
(2002) 05 MP CK 0088

In the Madhya Pradesh High Court

Case No : Criminal A. No. 953 of 1990 (J)

Lakhan Singh and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2003) 1 MPJR 152

Hon'ble Judges : Uma Nath Singh, J; Rajiv Gupta, J

Bench : Division Bench

Advocate : Vijay Naik, for the Appellant; S.K. Rai, Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

Uma Nath Singh, J.

This appeal impugns the judgment and order dated 22.9.90 passed by the learned Additional Sessions Judge, Narsinghpur in Sessions Trial No. 11/89 where by the accused were held guilty of offence u/s 302 read with 34 IPC and sentenced to life imprisonment each. However, all the accused were acquitted of charges u/s 120-B, 449, 364, 201 and 506-B IPC.

Succinctly narrated the facts of the prosecution case are that Nanhelal (PW 2) had two daughters, one married to accused Lakhan Singh and another namely Prabhabai (PW 5), to deceased Sunderlal. Accused Lakhan Singh wanted to keep PW 5, his sister-in-law, as second wife. As such accused Lakhan Singh was ill-disposed towards deceased Sunderlal, his co-brother. Accused Ramesh son of PW 2 and brother of PW 5, was related to accused Lakhan Singh and the deceased as their brother-in-law. Accused Ramesh was also interested to send Prabhabai to accused Lakhan Singh, even against a strong protest and to much disliking of Nanhelal (PW 2), his wife Shantibai (PW 6) and Prabhabai (PW 5) herself. On account thereof, there started a quarrel between accused Ramesh and Nanhelal

(PW 2), his father and Nanhelal, with rest of his family was ousted from his house by accused Ramesh on 26.7.88.

Nanhelal (PW 2) accordingly started living with his son-in-law deceased Sunderlal, his daughter Prabhabai (PW 5), his wife Shantibai (PW 6) and other members of his family in a house constructed in a Poultry Farm owned by Surendra Singh Chauhan (PW 3) which was situated at a little distance from village Mohad. On the other hand, accused Lakhan Singh and Ramesh entered into a criminal conspiracy to commit murder of deceased Sunderlal. Accused Lakhan Singh also invited his brother-in-law Ghasiram to participate in the conspiracy. On the fateful day of incident, all the three accused namely Lakhan Singh, Ramesh and Ghasiram wielded lathis, and went to the new residence of Nanhelal (PW 2) when he and deceased Sunderlal were asleep in one room. Ramesh, being son of PW 2, banged the door which was opened. At that time a chimney light was on in the said room. No sooner they entered the house, all the three accused started indiscriminate assaults on the deceased with lathis. When Nanhelal (PW 2), and other inmates of the house, Prabhabai (PW 5) and Shantibai (PW 6), cried for help and wanted to intervene, they were threatened with dire consequences. After deceased Sunderlal became unconscious he was dragged out of the house and taken to some unknown destination. All the appellants also threatened PW2 to be done away with if he disclosed the matter or lodged a report to Police.

On 27.7.88 at about 1.15 in the day time, Nanhelal (PW2) lodged an oral report at Police Station Kareli, which was recorded by Surendra Shukla (PW 17) then Town Inspector as FIR (Ex. P/2). The Investigating machinery was set on motion; a marg intimation was recorded; vide Ex. P/3, Inquest Panchnama was prepared; dead body was sent for postmortem; and a report thereof was received Vide Ex. P/7. Dr. R.K. Trivedi (PW 4) who conducted the postmortem noticed as many as 31 injuries on the body of the deceased. On memoranda of all the accused, Lathis, being the weapons of offence, were seized apart from seizure of other incriminating articles. On completion of the Investigation, a challan was laid and charges were drawn up against all the accused u/s 120-B, 449, 364, 201, 302 read with 34 and 506-B IPC which they denied and pleaded false implication, although the defence led no evidence in their favor. The learned Trial Judge mainly relying on the evidence of Nanhelal (PW2); his daughter Prabhabai (PW 5), his wife Shantibai (PW 6), Surendra Singh Chauhan (PW 3) in whose Poultry Farm the deceased was living, Autopsy Surgeon Dr. R.K. Trivedi (PW 4), Patwari Ayodhya Prasad (PW 1), Head Constable Narmada Prasad (PW 12) who recorded Rojnamacha Sanha and I.O. Surendra Shukla (PW 17), recorded the conviction and imposed the sentence as noted hereinabove.

Heard Shri Vijay Naik learned counsel for the appellants and Shri S.K. Rai, learned P.L. for the State and perused the records. Shri Naik, while strongly contending on merit, also pleaded that the nature of injuries does not countenance the conviction of the appellants u/s 302/34 IPC, therefore, he

submitted that at the most, if at all an offence is disclosed from the attending incriminating circumstances, it would be an offence of culpable homicide not amounting to murder u/s 304-11 IPC. Shri Naik also placed reliance on two judgments of the Apex Court : (1) Nadodi Jayaraman and Others Vs. State of Tamil Nadu, .

Shri Rai appearing for the State, on the other hand, defended the impugned judgment and submitted that on a thread-bare analysis of the prosecution evidence, the findings of the learned Trial Court do not call for any interference.

To appreciate the rival submissions as also the evidence on records, it is necessary to elliptically elucidate the testimonies of important witnesses and to briefly enlarge upon other incriminating circumstances. Nanhelal (PW 2) stated that the deceased has stayed with him on the fateful night. He also stated that accused Ramesh, Lakhan and Ghasiram forced open the door, inflicted lathi blows on the deceased and also threatened other inmates of the house. Being under serious threat, he only remained a helpless and mute spectator. In his cross examination, he stated that, just a day before the incident, he had shifted to his new residence in the Poultry Farm. He also stated that in the fateful night he and deceased Sunderlal were sleeping in one room and his wife and daughters, in another room. He further stated that he was waked up after hearing banging of door by accused Ramesh, his son. He, furthermore, stated that the accused had pushed open the door with legs. He left no doubt in repeating that he had seen all the accused striking lathi blows on the deceased and brushed aside a defence suggestion to the contrary. According to him, all the three accused caused repeated blows, one after other, for about one and half hours and the deceased kept crying. He clarified that a Chimney light was on in the room at that time. Surendra Singh Chauhan (PW 3) corroborated Nanhelal (PW2) in material particulars as regards shifting of PW/2 with family to his Poultry Farm and receiving of information from him about the details of the incident including names of the assailants. Dr. R.K. Trivedi (PW 4), Autopsy Surgeon as also the post-mortem report corroborated the eye-witness accounts about the manner of assaults and the nature of weapons used in the offence. Prabhabai (PW 5) wife of the deceased is equally resolute in her corroboration to Nanhelal (PW2) on all the incriminating circumstances, although she has also ventured to mention other less relevant facts which need not be referred to, for appreciation of prosecution evidence and more so, in view of preponderant direct evidence. Similarly, Shantibai (PW 6) has fully corroborated Nanhelal (PW2). Other witnesses, namely, Billesingh Sen (PW 7) had cut the nails of the accused. Imrat (PW 10) also stated that accused Lakhan wanted to keep Prabhabai (PW 5) with him but she was not willing to. He further stated that accused Lakhan and deceased Sunder had strained relations over Prabhabai (PW 5). Narmada Prasad, Head Constable (PW 12), proved the recording of information about the incident vide Sanha No. 777 on 17.4.88. Surendra Shukla (PW 17) being the investigating officer, has duly proved the seizures and the prosecution case, that relates to him. Kanchhedilal (PW 8) and Chhotelal (PW 9) were declared hostile, so also the

witnesses of seizures namely Raju Pandey (PW 11), Gopal (PW 13) and Roop Narayan Sharma (PW 15). However, Umrao Singh (PW 14) and Gokal Prasad (PW 16) have corroborated some seizures in their presence.

Thus, from the aforesaid analysis, we see no reason to question the appreciation of evidence as also the findings of the trial Court as regards the complicity of the appellants, nevertheless, in the totality of circumstances, indictment of the appellants for murder does not appear to be sustainable. It is alleged that the accused persons inflicted as many as 31 injuries, but the nature of weapons used as also the nature of injuries caused do not countenance the conviction u/s 302/34 IPC. That apart, as the appellants accused came back to Nanhelal (PW2) after occurrence and took away the belongings of the deceased, it seems that probably they wanted to teach the deceased a lesson and oust him from the house of PW/2. Thus it cuts across the findings of the learned Trial judge holding the accused guilty u/s 302/34 IPC. In the case of *Nadodi Jayaraman V. State of Tamil Nadu* (AIR 1993 SC 777), as many as 32 injuries were noticed on the body of the deceased which included serious injuries like laceration on the nose, eyebrow, fracture of left orbital plate, laceration over right ear, boned deep laceration of right temporal region and laceration of right occipital region etc. In the post-mortem report the doctor opined that the victim died due to shock and hemorrhage on account of multiple injuries and that injury No. 22 was sufficient to cause death in the ordinary course of nature. In the instant case, though the total number of injuries was 31 but there was no lacerated wound on any vital part of the body. Dr. R.K. Trivedi (PW 4) in his examination-in-chief has stated that all the injuries separately and cumulatively were sufficient to cause death in the ordinary course of nature but in para-7, the cross-examination, he says that injury Nos. 5, 6, 30 and 31 were not possible from lathi although the rest of the injuries could be caused therewith. In another case, namely, *Selveraj Vs. The State of Tamil Nadu*,), the presence of the eye-witness was doubted on the ground that the conduct of the eye-witness appeared to be absolutely unnatural and not being consistent with the ordinary course of human nature. We need to say that the facts of the present case are distinguishable inasmuch as Nanhelal (PW2) being under serious threat could not intervene during assaults but certainly thereafter, he not only lodged a report of the incident but also disclosed the incident to other witnesses.

Thus, to sum up, on a re appreciation of the evidence on records, the appellants, at the most, can be held to have knowledge and not an intention to cause death of the deceased which being an offence of culpable homicide not amounting to murder, is punishable u/s 304-11 IPC.

In the premises, the impugned judgment of conviction and sentence u/s 302/34 IPC, not being sustainable on facts as well as in law, as regards the nature of offence, is hereby set aside. Instead, the appellants are held guilty of offence u/s 304-11/34 IPC and sentenced to a period of 10 years R.I. each. As the appellants are in jail for more than ten years, they are directed to be released forthwith if

not wanted in connection with any other case. Accordingly, the Criminal Appeal succeeds in part.