
(2008) 06 MP CK 0041
In the Madhya Pradesh High Court

Mullu Singh, alias Yashwant Singh and Others	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 300, 302, 304, 307, 34

Citation : (2009) CriLJ 273

Hon'ble Judges : K.S. Chauhan, J;A.K. Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—Feeling aggrieved by the judgment of conviction and order of sentence dated 5/10/1999 passed by learned Sessions Judge, Damoh in Sessions Trial No. 104/99, convicting the appellants under Sections 307/34 and 302/34 IPC and sentencing them to suffer rigorous imprisonment of ten years u/s 307/34 IPC and life imprisonment u/s 302/34 IPC with a further stipulation that both the sentences shall run concurrently , this appeal u/s 374(2) of the Code of Criminal Procedure, 1973 has been preferred by them.

2. The prosecution has filed charge-sheet against four accused persons, namely, Kamal Singh, Mohan Singh, Mullu Singh and Durag Singh. During the course of investigation one accused, namely, Gulab Singh breathed his last. Accused Durag Singh has been acquitted by the impugned judgment. In this manner the present three appellants have filed this appeal.

3. In brief the case of prosecution is that on 14/4/1999 an information was received in the Police Station Nohta that accused persons are causing Marpeet by knife and kenchha (a sharp edged weapon). Said information was reduced in writing in Roznamcha and, thereafter, police force arrived at the spot which is nearby the Bus Stand. At the place of occurrence, injured Mangal Singh lodged a Dehati Nalishi that when he was going to take bath with his brother Dal Singh (hereinafter referred to as "the deceased") at that juncture accused persons

alighted from the bus. It is said that earlier to the incident, appellant Kamal Singh eloped with the sister of Mangal Singh, namely, Anita and basing this point, parties were in inimical terms. As soon as appellants Kamal Singh and Mullu Singh alighted from the bus, on the point of eloping Anita some altercation took place between injured Mangal Singh and appellants Kamal Singh and Mullu Singh as a result of which Mullu Singh and Kamal Singh took out knife and Kencha, respectively. Accused persons Gulab Singh, Mohan Singh and Durag Singh rushed towards the place of occurrence armed with Kencha. Thereafter, it is said that Gulab Singh and Mohan Singh dealt blows of Kencha on the abdominal region of Mangal Singh. Kamal Singh also dealt blow of Kencha which was landed on the left wrist of injured Mangal Singh. Acquitted co-accused Durag Singh dealt Kencha blow on the left arm of said Mangal Singh. Thereafter, Mullu Singh dealt knife blows nearby right eye and nose. When the accused persons were causing Marpeet to Mangal Singh, deceased who is brother of Mangal Singh came for intervention but Gulab Singh and Mohan Singh dealt blows of Kencha on the abdominal region of the deceased, as a result of which his intestine came out. Thereafter, Kamal Singh, acquitted co-accused Durag Singh and Mullu Singh also dealt blows of Kencha on the person of the deceased, as a result of which he became unconscious and ultimately he breathed his last.

4. It is the further case of prosecution that one other Mohan, son of Dashrath, Madan, Mukku and Jankibai have witnessed the incident. On the basis of Dehati Nalishi a case u/s 307/34 IPC was registered and the matter was investigated. The injured persons were sent to the hospital where the deceased was found to be dead. A Panchnama of the dead body was prepared. In furtherance to its investigation, investigating agency registered the FIR on the basis of Dehati Nalishi; prepared spot map; seized ordinary and blood stained earth from the place of occurrence; recorded the statement of the witnesses; seized knife and Kencha which were used as weapons in the commission of the offence at the instance of accused persons; seized wearing apparels of the deceased and injured Mangal Singh and they were sent for chemical examination.

5. After the investigation was over, a charge-sheet was submitted in the competent Court, which on its turn committed the case to the Court of Session where the accused persons were tried.,

6. Learned trial Judge on going through the charge-sheet framed charges punishable under Sections 307 and 302/34 IPC against all the accused persons. Needless to emphasis, the accused persons abjured/their guilt and requested for trial.

7. In order to prove its case, prosecution examined as many as 14 witnesses and placed Exs.P-1 to P-27, the documents on record.

8. The defence of appellants is of false implication and the same defence they set-forth in their statement recorded u/s 313, Cr.P.C and in support of their defence they examined three witnesses, namely, Malkhan Singh (DW-1), Kattu (DW-2)

and Govind Singh (DW-3). These witnesses were examined in order to prove the plea of alibi of appellant Mullu Singh.

9. Learned trial Judge after appreciating and marshalling the evidence placed on record came to hold that co-accused Durag Singh did not commit any offence and hence acquitted him from all the charges. However, the learned trial Judge came to hold that the appellants did commit the offences for which they were charged and eventually convicted them and passed the sentences which we have mentioned here-in-above.

10. In this manner the present appellants have preferred this appeal assailing the impugned judgment of conviction and order of sentence passed against them by the learned trial Court.

11. The contention of Shri N. P. Dubey, learned Counsel for the appellants is that the incident had taken place nearby the Bus Stand, but despite the independent witnesses were available, the prosecution did not take pains to examine them and they have examined those persons who are thickly related to the complainant party and are also interested witnesses. The contention of learned Counsel is that since it is borne out from the testimony of the prosecution witnesses that on the point of eloping the sister of injured Mangal Singh there was enmity between the parties, therefore, it was incumbent upon the prosecution to examine independent witnesses. The next contention of learned Counsel is that there is specific allegation against acquitted co-accused Durag Singh in the FIR as well as in the dying declaration of injured Mangal Singh and also in the case-diary statement of the eye-witnesses, but Durag Singh has been acquitted by the learned trial Court and if that is the position, there should be independent corroboration of the testimony of eye-witnesses who are thickly related to the complainant side.

12. An alternative submission has also been put-forth by the learned Counsel that if the testimony of the prosecution witnesses is tested on the anvil and touchstone of the present factual scenario, it would reveal that there was no intention of the appellants either to kill the deceased or to cause injuries to injured Mangal Singh. Indeed when injured Mangal Singh saw accused persons alighting from the bus, by keeping enmity in his mind on account of incident of his sister Anita, he (Mangal Singh) started hurling abuses to the accused persons. It has also come in the evidence that exchange of abuses took place and thereafter in heat of passion since quarrel arisen all of a sudden, the injuries were caused by the appellants to Mangal Singh and thereafter when the deceased tried to intervene in between, Gulab Singh (who later on died) and appellant Mohan Singh dealt blows of knife and kenchha to him and thereafter it is said that the other appellants dealt blows to the deceased and if that is the position, the case would come under Exception-4 to Section 300, IPC because there is nothing on record in order to prove that there was any premeditation. It has also been submitted by the learned Counsel that had there been any intention of the appellants to kill the deceased, since they alighted from the bus

and saw the deceased and injured, straightway they would have dealt blows instead of altercation with them. Thus, according to the learned Counsel, it can be inferred that there was no intention of the appellants to kill the deceased. In support of his contention, learned Counsel has placed reliance on the decisions Sikander alias Mohd. Shafiq Vs. State (Delhi Admn.), ; State of Himachal Pradesh Vs. Wazir Chand and Others, ; Kikar Singh Vs. State of Rajasthan, ; Rajendra Singh v. State of Bihar and decision of the Supreme Court Sukhdev Singh Vs. Delhi State (Govt. of NCT of Delhi), .

13. Per contra, Shri S.K. Rai, learned Public Prosecutor appearing for the respondent/State argued in support of the impugned judgment and has submitted that looking to the injuries caused to the deceased, the case would come under the ambit and sweep of Section 302, IPC and learned trial Judge did not commit any error in convicting the appellants u/s 302/34 IPC as well as u/s 307/34 IPC. It has been further argued by the learned Public Prosecutor that merely because before the incident some altercation took place between injured Mangal Singh and appellants Mullu Singh and Kamal Singh it will not dilute the case of prosecution in order to hold that the appellants have committed the offence punishable u/s 304 Part-I, IPC. In support of his contention, learned Public Prosecutor has placed reliance on the decisions Major Singh and Another Vs. State of Punjab, ; Jakki @ Selvaraj and Another Vs. State rep. by the IP, Coimbatore, and Tehal Singh and Others Vs. State of Punjab, . By placing reliance on the decision of the Supreme Court Kallu @ Masih and Others Vs. State of Madhya Pradesh, it has been submitted that injured witness should not be disbelieved. On these premised submissions, it has been argued by the learned Public Prosecutor that this appeal is without substance and the same be dismissed.

14. Having heard learned Counsel for the parties, we are of the considered view that this appeal deserves to be dismissed.

15. In the present case the foundation stone of the case is Dehati Nalishi (Ex.P-8) lodged by injured eye-witness Mangal Singh. This injured witness Mangal Singh when appeared in the Court as PW-10 he has proved Dehati Nalishi. On bare perusal of Dehati Nalishi it is revealed that on the fateful day at 10 in the morning when this injured witness along with his brother (deceased) was going to take bath and when they reached nearby the Bus Stand, at that juncture appellants Mullu Singh and Kamal Singh alighted from the bus. It has also been stated in the Dehati Nalishi that there was altercation between this witness, deceased and appellants Mullu Singh and Kamal Singh because Kamal Singh eloped Anita, who is sister of this witness. Thereafter, appellants Mullu Singh and Kamal Singh took out knife and Kencha, respectively and Gulab Singh, Mohan Singh and Durag Singh reached at the spot by carrying kencha. Thereafter Gulab Singh and Mohan Singh dealt blows of kencha on is abdominal region. Appellant Kamal Singh also dealt blow of kencha on his left wrist, acquitted co-accused Durag Singh caused injury by kencha In left hand and

appellant Mullu Singh dealt blows of knife nearby the right eye and nose. When the accused persons were causing injuries with the weapons to him, the deceased tried to intervene, as a result of which deceased-accused Gulab Singh and appellant Mohan Singh gave blows of Kencha on the abdominal region of the deceased, as a result of which the intestine of the deceased came out. Thereafter, appellants Kamal Singh, Mullu Singh and acquitted co-accused Durag Singh dealt blows of Kencha and knife on the back of the deceased. On going through the testimony of Mangal Singh (PW-10) it is revealed that he has proved his Dehati Nalishi (Ex.P-8). True he has not accused acquitted co-accused Durag Singh in his testimony and has stated that Durag Singh did not cause any injury to him, but, so far as involvement of other accused persons/ appellants is concerned, there is definite testimony of this witness against them. Even if the omissions and contradictions which are pointed out by the learned Counsel for the appellants from the testimony of Mangal Singh (PW-10) are taken into consideration, it would reveal that they are minor and do not go the root of the matter in order to exonerate the present appellants. In para 3 of his testimony this witness has specifically stated that after alighting from the bus, appellants Kamal Singh and Mullu Singh hurled abuses of mother and daughter and thereafter appellant Kamal Singh took out Kencha and dealt its blows to him. If we keep the testimony of injured Mangal Singh (PW-10) in juxtaposition to his Dehati Nalishi (Ex.P-8) it is luminously clear that whatever he has stated against the appellants in Dehati Nalishi it has been so stated by him in his testimony. In para 24 of his testimony he has stated that in his case-diary statement Ex.D-6 he did not state about the altercation which took place between him, deceased and appellant Kamal Singh. Similarly there is omission in his case-diary statement that appellant Kamal Singh took out the kencha and dealt its blows at two places of his hand, but this contradiction and omission will not sweep out the entire testimony of this witness which is otherwise clear, cogent and trustworthy. In the case-diary causing of blow by kencha by Kamal Singh is mentioned but the number of blows are not mentioned, thus this omission will not dilute the act or totally exonerate appellant Kamal Singh.

16. In very specific words injured Mangal Singh (PW-10) has stated that appellant Mohan Singh and deceased-accused Gulab Singh dealt the kencha blows on the abdominal region of the deceased, as a result of which his intestine came out and was exposed. Thus it can be admired that how much force would have been applied by these two persons. It has also been stated by this witness that after the blows of kencha were dealt by appellant Mohan Singh and deceased-accused Gulab Singh, the other two appellants Mullu Singh and Kamal Singh also dealt knife blows on the person of the deceased. It has already been stated by this witness that all the appellants except acquitted co-accused Durag Singh dealt blows of knife and kencha on his abdominal region, wrist, eye and nose.

17. The testimony of this witness (PW-10) has been corroborated by the evidence of other three eye-witnesses, namely, Sukke (PW-2), Mohan Singh

(PW-11) and Madan Singh (PW-1), who is a child witness. True, learned Counsel for the appellants has pointed out several omissions and contradictions which have arrived in the testimony of Sukke (PW-2) and Mohan Singh (PW-11), but they do not go to the root of the matter. Indeed in very specific words they have assigned the role of causing injuries by Kencha and knife by the appellants and deceased-accused Gulab Singh. It has been contended by the learned Counsel for the appellants that statement of PW-1 Madan Singh, who is a child witness should not be placed reliance because he appears to be a tutored witness and there are material contradictions and omissions in his testimony. The Supreme Court in the cases of Suryanarayana Vs. State of Karnataka, and Ratansinh Dalsukhbhai Nayak Vs. State of Gujarat, has categorically held that the evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. The Supreme Court in these two decisions has categorically held that even on the basis of testimony of a child witness conviction can be accorded. In the present case, for the sake of arguments, if the evidence of child witness PW-1 Madan Singh is ignored, from the evidence of injured witness Mangal Singh (PW-10), Sukke (PW-2) and Mohan Singh (PW-11) the vile act. of appellants of causing injuries to the deceased as well as to injured Mangal Singh has been duly proved.

18. The testimony of above said four eyewitnesses has been duly corroborated by the medical evidence. Dr. S.K. Jain (PW-9), who is the Autopsy Surgeon has proved the postmortem report of the deceased Ex.P-14. According to the Autopsy Surgeon the deceased sustained as many as 8 incised wounds, they are as under:

- (1) Incised wound (1/4" x 1/8") left side of epigastric region skin deep.
- (2) Incised wound (1" x 1/4") left side of lower part of epigastric region. Omentum protruded out.
- (3) Incised wound (1" x 1/4") over left temporal bone.
- (4) Incised wound (1" x 1/2") on the left umbilical region, loop of intestine protruded.
- (5) Incised wound (2" x 1/2") on the Rt. side of thoracic region of back close to vertebra, oblique, cavity deep.
- (6) Incised wound (1-1/2" x 1/2") below the Injury No. (5), oblique, cavity deep.
- (7) Incised wound (1" x 1/2") on the Lt. thoracic region of back, oblique, cavity deep, air bubbles coming through wounds, bleeding.
- (8) Incised wound (1/2" x 1/4") just above Injury No. (7) oblique, cavity deep.

On going through the testimony of the Autopsy Surgeon it is gathered that the blow of the weapon was so forceful that omentum of the deceased came out

from its cavity. Needless to emphasize abdomen is a vital part of the body and the deceased sustained as many as three incised wounds on his abdominal region. The Autopsy Surgeon has also found as many as four incised wounds on the back region of the deceased which corroborates the statement of the eyewitnesses that appellants Mullu Singh and Kamal Singh dealt blows by sharp edged weapons on the back of the deceased.

19. Merely because eye-witnesses have not stated against acquitted co-accused Durag Singh it would not dilute the case of prosecution as *Maxim falsus in uno, falsus in omnibus* is not applicable in our country. The decisions of *Major Singh and Another Vs. State of Punjab*, and *Jakki @ Selvaraj and Another Vs. State rep. by the IP, Coimbatore*, may placed reliance on the point.

20. We do not find any merit in the contention of learned Counsel for the appellants that the case would come under the ambit and sweep of Exception-4 to Section 300, IPC because incident had taken place all of a sudden in a heat of passion and there is no evidence of premeditation. On going through Exception-4 it is gathered that legislature has enacted the law that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. But, at the same time it has also been enacted that such quarrel and fight without the offenders having taken undue advantage or acted in a cruel or unusual manner. At this juncture we would like to add that injured Mangal Singh as well as the deceased were bare handed and all the appellants were armed with deadly weapons like knife and kenchha and they dealt repeated blows on the person of the deceased, as a result of which he died

21. Let us now consider the scope of Exception-4. This exception is in two parts. For ready reference it would be germane to quote Exception-4 which reads thus:

Exception-4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of a passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

(Emphasis supplied)

The first part would be an exception and if the case would rest totally excluding second part, according to us, the act of the accused will not amount to culpable homicide amounting to murder. But, if the accused while acting under the first part to Exception-4 further continues his act by taking undue advantage in cruel and unusual manner, his act would come under second part and in that case the action of the accused would amount to culpable homicide amounting to murder.

22. In the present case the deceased and the injured were bare handed and they were physically incapable to defend themselves and hence it can be said that the appellants have taken undue advantage because the deceased and the injured were totally unaware and were not suspecting that they would face severe blows

of the deadly weapons. Even if the fight is unpremeditated and sudden, yet if the instrument or manner or retaliation be greatly inadequate to the offence given and greatly dangerous in its nature, the accused cannot be protected under this exception. (See: Pandurang Narayan Jawalekar Vs. State of Maharashtra,).

23. Exception-4 cannot apply where the wounds inflicted on the person of the deceased cannot be said to have been given without the offender having taken undue advantage, irrespective of the fact that it happened in the heat of passion upon sudden quarrel. In Kikar Singh Vs. State of Rajasthan, it was held by the Supreme Court that the accused did not stop with the first blow. Even though the victim fell down, the accused inflicted two more blows on a fallen man. In that situation the Supreme Court held that accused acted cruelly with no justification and was not entitled to benefit of Exception-4. In the present case also after the deceased had fallen down, the repeated blows were dealt by the appellants and, therefore, their act also would not come under Exception-4 and for all practical purposes they have committed the offence of culpable homicide amounting to murder. On this point it would be fruitful to place reliance on the decision of Tehal Singh and Others Vs. State of Punjab, placed reliance by learned Public Prosecutor. In para 7 of the said decision the Supreme Court has held as under:

7. ...The three accused persons came together. One of them was armed with a gun, the other two were armed with iron rods. One of them challenged the deceased. The person who was armed with the gun opened fire and after the deceased fell "down the other two accused were not content but went forward to inflict injuries on the deceased person with the iron rods in their hands. Thereafter all of them went away together. The irresistible inference from these circumstances is that the three of them were actuated by the common intention to cause the death of the deceased. Merely because the injuries inflicted by Darshan Singh and Gurmel Singh were not serious injuries, it cannot be said that they were not actuated by the common intention to cause the death of the deceased. In order to attract the applicability of Section 34 read with Section 302, it is not necessary that each and every one of the accused persons must have inflicted a serious injury.

In the present case also after the blows of Kencha were dealt by appellant Mohan Singh and deceased-accused Gulab Singh to the deceased on his abdominal region, appellant Mullu Singh and Kamal Singh dealt blows of knife on his back region and thus their act indicates that they have shared common intention to kill the deceased with appellant Mohan Singh and deceased-accused Gulab Singh. We would also like to place reliance on the decision of Supreme Court Kallu @ Masih and Others Vs. State of Madhya Pradesh, wherein the Supreme Court has categorically held that the prosecution case itself alleging that accused persons came to beat complainant and in that situation the evidence of the injured witnesses cannot be rejected on the ground of enmity. In the case of State of Rajasthan Vs. Dhool Singh, which is a case of single injury the Supreme Court held that in order to ascertain whether the offence has been committed

under any of the Exception of Section 300, IPC, the nature of injury, the part of the body where it is caused and the force which was used would be relevant factors.

24. We have already held that on account of the repeated blows caused by appellant Mohan Singh to the deceased on the abdominal region, omentum came out and, therefore, for no rhyme or reason it can be held that appellants have committed any offence lesser to Section 302, IPC. Thus the decisions of Sikander alias Mohd. Shafiq Vs. State (Delhi Admn.), , State of Himachal Pradesh Vs. Wazir Chand and Others, , Kikar Singh (supra), Kikar Singh Vs. State of Rajasthan, , decision of the Supreme Court Sukhdev Singh Vs. Delhi State (Govt. of NCT of Delhi), placed reliance by the learned Counsel for the appellants are distinguishable on the facts.

25. We have also gone through the testimony of Dr. Shridhar Sharma (PW-8) and the MLC report of Mangal Singh in which as many as 9 incised wounds have been found and first three injuries are on abdominal region and, therefore, according to us, appellants have committed the offence punishable under section, 307/34 IPC. Dr. Shridhar Sharma (PW-8) has further opined that injuries No. 1 to 3 were dangerous to life. Thus, according to us, learned trial Court did not commit any error in convicting the appellants u/s 307/34 IPC also, The conviction of appellants under Sections 302/34 and 307/34 IPC is hereby upheld.

26. Resultantly, this appeal is found to be devoid of any substance and the same is hereby dismissed.