
(2018) 02 MP CK 0242
In the Madhya Pradesh High Court
Case No : 708 of 2005

Kadori and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-02-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#),
[Section 201](#), [Section 148](#), [Section 149](#) - Punishment for murder - Causing disappearance of evidence of offence or

Citation : (2018) 02 MP CK 0242

Hon'ble Judges : Hemant Gupta, Vijay Kumar Shukla

Bench : Division Bench

Advocate : Shivam Singh, Shivendra Pandey, N.S.Ruprah, Rajeshwari Tanwar

Final Decision : Allowed

Judgement

1. It is stated that appellant No.3 Hai Singh alias Hari Singh has died during the pendency of the appeal. Thus, the present appeal in respect of Hai

Singh alias Hari Singh stands abated. It is also stated by the learned counsel for the parties that appellant no.1 Kadori has already served the entire

sentence, hence no adjudication on merit is required. Thus, the present appeal survives in respect of appellant no.2 Jai Singh, appellant no. 4 Bhan

Singh and appellant no.5 Ram Krapal.

2. In the instant appeal, a challenge has been made to the order of conviction and sentence dated 14-03-2005, passed by Additional Sessions

Judge, Nowgong, District Chhatarpur in S.T.No.211/2002, where by the appellants have been convicted under section 148 of IPC to undergo

imprisonment for one year, under section 302/149 of IPC to undergo imprisonment for life and fine of Rs.3000/-, in default, to suffer further one

year simple imprisonment and under section 201 of IPC to undergo imprisonment for 3 years and fine of Rs. 1000/-, in default, to suffer further 3 months simple imprisonment.

3. Prosecution case in brief is that on 07-05-2002, at about 7.30 A.M., accused/appellant no.3 Hai Singh alias Hari Singh dashed the deceased

Hari Chandra by Truck No.URB-6416, which he was driving. At that time, the deceased Hari Chandra was going to Harpalpur on a bicycle with

milk canes. It is alleged that after the dash from the truck, the deceased fell down and thereafter he was assaulted by accused Jai Singh with a

spear(Barchhi). Karodi and Ram Krapal caused injuries with the help of lathi and accused Bhan Singh was having a country made pistol in his

hand. It is also alleged that accused Hari Singh has also assaulted the deceased with the help of tyrelever. It is alleged that the dead body was

dragged and was placed beneath the tyre of the truck, so as to give a colour of an accident. The FIR was lodged by PW-2 Amar Singh, who is

brother of the deceased at Police Station Harpalpur on 07-05-2002 at about 8.15 AM. The Investigating Officer reached at the spot, who

prepared panchnama of the dead body and the same was sent for postmortem examination. After the autopsy report, the charge sheet was filed

for the offence under sections 148, 302/149, alternatively Sections 302 and 201 of IPC as well as under section 25(1)(a and under Section 27 of

the Arms Act. Appellant Bhan Sing was only charged with the offence under the Arms Act.

4. Learned counsel for the State and the complainant submitted that the prosecution has proved the prosecution case on the basis of the testimony

of PW-2 Amar Singh and P-7 Har Prasad and their testimony is corroborated with the medical evidence.

5. The appellants abjured their guilt and submitted that they have been falsely implicated in the present case.

6. The prosecution case is based on the testimony of two eye witnesses PW-7 Har Prasad and PW-2 Amar Singh. Before appreciating the other

evidence, we propose to examine the testimony of PW-2 first. PW-2 Amar Singh is real brother of the deceased. He stated that on the date of the

incident, the deceased was going to distribute the milk on bicycle and at the same time Amar Singh and Har Prasad Kushwaha had also left the

house and were behind the deceased. He deposed that when the deceased reached Harpalpur square, the truck came from the warehouse side,

which was being driven by accused Harsa alias Hari Singh, he dashed the bicycle of the deceased and deceased had fallen on the road side. They

also chased the truck and according to him the other accused persons Bhan Singh, Jai Singh, Ram Kripal, Harsa alias Hari Singh and Karodi

Theemar, who were hidden near a house, they immediately came and started beating the deceased. He stated that Jai Singh was armed with spear

(Barchhi), Ram Kripal and Karodi armed with lathi, accused Harsa alias Hari Singh was having tyrelever whereas accused Bhan Singh was having

country made pistol. Another eye witness (PW-7) Har Prasad also deposed that he alongwith Amar Singh was on bicycle behind the deceased

and saw that when the deceased reached near the house of Bhagwat Narayan Rajput, the truck dashed the bicycle of the deceased from the back

side. The deceased had fallen on the ground and thereafter all the accused persons started bearing him. He also stated that Jai Singh was having

spear (Barchhi), Ram Kripal and Karodi were armed with lathi, Hari Singh alias Harsa was armed with tyrelever whereas Bhan Singh was having

country made pistol.

7. The prosecution has examined PW-8 Dr.K.P.Tripathi, who had conducted the postmortem submitted that there were multiple scratch and

contusion on right elbow. There were also multiple scratch on the chest and stomach of the deceased. There was also swelling and bone fracture in

femur and left thigh. There was also one penetrating wound 2-1/2x 2 inch on the right thigh. He has also found penetrating wound on left thigh.

There was also injury on testicle of the deceased. He opined that injuries nos. 1, 2, 3, 4 and 7 were caused by some hard and penetrating object.

The cause of death was shock due to excessive hemorrhage.

8. The Investigating Officer PW-9 B.D.Tripathi stated before the court that he registered the report at Crime No. 75/02 vide Ex.P-4. The marg

intimation about the death was registered at No.08/02. He prepared the spot map vide Ex.P-12 and had sent the dead body for the postmortem.

He has also seized same day the bicycle, truck, paint , shoes and blood stained soil and earth vide Ex.P-13. In para-4, of the statement of his

deposition, he stated that on the disclosure statement of Hari Singh, he had

seized tyre lever vide Ex.P-10. The accused Hari Singh and Karodi were arrested on 15-05-2002. On the discovery statement of Karodi, lathi was seized vide Ex.P-11. Lathi was also seized from accused Ram Kripal Yadav vide Ex.P-9. It is relevant to mention here that no seizure was made from Bhan Singh.

9. The prosecution case is based on the testimony of PW- 2 Amar Singh and PW-7 Har Prasad. PW-2 Amar Singh is real brother of the

deceased. He states that accused Hai Singh alias Hari Singh dashed the bicycle from the backside and he had seen that the vehicle was being

driven by Hai Singh and thereafter the deceased had fallen on the ground and other accused persons, who were hidden behind a house

immediately attacked with the help of weapons on the deceased. Accused Hai Singh also caused injury to the deceased with the help of tyre lever.

It is also stated that the dead body was dragged to a long distance where the vehicle was standing and then it was placed beneath the tyre of the

truck so as to make it a case of an accident. PW-7 Har Prasad in para-17 has also supported the version of Amar Singh (PW-2). In the cross-

examination, he admitted that there was old enmity with Bhan Singh.

10. On critical evaluation of testimony of two eye witnesses (PW-2) Amar Singh and PW-7 Har Prasad and other evidence, the prosecution story

seems to be highly improbable that there was the common object to murder the deceased Hari Chandra as first they all were knowing the exact

time of arrival of the deceased at the spot and thereafter his bicycle was dashed by appellant Hai Singh and when the deceased had fallen from the

bicycle, all other accused persons were hiding behind a house on the exact place of the dashing. It is also very unnatural and unbelievable conduct

that after beating the deceased, all the accused persons had dragged the deceased from the spot on the hard surface and then placed the dead

body under the beneath of tyre. Apart from the prosecution story, which seems to be highly improbable, the Doctor has not found any dragging

marks on the body and the Investigating Officer PW-9 B.D.Tripathi has also not stated that there was any dragging marks on the spot.

11. The testimony of the eye witnesses in the present case has to be examined and evaluated carefully as PW-2 Amar Singh, who is the informant

is the real brother of the deceased. In the cases of Brathi alias Sukhdev Singh

Vs. State of Punjab, AIR 1991 SC 318 and State of A.P. Vs.

Punati Ramulu and others 1994 Supp(1) SCC 590, it has been held that relationship by itself is not enough to discard the testimony of related witnesses.

12. We find that the testimony of this witness PW-2 Amar Singh is not corroborated with any evidence in the present case. Other witness PW-7

Har Prasad though has supported the testimony of PW-2 Amar Singh but he has admitted in para-17 of his deposition that there was enmity with

coaccused Bhan Singh. In para-17 of his deposition, he has admitted that relation with the accused persons are not good though he has denied that

because of the said reason, he has falsely implicated them but in the absence of any corroboration his testimony also becomes suspicious and not reliable.

13. In view of the aforesaid assimilation of the entire facts and evidence, we find that the case of the prosecution is highly improbable because there

is no dragging marks either on the dead body of the deceased or on the spot and further that the accused persons after killing the deceased would

drag the dead body and would place it beneath the tyre of the truck. It is also not believable that all the accused persons were knowing the exact

time of arrival of the deceased at the spot where the deceased is alleged to have been dashed by appellant Hai Singh and thereafter beaten by the

other accused persons. These circumstances go to the root of the matter and raise sufficient doubts about the involvement of the appellants in the

present case. We are therefore, of the opinion that the appellants are entitled to the benefit of doubt and the case against them is not proved

beyond reasonable doubt so as to uphold their conviction and sentence.

14. Accordingly the appeal is allowed. The appellants be set at liberty forthwith, if not wanted in any other case.