

(2018) 05 MP CK 0135

In the Madhya Pradesh High Court

Case No : CRIMINAL APPEAL NO. 391 OF 2002

Lalla @ Nagendra Singh & Another

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 21-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 302, 324

Citation : (2018) 05 MP CK 0135

Hon'ble Judges : SANJAY YADAV, J;ASHOK KUMAR JOSHI, J

Bench : Division Bench

Advocate : Sanjay Gupta, Vivek Jain

Final Decision : Partly Allowed

Judgement

SANJAY YADAV, J

Appellants take exception to judgment dated 23.07.2002, whereby the Additional Sessions Judge, Gohad, District Bhind having held them guilty for an

offence under Section 302 IPC, have sentenced them to life imprisonment with a fine of Rs.1000/each and the default sentence of three months

each for causing death of Rammohan.

(2) Three persons, viz, the appellants and one Pappu alias Balveer Singh were tried for said commission of offence punishable under Sections

302/34,120-B IPC in a prosecution set in motion with the complainant, Govind Singh @ Shiv Singh (PW-3), brother of the deceased, lodging FIR

(Exhibit P-2) with Police Station Gohad Chouraha that at about 6:00 AM on 05/05/1999 while he was fetching water from well his brother, since

deceased, along with the accused person had gone to attend the natures call when after sometime he heard his screaming "bachhao, bachhao";

when he rushed to the spot he saw these accused persons assaulting his brother with knife, causing injuries on his neck, head, chest & abdomen. On

seeing him approaching, the assailants ran away from the scene. That, Darvesh (PW-15) & Kunwar Singh (PW-9) also came on the spot. Rammohan

who was in pool of blood died after some time. The investigating officer after recording the FIR went to the spot and after preparing the inquest report

& collecting blood stained soil and simple soil, sent the body for postmortem. The accused persons were arrested and the weapons, viz, knives, used for

commission of offence were discovered at the instance of respective accused persons, which were sent for the Scientific Analysis to the Forensic

Science Laboratory and the Serologist, the report whereof were received vide Exhibit (P-26) affirming that the blood on the knives was human blood,

thus ascertaining their use in the commission of the offence. After completing the investigation, charge sheet was filed whereon the trial court framed

the charges of causing murder of Rammohan.

(3) The accused persons abjured their guilt.

(4) Prosecution to bring home the charges, examined 18 witnesses. Of these Govind Singh @ Shiv Singh (PW-3) and Sundar Singh (PW-17) were

examined as eye witnesses. The doctor, i.e. Dr. S.C. Gupta who performed the autopsy (Exhibit P/1) was examined as PW-1. Mithalesh (PW-2) was

examined to establish the motive; Harrendra Singh (PW-6), Kunwar Singh (PW-9), Ramhet (PW-12), Darvesh (PW15), however, did not support the

prosecution story. The investigating officer Pradeep Rajoriya was examined as PW-16. Ramjilal Sharma, Patwari was examined as PW-10. The

accused persons examined Lokendra Singh as DW-1.

(5) The trial Court on the basis of evidence on record found Pappu @ Balveer Singh not guilty of the offence under Section 120-B IPC. Consequently,

acquitted him of the said offence. But held the appellants guilty for offence under Section 302 IPC, which led to their conviction.

(6) That, the appellant No.2 viz, Reshu alias Resham alias Naresh had undergone the entire sentence and has since been released. The present appeal

is pressed for the appellant No.1-Lalla alias Nagendra Singh, who is serving the sentence.

(7) Close reading of the judgment under challenge reveals that the conviction turns on the testimony of two eye witnesses, viz Govind Singh @ Shiv

Singh (PW-3) and Sundar Singh (PW-17) corroborated with the postmortem report (Exhibit P1) and the testimony of the doctor, PW-1.

(8) The postmortem report (Exhibit P-1) reveals following injuries on the body of the deceased:

â??(1) Incise wound â?" 3 cm x 2 cm x 1 cm placed over right side chest anteriorly at 4, 5, 6th Rib Region margin regular. (2) Incise wound â?" 3cm

x 2cmx cavity at left chest Anteriorly 4th inter costal space. Margin regular.

(3) Incise wound â?" 2½ cm x 2 cm x cavity placed right side chest. Anteriorly at 4th inter costal space at mid clavicular line margins regular. . (4)

Incise wound â?" 3cm x 1cm x 1cm placed at right arm lateral 1/3rd anteriorly.

(5) Incise wound â?" 3cm x 1cm x 1cm placed infront of right ear zygomatic region 2 in number.

(6) Contusion 4cm x 4cm placed at right towards 1/3rd arm laterally.â??

(9) As per the opinion of doctor, Dr. S.C. Gupta (PW-1), the cause of death was the excessive hemorrhage from vital organ both lungs asÂ result of

injury by hard and sharp object. It leaves no iota of doubt with the forensic science report of human blood on the knives seized at the instance of both

the appellants that the injuries were caused by these knives.

(10) It is, however, borne out from the testimony of Govind Singh @ Shiv Singh (PW-3), specific role played by the assailants appellants No.1 and 2

has been categorically ascribed. In examination in chief, he clearly states of having seen Sher Singh (Sic Resu) having caused knife blows on the

chest of Ram mohan; whereas the role ascribed to Lalla appellant No.1 is omnibus in nature. Â¼fQj mUgksus pkdqvksa ls ekj fn;kA 'ksjflag us Nkkrh

e pkdqvksa ls ekjkÂ½. Sundar Singh (PW-17) another eye witness, gives an omnibus statement of having taken his buffaloes to well and seen the

accused persons giving repeated blows to Rammohan Â¼rks eSaus tkdj ns[kk fd yYyk js'kw jkeeksgu dks flj xnZu lhuk vkSj isV esa pkdw ekj jgs

FksÂ½. Evidently, the prosecution though had charged the accused persons of having shared common object, but failed to establish the same and it is

the individual act of respective assailants which led to their conviction under Section 302 of IPC. Whereas, the Appellant No.2 who is attributed of

giving blows on the vital organ has undergone the entire sentence. The conviction of the appellant No.1 whose act is attributed in causing injuries No.4

& 5 which as per doctor's opinion are not on the vital organ and were not fatal,

the trial court in our considered opinion grossly erred in holding him guilty of the offence under Section 302 of IPC. In view whereof, the conviction of appellant No.1-Lalla @ Nagendra Singh is set-aside. However, since the role ascribed to appellant No.1 as is borne out from the evidence on record whereby injuries No.4 & 5 have been ascribed to him, we are of the considered opinion that appellant No.1 is guilty of causing simple injury and is liable to be punished under Section 324 of IPC. Accordingly, we impose a sentence of 2 years RI. It is borne out from the record that the appellant No.1 is in jail for 13 years and have already served the sentence which has been imposed today. He be released from the jail forthwith.

(11) Consequently, appeal is partly allowed to the extent above.

(12) A copy of the order be sent to the trial Court along with its record for information.