

(2018) 03 MP CK 0030
In the Madhya Pradesh High Court
Case No : CRA NO. 537 OF 2011

Mohd. Jafar Maulana & Anr

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 13-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 148, 302
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2018) 03 MP CK 0030

Hon'ble Judges : ANJULI PALO, J;S.K.GANGELE, J

Bench : Division Bench

Advocate : Sankalp Kochar, Pradeep Singh

Final Decision : Dismissed

Judgement

1. Appellants-accused have filed this appeal challenging the judgment dated 31.12.2010 passed by the IInd Addl. Sessions Judge, Bhopal in Sessions

Trial No. 332/2007, whereby the appellants have been convicted under Section 302/34 of the Indian Penal Code and sentenced to undergo life

imprisonment and fine of Rs. 10,000/(each) with default stipulations.

2. Prosecution case in brief is that on 29.08.2007 at 6:00 pm Bablu @ Sheikh Rizwan along with Sheikh Suleman came to fruit market near

Jahangirabad Masjid for purchasing fruits.Â It was alleged that the appellants along with other accused persons came there armed with knife.Â

They pushed Bablu (since deceased) from the motor-cycle then started assaulting him with a knife. Bablu sustained several injuries on his chest and

other body parts.Â The appellants and their companions fled away.Â Bablu was unconscious hence, he was taken to Chirayu Hospital, where he

was declared dead.Â His body was sent to Hamidia Hospital for post-mortem.Â

FIR was lodged by Sheikh Suleiman at Police Station Jahangirabad, Bhopal at 6:10 pm on the same day. Police registered case against the appellants (who are father and son) and other accused persons under Sections 147, 148 and 302/34 of IPC. After investigation, charge-sheet has been filed before the concerned Court.

3. During the trial appellants abjured guilt and pleaded that they are falsely implicated by the complainant party with the help of police.

4. Learned Trial Court held the appellants guilty for committing murder of Bablu in furtherance of their common intention. Hence, they have been

convicted under Section 302 r/w 34 of IPC and awarded sentence as mentioned above. One Shoaib, has been acquitted by the Trial Court.

5. In appeal the primary stand of the appellants that the learned Trial Court relied on the eye-witnesses, Sheikh Suleman (PW-1), Sheikh Afsan (PW-

2) and Sheikh Faizan (PW-11). It is alleged that they are closely related with the deceased, their statements are contradictory and unreliable. It was

alleged that in the opinion of the doctors, the cause of death was excessive, bleeding from 23 injuries of the deceased. The Trial Court failed to

consider as to what specific role has been attributed to the accused persons and which fatal injury caused by appellants resulted in the death of the

deceased. The appellants submit that, it is a case of sudden and mutual fight, therefore, each accused would be held liable for his individual act.

Learned Trial Court wrongly convicted the appellants on the basis of surmises and conjectures. Hence, the impugned judgment is liable to be set

aside. They prayed that they are entitled to be acquitted from the charges levelled against them.

6. Learned Government Advocate for the State supported the judgment of the trial Court.

7. Heard learned counsel for the parties at length. Perused the record.

8. Prosecution examined Sheikh Ahsan (PW-2), Sheikh Nazim (PW-4), Azim (PW-6), Badshah (PW-7), Sheikh Faizan (PW11) and Sheikh Suleman

(PW1) as, eye-witnesses. We are in agreement with the opinion of the learned Trial Court in paragraph 18 of the impugned judgment that Bablu @

Rizwan died due to multiple fatal injuries on his body caused by sharp object. In this regard, we rely on the testimonies of Dr. Vimla Prajapati (PW-

9) and Dr. D.K.Satpati (PW-3) who jointly conducted the autopsy of the

deceased.Â They found following injuries on the person of the deceased :

- (1) Incised wound of about 12cm in length on the right shoulder.
- (2) Incised wound on the right shoulder of 3cm x muscle deep and 12cm long.
- (3) Incised wound on the right wrist ofÂ 3cm x 1cm, the bone was cut.Â
- (4) Incised wound ofÂ 5 cm x 2 cm on right wrist, tendon and bone was cut.
- (5) Incised wound on knuckle of little finger on right hand of 1 cm x 0.5 cm.
- (6) Superficial incised wound of index finger of right hand ofÂ 5 cm in length.
- (7) Incised wound of right thigh ofÂ 4cm x1cm x skin deep.
- (8) Incised wound on right thigh ofÂ 4 cm x 1cm x skin deep.
- (9) Incised wound on right thigh of about 6cm x 1.5cm x 2cm deep.
- (10) Two incised wound on right leg of 4cm x 1cm.
- (11) Incised wound on right side of face of 7cm x 1.5cm x muscle deep.
- (12) Incised wound on right side of face of 5cm x cm x muscle deep.
- (13) Incised wound on left shoulder of 9cm x 1cm x muscle deep.
- (14) Incised wound on left shoulder of 8cm x 1.5cm.
- (15) Incised wound on left shoulder of 13cm x 3cm. Shoulder bone was cut.
- (16) Incised wound on left forearm of 4 cm x 1cm.
- (17) Incised wound on right upper arm of 7cm x 1cm x muscle deep.
- (18) Incised wound on left elbow ofÂ 2.5cm x 0.5 cm.
- (19) Incised wound on left thumb of 3cm x 1cm due to which thumb has amputated only attached with skin.
- (20) Incised wound on left shoulder of 6cm x 1cm x muscle deep.Â
- (21) Incised wound over back side of neck of 4cm x 1cm x muscle deep.Â
- (22) Incised wound over vertex skull on mid portion of head of 5cm x 1cm x skin deep.
- (23) Stitched stab wound present on left side of chest of 5cm x 2 cm which reached upto the left chamber of heart after cutting the 5th rib.Â The wound was 20 cm deep and filled with blood.

9. During the internal examination of the body of the deceased, Dr. Vimla Prajapati (PW-9) found that both the chambers of heart were empty.Â All the injuries were caused within 24 hours.Â Both the doctors opined that the

nature of injuries were homicidal and were caused by hard and sharp object.Â They also opined that the injuries were sufficient to cause death of the deceased in ordinary course of nature.Â Dr. D.K.Satpati also explained that he examined the weapons baka and knife.Â The blade of baka was 20.5 cm in length and 45 cm in width.Â Â Similarly, the knife was 29.5 cm long and 3.3 cm in width.Â All the injuries would be caused by aforesaid weapon.He established his opinion, given in report Ex. P/8 and P/9.

Dr. Vimla Prajapati also stated the same opinion.

10. We do not find any reason to disbelieve the opinion of both the doctors who supported the prosecution story and established that the assailants knowingly and intentionally inflicted multiple blows by hard and sharp weapons on the body of the deceased to kill him.Â As a result deceased Bablu died immediately after the incident.Â The number of injuries on the body of the deceased clearly indicate that more than one person inflicted blows on the deceased.Â On the contrary, learned counsel for the appellant contented that trial Court acquitted the other co-accused on the same set of evidence. Hence, the appellants are entitled to be acquitted from the charges levelled against them.Â

11. In this regard, we rely upon the case of Ganesh Vs. State of Karnataka & Ors. reported in (2008) 17 SCC 152, wherein the Supreme Court has held as underÂ :

â??As a rule of universal application, it cannot be said that when a portion of the prosecution evidence is discarded as unworthy of credence, there cannot be any conviction. It is always open to the court to differentiate between an accused who has been convicted and those who have been acquitted. (See Gurcharan Singh v. State of Punjab (AIR 1956 SC 460) and Sucha Singh v. State of Punjab (2003 (7) SCC 643).â??

12. The maxim â??falsus in uno, falsus in omnibusâ? is merely a rule of caution.Â As has been indicated in case of Sucha Singh (supra) in terms of felicitous metaphor separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made.

13. In the light of the above principle, we re-appreciate the prosecution evidence of record. In the instant case, FIR (Ex. P/1 has been lodged by

Sheikh Suleman. In the FIR names of eye-witnesses Sheikh Suleman, Gulfam and Badshah have been mentioned. At the time of incident, they

were present with the deceased on the spot. Gulfam is the injured eye-witness. From the testimony of Sheikh Suleman (PW-1), Sheikh Ehsaan

(PW-2), Sheikh Naseem (PW-4), Azeem (PW-6), Badshah (PW-7) and Sheikh Faizaan (PW-11), it was established that Bablu died due to aforesaid

injuries, mentioned in paragraph 7 of this judgment.

14. Dr. Krishnanand (PW-16) deposed that on 29.08.2007 at about 6:00 pm, deceased Bablu was brought to the hospital. Ramdeo (PW-1), Head

Constable stated that the deceased died on the same day at 7:16 pm. Sheikh Suleman clearly explained that FIR has been lodged by him at about

8:00 pm, when he firstly reached the hospital and then at the police station, Jahangirabad.

15. Learned counsel for the appellants further contented that in this case delay in lodging the FIR is doubtful. Hence, appellants cannot be convicted

for offence mentioned in the FIR. He placed reliance on the case of Bandi Mallaiah & Ors. Vs. State of Andhra Pradesh [(1980) 3 SCC 136].

16. After considering all the evidence in this regard, we come to the conclusion that FIR has been lodged promptly against the appellants. It is not

lodged as an afterthought.

17. Sheikh Suleman (PW-1) is the cousin brother of the deceased. He categorically stated that, on 29.08.2007 at about 5:30 to 6:00 pm, he along

with Bablu (since deceased), Badshah and Sheikh Ehsaan came to Jahangirabad on motor cycle. They were purchasing fruits, etc for Roja

iftar. Suddenly, appellants came there armed with knife. They pushed Bablu from the motor cycle. On hearing the noise, they all rushed

towards Bablu. They saw that the appellants jointly inflicted repeated blows by their knife on the face, neck, chest and other body parts of the

deceased.

18. Testimony of Sheikh Suleman (PW-1) is duly corroborated by Sheikh Ehsaan (PW-2), Sheikh Naseem (PW-4), Azim (PW-6), Badshah (PW-7)

and Sheikh Faizan (PW-11). They also have stated that Bablu was taken to Chirayu Hospital by Badshah on an autorickshaw. Raja (PW-13) auto-

driver supported it. He deposed that he saw Bablu in severely injured condition. Sumeer Khan (PW-17) corroborated that at the time, he heard that appellants assaulting Bablu.

19. Sheikh Ehsaan (PW-2) and Sheikh Naseem (PW-4) followed Bablu to Chirayu Hospital. When Bablu died in the Hospital, Sheikh Suleman

(PW-1) went to police station, Jahangirabad to lodge the report. Learned counsel for the appellant submits that the testimony of Sheikh Suleman

(PW-1) and Sheikh Ehsan (PW-2) is not reliable. He relied on the case of *Muhuwa Vs. State of MP* [(1976) 1 SCC 37] wherein the Hon'ble

Supreme Court as held as under :

the evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand;

for, evidence is to be weighed not counted.

20. After reappreciating and evaluating the prosecution witness, we do not find such circumstances in the present case.

In our opinion there is no inconsistency between the testimony of Sheikh Suleman (PW-1), Sheikh Ehsan (PW-2) and Sheikh Naseem (PW-4).

21. The learned counsel for the respondents has also sought to assail the prosecution version on the ground of lack of independent witnesses. We are

not impressed by this submission in the light of the observations made by Supreme Court in *Darya Singh Vs. State of Punjab*, AIR 1965 SC 328 =

1964(7) SCR 397, wherein it was observed:

It is well-known that in villages where murders are committed as a result of factions existing in the village or in consequence of family feuds,

independent villagers are generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and

might expose them to very serious risks. It is quite true that it is the duty of a citizen to assist the prosecution by giving evidence and helping the

administration of criminal law to bring the offender to book, but it would be wholly unrealistic to suggest that if the prosecution is not able to bring

independent witnesses to the Court because they are afraid to give evidence, that itself should be treated as an infirmity in the prosecution case so as

to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merits.

24. On the issue of appreciation of evidence of interested witnesses, Dalip Singh

Vs. State of Punjab, AIR 1953 SC 364 = 1954 SCR 145, is one of the earliest cases on the point. In that case, it was held as follows:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means

unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely.

Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and

there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty,

but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.”

25. Similarly, in *Piara Singh and Ors. Vs. State of Punjab*, AIR 1977 SC 2274 = (1977) 4 SCC 452, this Court held:

“It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of

being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on

the said evidence.”

26. In *Hari Obula Reddy and Ors. Vs. The State of Andhra Pradesh*, (1981) 3 SCC 675, a three-judge Bench of this Court observed:

“.. it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or

rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless

corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses

should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or

inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.”

27. Again, in *Ramashish Rai Vs. Jagdish Singh*, (2005) 10 SCC 498, the following observations were made by this Court:

“The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and

reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that

enmity is a doubleedged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to

examine the testimony of inimical witnesses with due caution and diligence.â??

22. Dr. Krishnanand (PW-16) explain that Kayamuddin (PW-18) and Badshah (PW-7) brought Bablu to Chirayu Hospital. Kayamuddin (PW-18)

corroborated the testimony of Sumer Khan (PW-17).Â We are not inclined to accept the version of Kayamuddin (PW-18) that when they brought

Bablu to the hospital, he did not see brother of the deceased because presence of Sheikh Suleman (PW-1) and Sheikh Ehsaan (PW2) was established

without any inconsistency.Â Further Sumer and Kayamuddin partly supported the prosecution story.Â They turned hostile. Hence, their testimony

cannot be used to establish the whole case of prosecution.

23. As per the prosecution story, Gulfam (PW-21) is an injured eye-witness.Â During the incident, he sustained simple injuries caused by the

appellants.Â But he did not state against the appellants.Â His statement under Section 164 of Cr.P.C. was recorded in the Court. Learned counsel

for the appellants suggested that under the influence of someone, he gave the statement before magistrate against the appellants.

24. We are well aware of the tendency of the eyewitness.Â In case of Ramesh and others vs. State of Haryana 2017 Cri.L.J. 352, the Supreme

Court held that trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the accused/delinquent or political

pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary

considerations.

25. After scrutinizing the evidence and conduct of Gulfam (PW-21), it is evident that he was afraid of the appellants.Â He was assaulted in broad

day light.Â At the same time Bablu was brutally assaulted at same distance by the appellants.Â He had proper opportunity to see the assailants who

assaulted him and the deceased.Â But he did not state against them and turned hostile.

26. The learned counsel for the appellant has placed reliance on the case of R. Shaji Vs. State of Kerala, (2014) 4 SCC (Cri.) 185.Â The Supreme

Court has held that as under:

“So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted.

As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence.”

27. The Hon^{ble} Supreme Court has further held that:

“When a statement is recorded in court, and the witness speaks under oath, after he understands the sanctity of the oath taken by him either in the name of God or religion, it is then left to the court to appreciate his evidence under Section 3 of the Evidence Act. The Judge must consider whether a prudent man would appreciate such evidence, and not appreciate the same in accordance with his own perception. The basis for appreciating evidence in a civil or criminal case remains the same. However, in view of the fact that in a criminal case, the life and liberty of a person is involved, by way of judicial interpretation, courts have created the requirement of a high degree of proof.”

28. In the light of the aforesaid case law, when we evaluate the evidence of Gulfam (PW-21) with other eyewitnesses with all over effect, it appears that the appellants inflicted fatal blows to the deceased and simple injury to Gulfam.

29. Pawan Mishra (PW-20) Investigating Officer, deposed that after getting information from Sheikh Suleman on 29.08.2007, he reached the spot of occurrence and prepared spot map (Ex. P/2) as indicated by Sheikh Suleman (PW-1) in which at Sl. No. 2 the deceased and Sheikh Suleman were present at the time of incident. We are not in agreement with the contention of learned counsel for the appellants that Sheikh Suleman (PW-1) was not present on the spot, he concocted false story to set him up as eye-witness. There is rare possibility to implicate the appellants, Sheikh Suleman (PW-1) prepared plan within a short span. Learned counsel for the appellants

further stated that almost all the eye-witnesses are related to the deceased.Â Hence, the trial Court wrongly relied on their testimony to convict the appellants. We are not inclined to accept this contention that they are more interested to punish the real culprit.Â They do not want to implicate any innocent person.Â In case of Roop Narain Mishra Vs. State of UP [2017 Cri.LJ 1487] has held as under :

â??On the point of 'interested witnesses', the Hon'ble Supreme Court in State of U.P. v. Jagdeo, reported in 2003 Cri LJ 844 (SC) observed that only on the ground of interested or related witnesses, their evidence cannot be discarded. Most of the times eye witnesses happen to be family members or close associates because unless a crime is committed near a public place, strangers are not likely to be present at the time of occurrence.â? [See also Jodhan Vs. State of MP, (2015) 11 SCC 52].

30. Now a days, independent witnesses generally keep mum to save themselves and their family.Â They are under pressure of the various elements some time they are gained over by the accused person.Â Learned counsel for the appellants placed reliance in case of Devilal Vs. State of Rajasthan [(1971) 3 SCC 471] and Bhagirath Vs. State of MP [(1976) 1 SCC 20].Â We are not inclined to accept the aforesaid contention. In the instant case, we do not find that the prosecution evidence established new prosecution case.Â

31. In the present case, the appellant committed cold blooded murder of the deceased.Â The manner in which they assaulted the deceased and as alleged by the prosecution, they were in the profession of â??Adibaajâ??.Â In such condition, normally independent witness does not want to come forward to put themselves in danger.Â There is no cogent reason to discard the testimony of related witness which is duly corroborate by the other evidence and medical evidence.

32. Pawan (PW-20) further stated that he recovered motor cycle of the deceased and blood stained earth from the spot. He recovered weapon by drawing seizure memo (Ex. P/14) and Ex. P/15) as per memorandum Ex. P/12 and Ex. P/13.Â The seized weapons were sent for doctorâ??s opinion.Â Dr. D.K.Satpathi (PW-3) supported the prosecution story and stated the injuries of the deceased may be caused by the seized sharp edged weapons.Â All the seized

articles were sent to FSL for chemical examination. As per the FSL report, Ex. P/30 and Ex. P/31, blood stains were present on both the weapons.

Due to some reason, FSL could not confirm that on Article D human blood was present but on Article E, it was confirmed that human

blood was present on it. It is sufficient to connect the appellants with the aforesaid crime.

33. Learned counsel for the appellant has submitted that the appellants had no motive to kill Bablu. In our opinion, the motive of the appellants is

also established in the case. Pawan (PW-20) Investigation Officer proved that 3-4 months back, deceased lodged FIR against the appellants that

they were doing Adibaji with him. They demanded Rs. 50,000/- from the deceased. Thus, Sheikh Suleman (PW-1) and Sheikh Ehsan

(PW-2) clearly corroborate this fact that the appellants had the motive to commit murder of the deceased. In case of Yogesh Singh Vs. Mahabeer

Singh & Ors. [(2017) 11 SCC 195], the Honble Supreme Court has observed as under :

Even if there is absence of motive, that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore,

in case there is direct trustworthy evidence of witnesses as to commission of an offence, motive loses its significance. Therefore, if the genesis of

motive of occurrence is not proved, the ocular testimony of witnesses as to the occurrence could not be discarded only on the ground of absence of

motive, if otherwise the evidence is worthy or reliance.

34. Learned counsel for the appellant contended that the prosecution has failed to prove charge against the appellant beyond reasonable doubt, hence

appellant be acquitted from the charges levelled against them. We are not inclined to accept the said contention. Rule of benefit of doubt does not

warrant acquittal of accused by resorting to surmises conjectures or fanciful consideration. In case of Yogesh Singh (supra), the Honble

Supreme Court has held as under :

It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden

on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations

made by Venkatachaliah, J., in State of U.P. Vs. Krishna Gopal and Anr., (1988) 4

SCC 302:

25. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the

accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary,

trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

35. In our considered view, all the circumstances establish that the appellants had intention to cause injury to the deceased and murder him. Therefore,

the appellants were rightly convicted by the Trial Court under Section 302/34 of the IPC. Accordingly, we find no merit in this appeal. The

appeal is hereby dismissed.

36. Copy of this judgment be sent to the Court below for information and compliance alongwith its record.