

(2018) 01 MP CK 0015
In the Madhya Pradesh High Court
Case No : 155 of 2000

Maukam Singh S/o Pannalal & Ors.

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#), [Section 324](#), [Section 323](#), [Section 341](#), [Section 506\(ii\)](#) - Pu

Citation : (2018) 01 MP CK 0015

Hon'ble Judges : Sanjay Yadav, Ashok Kumar Joshi

Bench : Division Bench

Advocate : Madhukar Kulshrestha, Pramod Pachori

Final Decision : Dismissed

Judgement

1. Challenge in this appeal is to the judgment dated 11th February, 2000, passed by I Additional Sessions Judge, Ashoknagar in Sessions Trial

No. 60/1993, whereby each appellant is convicted and sentenced under Section 302/34 of the IPC, for causing murder of Than Singh, to undergo

life imprisonment with a fine of Rs.1000/- with default stipulation; under Section 324/34 of the IPC to undergo rigorous imprisonment for one year;

and under Section 323/34 of the IPC to undergo six months rigorous imprisonment, and all jail sentences of each appellant have been directed to

run concurrently.

2. Undisputedly complainant Imrat Singh (PW-1), Bahadur Singh (PW-2) and Ajit Singh (PW-3) are real brothers and deceased Than Singh was

their grandfather and appellants Maukam Singh and Sitaram are real brothers and sons of Pannalal and appellant Munnilal is real brother of

Pannalal. In village Gahora, complainant and Pannalal are neighbours.

3. It would be significant to mention here that Pannalal and Dashrath Singh have been acquitted by the trial Court from the charge under Sections

341, 323 or 323/34 and 506 Part-II of the IPC by same impugned judgment and one another co-accused Harnam Singh had died before

commencement of the trial.

4. Prosecution's case in brief is that in khoda (house for tying cattle) a platform of Deity of complainant Imrat Singh's family is situated. On the date

of incident, i.e., 28th October 1992, complainant Imrat Singh's family members had gone for offering prasad to the deities at the platform situated

in Pannalal's khoda. On the same day in the night at 8 pm appellants along with some other family members had gone to complainant's house and

enquired that why they had entered in their khoda, then it was replied that they had gone for offering prasad to their deities, thereafter appellants

and their companions returned back but again at 20.30 hrs. when complainant Imrat Singh and his family members were taking food in their house,

the appellant Maukam Singh armed with farsa, appellants Munnilal and Sitaram with luhangis, and co-accused Harnam, Pannalal and Dashram

having luhangis entered into the complainant's house and started beating the complainant Imrat Singh and his brother Ajit Singh. Appellant

Maukam caused farsa injury on the head of Ajit Singh and appellant Munnilal caused injury to Ajit by luhangi on his head. Complainant Imrat Singh

tried to save his brother, then appellant Maukam by farsa and other appellants by luhangi gave beating to the complainant Imrat, who received

injuries on his head, hand, knees and nose. In the same incident, complainant's grandfather Than Singh received blunt injuries. Witnesses Amar

Singh and Shivraj tried to save complainant and his family members. The appellants and their companions returned back. Thereafter, when Imrat

with his brother Ajit was going to the police station for lodging the report, on the way Pannalal and Dashrath obstructed their path and threatened

that on reporting they would be murdered. Bahadur was assaulted by sticks, who received injuries in both of his legs, shoulder and back. Imrat

Singh lodged the FIR at 21.10 hrs. at Police Station Isagarh. Thereafter, injured complainant Imrat Singh, Ajit Singh and Than Singh were sent to

Primary Health Centre, Isagarh in the same night where Dr. Premnarayan

Kethoriya (PW- 11) medically examined Than Singh, Ajit Singh, Imrat Singh and Bahadur Singh and recorded their separate MLC. Injured Than Singh was referred for x-ray examination of his head injury to District Hospital Guna. In x-ray examination on 29th October, 1992 at District Hospital Guna, Radiologist Dr. R.K.Jain (PW-9) found fracture of parietal bone of his skull and recorded x-ray report (Ex.P/9). Than Singh was admitted in District Hospital, Guna on 29th October, 1992 and expired in the same hospital on 22nd November, 1992, thereafter in registered crime, offence of Section 302 of the IPC was added. After completing formalities, the dead body of Than Singh was sent for post-mortem. In District Hospital, Guna on 23rd November, 1992 Dr. Surendra Kumar Shrivastava (PW-7) with Dr. C.D.Sharma conducted autopsy of about 70 years old Than Singh and recorded post-mortem report (Ex.P/4).

5. After completing the investigation, the charge sheet filed before the relating Magistrate, who committed the criminal case to Sessions Court.
6. The trial Court framed charges under Section 302 or 302/34, 324 or 324/34 and 323 or 323/34 (on two counts) of the IPC against present appellants and framed charges under Sections 341, 323 or 323/34 and 506 Part-II of the IPC against Dashrath and Pannalal.
7. Before the trial Court, 11 prosecution witnesses were examined.
8. It was the defence of the appellant that they had been falsely implicated as one year prior to the incident, Pannalal had purchased that house, wherein abovementioned platform of complainant's deities were situated, from the real brother Samrath Singh of deceased Than Singh and, hence, the complainant's family was annoyed with the family of Pannalal. Defence witness No.1 Gajraj Singh was examined, who deposed that actually on the date of incident in the evening at 7-7.30 pm, Pappu had assaulted Pannalal by his stick; Harnam had beaten Pappu by stick and later on Ajit Singh was also assaulted by Harnam with his stick.
9. The trial Court acquitted Pannalal and Dashrath but convicted and sentenced each appellant for the abovementioned offences.
10. Learned counsel for the appellants vehemently contended that the learned trial Court though partially disbelieved all prosecution witnesses while acquitting accused persons Pannalal and Dashrath, but has erred in partially placing reliance on same set of evidence to convict the

appellants. It was further contended that according to the evidence given by the prosecution's eye-witnesses, deceased Than Singh was beaten by

the appellants with farsa and luhangis but no incised or penetrating wound was found by the doctor, who conducted the autopsy on the body of

deceased Than Singh, hence the evidence of relating eye-witnesses on this point is belied and is rebuttable by the medical evidence. It was further

submitted that Ajit Singh (PW-3) deposed that appellant Maukam Singh assaulted on Than Singh by blunt side of his farsa whereas this fact was

missing in his police statement. Hence, the prosecution witnesses made significant improvement in their version to keep it in accordance with the

medical evidence. It was also submitted that it was not proved beyond reasonable doubt that the appellants were having common intention to

cause murder of Than Singh, hence the offence of murder was not proved against any of the appellants. Much emphasis by appellants' learned

counsel was placed on the fact that complainant Imrat Singh (PW-1) has admitted that with four other companions he is being tried for the offence

under Section 324 of the IPC. It was also argued that the trial Court erred in believing on partisan and interested eye-witness account given by

three real brothers in absence of corroboration by any independent witness. Therefore, it is prayed that the appeal filed by the appellants be

allowed and each of them be acquitted from the relating charges.

11. On the other hand, supporting the conviction recorded by the trial Court against the appellants, it has been contended by the Public Prosecutor

that the incident occurred within the house of the complainant, hence presence of so-called independent witnesses could not be expected in

complainant's house at the time of incident and when on spot three or more family members of complainant were beaten by three or more

assailants, then each injured witness could not give minute details regarding each assault of each assailant. Hence, the dismissal of appeal is prayed.

12. Considered rival submissions and perused the record.

13. According to the evidence of Dr. Premnarayan Kethoriya (PW-11) and his MLC (Ex.P/12), in the night of 28th October, 1992, he found

following injuries on the body of the injured Than Singh:-

(i) Swelling extended from left side of his head near to left ear extending up to middle of the scalp and this swelling was also extended up to parietal

region of the head and blood was oozing from left ear and both nostrils of the nose of Than Singh and for determining the nature of this injury he

advised for x-ray examination of Than Singh;

(ii) Lacerated wound of size 1"x1/4cmx1/4cm on front and at middle part of head.

14. In the opinion of Dr. Kethoriya, both the injuries found on the body of Than Singh, were caused by hard and blunt object within 6 hrs. from his

examination and injury of lacerated wound was of simple nature but the nature of first injury could be determined on x-ray report.

15. According to the evidence of Radiologist of District Hospital Guna, Dr.R.K.Jain (PW-9) and his x-ray report (Ex.P/9), he found fracture of

parietal bone in the skull of injured Than Singh.

16. Dr. Surendra Kumar Shrivastava (PW-7) deposed that on 23rd November, 1992 at District Hospital Guna, on conducting autopsy of

deadbody of Than Singh, with Dr. C.D.Sharma, he found that rigor mortis was present and his face and eye was having blackish colour and there

was blackening all around each eye and on dissection of the deadbody, beneath the skin of scalp diffused hematoma was also present in fronto

parietal region of the skull and there was clotted blood in the brain membrane and according to the hospital's record, Than Singh was admitted on

29th October, 1992 in District Hospital, Guna and died on 22nd November, 1992 at 8.35 pm. Dr. Shrivastava deposed that he and Dr.

C.D.Sharma had opined that the reason of death of Than Singh was Coma caused due to abovementioned head injury and his death has occurred

within 24 hrs. from starting of his post-mortem. Dr. Shrivastava deposed that looking to the nature of injuries of deceased Than Singh, such injuries

could be homicidal or accidental but he clearly deposed in his examination-in-chief that the head injury was sufficient to cause death in ordinary

course of nature. It is significant to mention here that on this point, the abovementioned opinion given by Dr. Shrivastava was not challenged in his

cross examination by the learned defence counsel.

17. Regarding injuries of the other injured prosecution witnesses, according to the evidence of Dr. Prem Narayan Kethoriya (PW-11) and his

MLC (Ex.P/14), he examined complainant Imrat Singh in the night on 28th October, 1992 and found following injuries on his body:-

- (i) Incised wound 2-1/2" x ?" on right side of head;
- (ii) So many marks of abrasions on right side of his nose;
- (iii) Incised wound ?" long and deep up to skin over right side of nose;
- (iv) Swelling extending on right forearm; (v) Contusion 2x1" on left knee;

18. Dr. Kethoriya opined that all the injuries of Imrat Singh were caused within 6 hrs. of his examination and are of simple nature but

abovementioned two incised wounds were appearing to be caused by any hard and sharp edged object whereas remaining two injuries were

caused by hard and blunt object.

19. According to the evidence of Dr. Prem Narayan Kethoriya and his MLC (Ex.P/13) he examined injured Ajit Singh in the night of 28th

October, 1992 at Primary Health Centre, Isagarh, and found following injuries on his body:-

- (i) Incised wound situated about 3-1/2 " above the right ear on right side of head;
- (ii) Abrasion 1x1" on front side of right knee;
- (iii) Abrasion 1/4x1/4" on right index finger;

20. In the opinion of Dr. Kethoriya, abovementioned incised wound was caused by hard and sharp cutting object whereas all other injuries were

caused by hard and blunt object and for determining the nature of injuries of incised wound he had advised for x-ray examination of Ajit Singh's

head whereas remaining three injuries were of simple nature.

21. It has been vehemently contended by appellants' learned counsel that no incised or penetrating wound was found on the body of injured Than

Singh (late on dead), hence ocular evidence given by three brother prosecution witnesses regarding beating of Than Singh by the appellants is not

medically corroborated but according to the prosecution version, in the same incident, in which Than Singh received injuries, the complainant Imrat

Singh (PW-1) and Ajit Singh (PW-3) have received incised wounds. According to the medical evidence, two incised wounds were found on head

and nose of the complainant Imrat Singh and Ajit Singh (PW-3) was also having incised wound over his head. Hence, in this case it could not be

inferred that the evidence given by the prosecution's eye-witnesses is totally belied by the medical evidence.

22. Complainant Imrat Singh (PW-1) deposed that on the date of incident, in the night at about 8.30 pm, appellants with their companions entered

into his house and firstly appellant Maukam assaulted by his farsa on head of Ajit Singh and Munnilal assaulted by his luhangi to Ajit Singh on his

head. Thereafter, his grandfather Than Singh was also assaulted by luhangi. Appellant Sitaram with his companions threw down Than Singh on

floor and thereafter appellant Maukam Singh caused injury on Ajit Singh's head by blunt side of his farsa and Maukam Singh also assaulted on him

by farsa and Than Singh was assaulted by the appellants and their companions. After giving beating to them appellants and their companions fled

away and in the same night he lodged FIR (Ex.P/1) at Police Station Isagarh, which is also proved by its scribe, Sub-Inspector Jeevanlal (PW-6).

Complainant deposed that his grandfather Than Singh remained hospitalised in District Hospital, Guna for about 25- 26 days and thereafter on

22nd November, 11992 Than Singh expired. In cross-examination, complainant deposed that Amar Singh and Shivraj Singh have also witnessed

their his beating but Amar Singh (PW-5) deposed that he had not seen any beating, hence he was declared hostile by the prosecution, though

Amar Singh (PW-5) deposed in his examination-in-chief that after incident Ajit Singh and Imrat Singh both were in injured condition, came to his

house and intimated that they have been beaten by appellants and their companions and asked him to take them to Isagarh and their medical

examination. In cross-examination Amar Singh deposed that he had gone with Ajit Singh for reporting the matter at Police Station Isagarh.

23. Bahadur Singh (PW-2) deposed that at the time of incident he was taking his food and after hearing the sound of crying he saw that appellants

and their companions were giving beating to his brothers Ajit Singh, Imrat Singh and his grandfather Than Singh. Maukam assaulted by his farsa on

Than Singh and Munnilal assaulted by his luhangi to Than Singh and appellants and their companions were giving beating to his grandfather Than

Singh after throwing him down on floor. Bahadur deposed that he also received an injury from luhangi of Harnam Singh (dead). According to the

evidence of Dr. Prem Narayan Kethoriya (PW-11) and his MLC (Ex.P/15), he has found three abrasions on upper portion of right shoulder, left

thumb and on left leg of Bahadur Singh.

24. Ajit Singh (PW-3) deposed that on the date of incident, in the night at 8 pm, appellants with their companions came to his house and started

his beating. Maukam Singh assaulted on his head by his farsa and Munnilal assaulted luhangi on his head. When his brother Imrat Singh came to

save him, Maukam assaulted with farsa on head of Imrat Singh. Ajit Singh deposed that appellant Maukam has assaulted on head of his

grandfather Than Singh by blunt side of farsa, but this fact is missing in his police statement recording during investigation.

25. Much emphasis has been given by the appellants' counsel that in FIR it is not mentioned by the complainant Imrat Singh that he or any of his

family member was assaulted from blunt side of the farsa. In the light of the case of Masalti and others vs. State of UP (AIR 1965 SC 202), it is

clear that when more than two assailants give beating to some prosecution witnesses in pursuance of common intention of them, it is often not

possible for each injured witness to describe accurately the part played by each one of the assailants. It is true that in FIR there is no such

avermment that any of the injured or deceased was assaulted from blunt side of farsa, but only due to this fact, the total evidence of complainant

Imrat Singh (PW-1), Bahadur (PW-2) and Ajit Singh (PW-3) could not be discarded in toto as complainant Imrat Singh was having two incised

wounds on his head and nose and Ajit Singh was also having incised wound on his head. The presence of these injuries on the witnesses Imrat

Singh (PW- 1), Bahadur Singh (PW-2) and Ajit Singh (PW-3) in the house in the night cannot be doubted.

26. Shivraj Singh (PW-4) deposed that on the date of incident he was taking his meals in his house in the night at about 8.30, then he heard the

sound of quarreling, thereafter he went to the house of complainant's father Gaya Prasad and in the way he saw appellants Maukam, Munnilal with

Pannalal, Dashrath and Harnam and at that time appellant Maukam was having a farsa and each of other persons was having lunangi and in the

house of Gaya Prasad grandfather of the complainant, Than Singh was lying on floor in unconscious condition and at that time blood was oozing

from the head of Ajit Singh and Bahadur was also injured. Thereafter, by his bullock-cart, Than Singh and other injured were taken to Isagarh and

thereafter Than Singh was sent to Guna. Though Shivraj Singh (PW-4) and Amar Singh (PW-5) have not deposed about seeing the beating of the

complainant and his family members, but by their evidence they have corroborated the evidence of the complainant and his family members on the material circumstances just after the beating. Shivraj Singh deposed that he had seen in the way appellant Maukam having a farsa with his

companions. In such state of evidence, it cannot be inferred that there is evidence of only interested or partisan witnesses belonging to a family.

27. Placing reliance on the evidence of Gajraj Singh (DW-1) and admission of complainant Imrat Singh (PW-1) in his cross-examination that he

with his other four companions is tried for the offence punishable under Section 324 of the IPC, it has been tried to argue that actually the

complainant and his family members were aggressors and had beaten Pannalal's family members, but no any FIR of relating criminal case pending

against the complainant Imrat Singh and his family members nor any medical report of any family member of appellant has been proved in defence.

It is clear from the total evidence of Gajraj Singh (DW-1) that he had seen the incident occurred at about 7 or 7.30 pm in front of the house of

Pannalal, when he saw that Pannalal and Harnam were taking their plough (agricultural improvement) towards their house and at that time Pappu

assaulted by his stick on Pannalal and he deposed that Pappu is son of Gaya Prasad and blood was oozing from Pannalal's head, thereafter

Harnam assaulted by his stick on Pappu and Harnam also assaulted by his stick on Ajit Singh (PW-3) but Gajraj Singh (DW-1) clearly deposed in

his examination-in-chief that he did not see Than Singh at that time and he did not see Pannalal and Harnam Singh entering into any house. In

cross-examination, Gajraj Singh clearly deposed that he had not seen beating of Than Singh. It has been clearly mentioned by the complainant and

his brothers that the incident had occurred at about 8.30 pm in their house. Hence, it is clear that Gajraj Singh (DW-1) was describing about an

incident which had occurred about one hour prior to the time of incident occurred within the house of complainant Imrat Singh. The time gap of

about one hour or more and the different place indicated by Gajraj Singh (DW-1) clearly indicates that his evidence could not influence the

veracity of evidence given by different prosecution witnesses. The incident occurred at different places with such time gap could not be termed as

cross-cases.

28. Kalyan Jati (PW-8), a Panch witness of relating seizures has not supported the prosecution's case regarding the alleged seizure memos, but as

no FSL report was produced by the prosecution before the trial Court, the alleged recovery or circumstantial evidence regarding seizure of one

farsa, four luhangis and one stick during the investigation appears to be immaterial.

29. SHO J.B.S. Kushwaha (PW-10) deposed that on the date of incident, he was SHO of Police Station Isagarh and primarily investigation was

conducted by Head Constable Chironjilal, but as Chironjilal had expired in a subsequent vehicular accident, he proved the signatures of deceased

Head Constable Chironjilal over the spot map (Ex.P/2) and on some police statements, memorandums and seizure memos. In the spot map

(Ex.P/2), inside a portion of complainant's house is mentioned as place of incident and Pannalal's house is adjacent to the house of complainant.

Much emphasis has been given on the fact that cause of the incident was going by the family members of the complainant's khoda where the

platform of the complainant's deities is situated, but that incident has been mentioned to be happened in the FIR of complainant at 4.00 pm,

whereas the present incident had occurred at 8.30 pm. Even prosecution witness Amar Singh (PW-5), who though did not support the

prosecution story, has clearly deposed in his examination-in-chief that at about 8.00 pm, when he was at his house then he had seen the injured

Ajit Singh, Bahadur and Imrat, who intimated him about their quarrel with appellants and their companions and he had also deposed that he had

gone with the complainant and his brother Ajit Singh for lodging the report to Police Station in the same night.

30. Shivraj Singh (PW-4) has deposed that just after the incident he had seen some appellants with their weapons. Hence, it could not be inferred

that there is no independent corroboration of evidence given by abovementioned three injured prosecution witnesses. Their evidence is

substantially corroborated by medical evidence available on record. The evidence of Imrat Singh (PW-1) is substantially corroborated by his

prompt FIR (Ex.P/1) also proved by its scribe.

31. Though Than Singh died about 24 days after the incident, but from medical evidence it is established that he had sustained fracture of his

parietal bone with internal damage to the brain. It has been previously observed that the evidence of Dr. Surendra Kumar Shrivastava (PW-7)

regarding injury received by deceased Than Singh as he has clearly deposed that relating injury was sufficient in the ordinary course to cause death,

has not been challenged by the appellants. The autopsy doctor Surendra Kumar Shrivastava has made an outline diagram of injuries found in the

skull of the deceased in his post-mortem report, which clearly indicates that such injuries could not be resulted by a single or two blows.

32. We are of the considered opinion that the trial Court has properly and legally analyzed the evidence available on record and there appears no

any perversity in any of its findings. The appeal filed by the appellants is devoid of any substance.

33. Consequently, the appeal filed by the appellants is dismissed and each appellant's conviction and sentence as recorded by the trial Court is

affirmed.

34. The appellants are on bail. Their bail bonds are cancelled. They are directed to surrender before the trial Court without any delay so that they

may be sent to jail for execution of remaining part of their jail sentence. A copy of the judgment be sent to the trial Court along with the record for

information and compliance.