Indrapal Singh And Ors

APPELLANT

Vs

State Of M.P

RESPONDENT

**Date of Decision : 19-05-2020**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 374

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 304II, 307, 323, 324, 326

**Citation : (2020) 05 MP CK 0091**

**Hon'ble Judges : Anand Pathak, J; Vishal Mishra, J**

**Bench : Division Bench**

**Advocate : Dharmendra Singh, Vinay Kumar, S. S. Rajput,**

**Final Decision : Dismissed**

## **Judgement**

Vishal Mishra, J

1. Both the criminal appeals arising out of the same judgment of conviction dated 23.12.2009, therefore, they are being heard and decided analogously.
2. In Criminal Appeal No. 74/2010 name of appellant No. 2 was deleted in terms of the order dated 02.01.2017, as he has already filed Criminal Appeal No. 45/2010, wherein he is appellant No.1.
3. Both the appeals have been filed under Section 374 of Cr.P.C. against the judgment of conviction dated 23/12/2009 passed by the I Additional Sessions Judge, Guna in Session Trial No.238 of 2007, whereby the appellants have been convicted for the offence punishable u/Ss. 148, 302/149 and 307/149 for 1 year R.I, Life Imprisonment with fine of Rs. 10,000/- and 10 years R.I with fine of Rs. 5000/- respectively with default stipulations and there is no separate conviction given by the learned trial Court under Section 326/149 of IPC to the accused-appellants.
4. As per the prosecution story, Dehati Nalisi has been lodged by complainant-

Bunty @ Bahadur Singh (PW-1) alleging therein that on 02.05.2007 (Saturday) at about 01:00 pm there was an altercation of the complainant with one Ranjeet Singh on 28.04.2007 and today when the complainant was sitting at the shop of Avon tailor, at that time, accused-appellants came their on motorcycle armed with deadly weapons and started abusing the complainant and started inflicting injuries to him. Nepal Singh who was sitting at the bus stop, waiting for the bus, came there to rescue the complainant-Bunty@ Bahadur Singh, at that time the accused persons inflicted injuries to Nepal Singh, resulting into the death of Nepal Singh on the spot. On the basis of which, Dehati Nalisi was got registered which is exhibited as Annexure P/1 and subsequently, FIR was got registered bearing Crime No.107/2007 at police Station Cantt, District Guna against eight accused persons for the offences registered under Sections 302, 307, 323, 324, 147, 148 and 149 of IPC at Police Station Cantt, District Guna. During the course of investigation, police authorities have got conducted the M.L.C of injured Bunty @ Bahadur Singh and postmortem got done of deceased Nepal Singh. Seizure memo, naksha panchayatnama and other documents were prepared by the prosecution and after completion of investigation, the charge-sheet has been filed before the trial Court.

5. The learned trial Court has framed the charges against the accused-appellants, who have denied the charges and accordingly, they were put to trial. The prosecution in support of their case have examined 21 prosecution witnesses and in defense, six witnesses were examined.

6. The learned trial court on the basis of pleading as well as considering the oral and documentary evidence on record and after hearing the rival parties, has arrived at conclusion that prosecution was successful in proving the case against six of accused person and failed to prove the case against two co-accused persons namely Gopal Singh and Brijendra Singh. The learned trial Court vide its judgment of conviction dated 23.12.2009 has acquitted co-accused Gopal Singh and Brijendra Singh from all the charges given them the benefit of doubt, but has convicted all other accused persons for offence under Sections 148, 302/149, 307/149 and 326/149 of IPC. Against the judgment and conviction passed by the trial Court on 23.12.2009, the present appeals are being preferred. State Government has not preferred any appeal against the acquittal of two persons.

7. Counsel for the appellants has preferred the appeals on several grounds including the grounds that on the same set of evidence, the learned trial Court has granted benefit of doubt to two accused persons namely, Gopal Singh and Brijendra Singh and they have been acquitted from all the charges, but has convicted all the remaining appellants, which is not permissible as per law. Other ground which has been taken by learned counsel for appellants is that there was no intention of the accused/appellants to kill Nepal Singh, rather as per the prosecution story. If the prosecution story is taken in toto, then, there was an altercation with injured-Bunty @ Bahadur Singh and when the Nepal Singh intervened, at that time, all of sudden injuries, were inflicted to him by all the

accused persons, thus, there was no common intention of all the accused persons to kill Nepal Singh. The learned trial Court has not considered the aforesaid aspect and has convicted the accused persons/appellants. There was no motive with the appellants to kill Nepal Singh. The motive which could have been attributed was with respect to inflicting injuries to complainant-Bunty @ Bahadur Singh as the story of previous enmity is being created by the prosecution. Worst to worst, for inflicting the injuries to complainant-Bunty @ Bahadur Singh, they could have been convicted under Section 307 of IPC, for which they have already undergone a considerable period of custody. There is no mens rea in the whole prosecution story, to show that accused-appellants have any common intention to kill Nepal Singh. The injuries inflicted to Nepal Singh were inflicted all of sudden in the heat of passion, therefore, Section 302 of IPC is not made out against the present appellants, if the prosecution story is taken in toto, at the most the conviction can be under Section 304 part II of IPC.

8. Another ground which has been taken by learned counsel for appellants is that timing of registration of Dehati nalisi and FIR almost one in the same. It is submitted that the incident was occurred at 01:00 pm and Dehati Nalishi was got registered at 2:10 PM and the FIR which has been registered at 02.10 pm. It is further argued that the distance of police station from the place of incident is shown to be 11 K.M. which clearly goes to create serious doubt over the prosecution story.

9. The aforesaid arguments advanced by learned counsel for the appellants is of no help as from the record, it is seen that Dehati Nalishi (Ex. P/1) is said to be reported by complainant-Bunty@Bahadur Singh was pen down at 02:10 PM on 02.05.2007, whereas FIR (Ex.P/24) was got written on 02.05.2007 at the Police Station, Cantt. District Guna at about 02:50 PM, thus, the recording of Dehati Nalishi and the FIR is having a difference of nearly 40 minutes, which is sufficient time, thus, the arguments with respect to timing in registration of Dehati Nalishi and FIR creating serious doubt over the prosecution story is of no help to the appellants.

10. Another ground which has been taken by counsel for the appellants is that there are material contradiction in the statements of prosecution witnesses, some of the prosecution witnesses are not an eyewitnesses and the prosecution witnesses who are shown to be eyewitnesses, their presence on the spot is doubtful. It is argued that Nepal Singh who has deceased in the case is said to be standing at the bus stop waiting for bus and complainant-Bunty @ Bahadur Singh was sitting at the shop of Avon tailor. Counsel for the appellants has drawn attention of this Court to the spot map (Ex. P-14) and has argued that spot 'A' is shown to be the place of incident, spot 'F' is shown to be the shop of Avon tailor, the sleeper of Bunty @ Bahadur Singh the injured was found at point 'J' which is considerable distance from place of incident. There is nothing on record to show that after Bunty was inflicted injuries, he has tried to ran away, as a result of which, his sleeper left at point 'J' which was shown in the spot map. The body of

the deceased was lying at point 'A' which is sufficient distance about 24-25 ft. which creates a serious doubt over the prosecution story, and there is every possibility that there are two incidents one which has taken place with Bunty, another, wherein the deceased Nepal Singh has been inflicted by some other person, resulting into his death, but the prosecution has clubbed both the incidents together. It is further argued that there are material contradiction in the statements of eyewitnesses Bunty @ Bhadur Singh (PW-1), Satendra @ Gudda (PW-4), Shailendra (PW-5) and Deepak (PW/7), who are said to be eyewitnesses of the incident. All the eyewitnesses have given the different version which creates serious doubt over the prosecution story. In support of his contention, he has placed reliance over the judgment passed by the Hon'ble Supreme Court in the case of Hari Kishan Vs. State of Haryana, reported in (2010) 2 SCC 131.

11. With respect to the aforesaid arguments, it is seen from the record that spot map (Ex. P/14) which is prepared by the prosecution and was proved by the Karan Singh (PW-2). The patwari naksa has been produced by the prosecution as Ex. P/54, wherein the place of incident appears to be one and the same, thus, there are no discrepancies in the spot map prepared by the prosecution. Bunty is one of the injured in the case and he has been examined as PW-1, wherein he has categorically stated regarding inflicting injuries to him as well as Nepal Singh by the accused persons. In paras 1 and 2 in his examination-in-chief, he has categorically stated that at about 01:00 p.m. when he was sitting at the shop of Avon tailor, at that time, accused persons namely Nawab, Ranjeet , Inder, Lala, Narsingh, Viswaveer, Gopal Singh and Brijendra Singh all came on 3 motorcycles armed with deadly weapons and after getting down from their motorcycles, they started abusing the complainant and they started inflicting injuries to him. Co-accused Nabab, Inder and Ranjeet Singh have inflicted farsa blows, accused-Gopal has inflicted injuries by lohangi. Nepal Singh who was sitting at bus stop, was informed by someone and he immediately came to the spot and with the folded hands, requested the accused persons to leave Bunty @ Bhadur Singh, but the accused persons have inflicted injuries to Nepal Singh also. The accused Nabab and Inder have inflicted injuries on the head of the deceased and thereafter, all other accused-appellants have inflicted injuries to the deceased, which have resulted into his death on the spot. There were nine injuries found on the body of the deceased by the doctor (PW/9). He has further stated in his statement that 3-4 days back, some altercation took place between complainant-Bunty @ Bahadur Singh and the accused persons have beaten him on 28.06.2007 and has inflicted injuries in his leg by a farsa blow and has also beaten him with hands and he was admitted in the Hospital for two days. Counsel for the appellants has argued that the injuries which have shown to be inflicted to the injured-Bunty are the injuries of the previous incident which was said to have taken place on 28.06.2007. No such incident has taken place on 02.07.2007. It is argued that the story is being created to show the previous enmity as there was nothing on record with respect to incident said to have taken place on 02.07.2007. The cross-examination of complainant-Bunty has

remained uncontroverted. In paras 21 and 22 of his cross-examination, he has categorically narrated the entire incident and has clarified that the accused-appellants have come on spot on three motorcycles armed with deadly weapons. The injuries which have been inflicted on the body of injured-Bunty @ Bahadur Singh as well as deceased-Nepal Singh are being medically corroborated. Dr. R.P. Sharma (PW-9) has done postmortem of deceased-Nepal Singh and he has found nine injuries on the body of the deceased. He has given the postmortem report, which is exhibited as P/23 and in the opinion of the Dr., the cause of death was coma due to head injury and associated other injuries and was within 12 hours of the examination and death is reported to be homicidal in nature. The injuries which have been found on the body of the deceased could have been very well inflicted by the weapons which have been seized from the possession of the present appellants. Dr. M.L. Bhola (PW-13) who was posted as medical officer in District Hospital, Guna done MLC of injured Bunty @ Bahadur Singh. He has found nine injuries on the body of the injured and all the injuries were within 24 hours of the examination. The injuries Nos. 1, 8 and 9 were inflicted by sharp cutting weapon and rest of the injuries by hard and blunt object. The injuries Nos. 8 and 9 are reported to be simple in nature and rest of the other injuries, he has referred to radiologist for making X-ray. The report is exhibited as P/29. Dr. Sitaram Singh Raghuwanshi (PW-17) who was posted as medical officer in District Hospital, Guna on the post of radiologist has got done the X-ray of the injured. In the X-ray, it was found that the fracture of ulna bone of left hand, fracture of below radius bone of the right hand and 5th metacarpal bone fracture of right hand, fracture of fibula bone of left leg and fracture below of fibula bone in the left leg and fracture of 3rd and 4th metacarpal bone of left hand, in this regard, reports as well as X-ray palates are exhibited as P/57 to P/64.

12. The statements of the eye witnesses have been looked into by this Court and it is found that all the eyewitnesses have categorically supported the version of injured Banty @ Bhadur Singh. The learned trial Court has considered the statements of prosecution witnesses from para 24 of the judgment. As far as the arguments with respect to acquittal of Gopal Singh and Brinjendra Singh are considered, it is seen from the judgment, the learned trial Court has taken care of aforesaid aspect from para 24 onwards and has found that co-accused Gopal Singh and Brijendra Singh were aged about 80 years. The age of the aforesaid co-accused was not disputed by the complainant-Bunty @ Bahadur Singh and was partially admitted, similarly, Satendra @ Gudda (PW-4) and Sanju (PW-6) has also stated that age of the aforesaid co-accused persons were between 70-80 years. Both are reported to be handicapped and there was no injuries of sariya and luhangi over the body of the deceased. The learned trial Court has considered the aforesaid aspect of the case and placing reliance upon the order passed in the case of Babu Sinhg and Ors. Vs. State of M.P. reported in 1992 (2) M.P.J.R. 39 has granted the benefit of doubt to them and they have been acquitted.

13. The aforesaid case law is of no help to the present appellants owing to the

fact that there is sufficient evidence available on record against them. The learned trial Court has considered the discrepancies in timing and the distance as shown in the spot map, but the aforesaid discrepancies so small that no benefit could have been extended to the accused-appellants. The case laws which have been relied by the counsel for the appellants are of no help as the same are on different set of facts and circumstances which are not applicable in the present case. The acquittal of other co-accused persons were on different footing and has been explained by the trial Court in para 24 onwards of the judgment. As far as motive of inflicting injury is concerned, learned trial Court has taken care of in para No. 64 of the judgment. From the entire prosecution story, it is apparently clear that the accused-appellants armed with deadly weapon with the pre meditation of minds and having common intention have come to inflict injuries to Bunty @ Bahadur Singh who has survived in the incident, but Nepal Singh who tried to intervene and rescue complainant-Bunty @ Bahadur Singh was inflicted with fatal injuries, resulting into his death. It is not a case that Nepal Singh sustained one injury. Repeated injuries were inflicted upon him, which were medically proved. Had it been a case where Nepal Singh (the deceased) was inflicted one or two injuries, it could have been gathered that, the accused stopped the intervening person, but in the present case the evidence has come on record that Nepal Singh tried to stop the accused persons from beating Bunty (injured) and with folded hands has prayed to leave him, but the accused persons did not hear him and have inflicted injuries one after another till he was dead. Thus, there was a clear intention that whoever comes to rescue Bunty, the accused persons will not leave him. This goes to show that all the co-accused were having common intention. It is also stated by the prosecution that when the injuries were inflicted Bunty @ Bahadur Singh who fell down on the ground, the accused-appellants assuming that the complainant/injured have been killed, therefore, they left him and went away. Apart from this, motive can be gathered from the fact that some incident has taken place on 28.06.2007.

14. Learned counsel for the respondent/State has supported the judgment of conviction passed by the learned trial Court and contended that there is ample evidence is available on record to show the involvement of the present appellant for committing crime and the prosecution is also proved the case through eyewitnesses. The injuries which have been received by complainant as well as the deceased are medically corroborated. It is settled principle of law by Hon'ble Supreme Court that the statements of prosecution witnesses cannot be discarded owing to the fact there are some minor contradiction in the statements of witnesses, but part of the statements can always be taken into consideration in prosecution case. In the present case, all eye witnesses namely as complainant-Bunty-(PW-1), Karan Singh/ (PW-2), Satendra @ Gudda-(PW-4), Shailendra (PW-5), Sanju-(PW-6), Deepak-(PW-7) have categorically stated regarding incident and active participation of the accused persons in inflicting injuries to the injured and the deceased. In such circumstances, there is no illegality committed by the trial Court. The discrepancies which have tried to be shown by

the appellants regarding timing in registration of Dehati nalisi and FIR is of no help to the appellants. He has relied upon the judgment rendered by Hon'ble Supreme Court in the case of Soma Bai Vs. State of Gujrat reported in AIR 1975 SC 1453, wherein it is held that the statements of witnesses cannot be discarded owing to some minor discrepancies.

15. The arguments advanced by the appellants regarding material difference in FIR as well as statements of prosecution witnesses, it is settled law that FIR is not an encyclopedia of facts and it is not expected from a victim to give details of the incident either in the FIR or in the brief history given to the doctors. FIR is not an encyclopedia which is expected to contain all the details of the prosecution case; it may be sufficient if the broad facts of the prosecution case alone appear. If any overt act is attributed to a particular accused among the assailants, it must be given greater assurance. In this context, reference to certain authorities would be fruitful.

16. The Hon'ble Court in the case of State of Uttar Pradesh Vs. Naresh and Others, passed in Criminal Appeal No.674/2006 has held as under:-

57.....reiterating the principle, the Court opined that it is settled legal proposition that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has been falsely implicated. The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from the same. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused. For the aforesaid purpose reliance was placed upon Rotash v. State of Rajasthan[8] and Ranjit Singh v. State of M.P.[9]

17. It is also settled position of law that in case, charges have been framed under Section 302 of IPC there is no requirement to prove the motive, if there is sufficient evidence available on record. In such circumstances prosecution story is being supported by prosecution witnesses with cogent and reasonable evidence. The aforesaid aspect considered in the case of Gurcharan Singh vs State Of Punjab reported in AIR 1963 SC 340. The Hon'ble Supreme Court (Three Judges Bench) in the case of V.K. Mishra and Anr. Vs. State of Uttrakhand and anr. reported in (2015) 9 SCC 588 and Motiram Padu Joshi and Ors. Vs. State of Maharastra reported in (2018) 9 SCC 429, wherein the Hon'ble Supreme Court has held as under:-

"While appreciating the evidence of witness, approach must be whether the evidence of witness read as a whole appears to have a ring of truth and

consistent with the prosecution case or to find out whether against the general tenor of the case. All that is required is that their evidence is to be scrutinized with care and caution."

18. In the present case injuries found on the body of the deceased and injured were medically corroborated, prosecution story is supported by statements of witnesses including statement of injured witness.

19. Thus, after going through the material available on record and considering the settled legal position, it is observed that the learned trial court has not committed any illegality while deciding the judgment of conviction.

20. Accordingly, the present criminal appeals are merit-less and hereby dismissed.