

(2017) 12 MP CK 0025
In the Madhya Pradesh High Court
Case No : 541 of 1999

Nannulal and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 21-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 357](#) — Order to pay compensation
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 300](#), [Section 323](#)

Citation : (2017) 12 MP CK 0025

Hon'ble Judges : Sanjay Yadav, S.K.Awasthi

Bench : Division Bench

Advocate : Dhirendra Singh, B.K.Sharma

Judgement

1. Since both the appeals are connected with the common judgment dated 15.10.1999 passed by Additional Session Judge, Mugaoli, District Guna in Session Trial No.99/1998, hence the present appeals are hereby decided by the present common judgment.

2. The appellants Ram Bahadur, Rakesh, Ram Gulam, Harnam Singh, Roop Singh, Sobhagya Singh and Ramdayal being aggrieved with their convictions of offence under Section 323 (7 counts) of IPC whereas each of them has been sentenced to 1 year RI with fine of Rs.500/- each with default stipulation.

3. The prosecution case, in short, is that a day before 1.11.1997 Reena Bai daughter of Hanif goes to ease herself at about 6:00 pm, on the way one Chandan Singh tease her. She narrated the matter to her family members. On the same night, Panchayat was called to settle the matter in village Bhopal but Chandan Singh did not turn up, therefore on next day on 1.11.1997 Yusuf Khan alongwith his father Habib, Rubina, Rajiya Khan, Irshad, Jameel Khan, Afsari Bai, Abdul Hafiz, Ayub Khan, Aashma and Rajmohammed were going to Police Station Mugaoli to lodge the report at about 2:00 pm. When the aforesaid persons

reached between Mahuakhadi and Bhopal, the appellant alongwith other persons came there having lathi, luhangi and farsa and abused them. They threatened and prevented them to lodge the report. On being protested by the complainant then Prakash Singh gave a blow of farsa on the head of Ayub Khan, due to which he sustained injuries and fell down on the ground. When Yusuf Khan alongwith Hanif, Rubina, Irshad, Jameel Khan, Habib Sheikh, Afsari Bai, Aashma, Rajmohammed, Rajjo alias Rajia Khan tried to rescue Ayub Khan, the other accused persons inflicted injuries to the above persons by lathi and luhangi and they also sustained injuries. The complainant Yusuf Khan lodged First Information Report Ex.P/5 at Police Station Mugaoli. When Ayub Khan was brought to the Police Station, he was alive and his statement Ex.P/51 was recorded by S.H.O., Police Station Mugaoli Mr. S.S.Parmar. After that, he sent to the injured persons to the hospital for medical examination. During treatment, Ayub Khan had expired. After receiving the information regarding the death of Ayub Khan, the police has registered merg intimation Ex.P/53. On 02.11.1997 lash panchnama Ex.P/1 of Ayub Khan was prepared by Mr. S.S.Parmar, S.H.O., Police Station Mugaoli. Dead body of the deceased Ayub Khan was sent to post-mortem. Dr. Vijya Sakpal (PW/12) performed autopsy on the body of Ayub Khan and wrote the post-mortem report Ex.P/16. The investigating Officer Mr. S.S.Parmar reached to the spot and he prepared the spot map Ex.P/4. Blood stained soil, simple soil and blood stained piece of stone were seized from the spot by seizure memo Ex.P/7. The statement of witnesses were recorded and accused persons were arrested. Various weapons were seized from the accused persons on the basis of their memorandum recorded under Section 27 of the Evidence Act. All the recovered articles were sent to Forensic Science Examination. After completion of the investigation, charge-sheet was filed before the Judicial Magistrate First Class, Mugaoli, who committed the case of the Court of Sessions and ultimately it was transferred to the Additional Session Judge, Mugaoli, District Guna.

4. The appellants abjured their guilt. They took a plea that they are innocent and they have been falsely implicated in the matter but no evidence was produced by the appellants.

5. The trial Court after considering the evidence adduced by the parties convicted the appellant Prakash for the offence punishable under Section 302 of IPC and sentenced him as mentioned in para 2 of the judgment whereas the other appellants were convicted for the offence under Section 323 (7 counts) of IPC each and sentenced for a period of one year's imprisonment with the fine of Rs.500/- each.

6. We have heard the learned counsel for the parties and perused the record.

7. Learned counsel for the appellants submitted that the prosecution examined only relatives and interested witnesses and only independent witness Laxman Singh (PW-7) alone has been examined but he has not supported the prosecution version and he has turned hostile, the trial Court committed error in convicting

the appellant Prakash on the evidence of such witnesses. He further submitted that the evidence of Dr. Vijaya Sakpal (PW/12), who performed the post-mortem of the deceased Ayub Khan are in-consistence and contradictory. As such the trial Court erred placing reliance on the evidence of Dr. Vijaya Sakpal. In these circumstances, the conviction of the appellant Prakash deserves to be set aside.

8. Per contra, the Public Prosecutor for the State has submitted that the evidence of eye-witnesses can not be discarded merely on the ground that they were relatives of the deceased especially when their evidence is consistence, natural and trustworthy. The incident has taken place when the other injured persons were going to lodge FIR against the accused Chandan Singh and nine persons sustained injuries in the incident. The evidence of eye-witnesses has corroborated by the medical evidence, hence, the trial Court has committed no error in holding the appellant Prakash guilty for the offence under Section 302 of IPC.

9. First of all, it is to be considered as to whether the death of the deceased Ayub Khan was homicidal in nature or not ? In this connection, evidence given by Dr. Vijaya Sakpal (PW/12) is important who performed the post-mortem on the body of the deceased Ayub Khan and gave a report (Ex.P/16). He found the following injuries on the deceased Ayub Khan :-

"(1) Lacerated wound 3x1x1 cm at the parietal area 7 cm above and behind left ear.

(2) Lacerated wound 4x1xbone deep at occipital area 5 cm behind left ear.

(3) One Contusion 10x3 cm at left chestal region above 10-11 ribs.

(4) Bruise 6x2 cm at the left shoulder."

According to Dr. Vijaya Sakpal (PW/12), the deceased died due to internal spleen rupture as well as external hemorrhage within 24 hours of the post-mortem and the death of the deceased was homicidal in nature.

10. In the present case the eye-witnesses Rubina (PW/1), Rajiya Khan (PW-2), Irshad (PW/3), Habib Sheikh (PW/4), Jamil Khan (PW/5), Yusuf (PW/6), Laxman Singh (PW/7), Afsari Bai (PW/9), Hanif (PW/10), Abdul Hafij (PW/11) were examined. Laxman Singh (PW/7) has not supported the prosecution story and he has turned hostile. It is also stated that the complainant Yusuf had lodged the FIR Ex.P/5 at Police Station Mugaoli, District Guna. The incident took place at 14:00 pm whereas the FIR lodged at 16:00 and the police station was 5 kms away from the spot. Looking to the distance of place of incident, it appears that FIR was lodged without any reasonable delay.

11. Since the eye-witnesses in the case are near relatives of the deceased, we have examined their evidence with great caution and carefully.

12. Rubina (PW/1), Rajiya Khan (PW/2), Irshad (PW/3), Habib Sheikh (PW/4), Jamil Khan (PW/5), Yusuf (PW/6), Afsarbai (PW/9), Hanif (PW/10) and Abdul

Hafij have criticized that one year ago the second day of Diwali festival at about 6:00 pm, Reena daughter of Hanif (PW/10) goes to ease herself, after coming to the home she informed her family members that Chandan Singh caught hand and tease her. When he was going to the Police Station for lodging the report, Shaligram requested that he did not lodge the report and settle the matter in village panchayat. On the same night Panchayat was called to settle the matter in village but Chandan Singh did not turn up, therefore, on the next day they were going to lodge the report. When they reached 1 Km away from the village then the accused persons surrounded them and the accused persons threatened that if they will go to the police station for lodging the FIR, they will kill them. Thereafter, the accused Prakash gave a farsa blow on the head of Ayub Khan, due to which he sustained injuries and he fell down on the ground then the other co-accused persons inflicted injuries to him by luhangi and lathi. When Yusuf Khan tried to rescue Ayub Khan then Ramdayal gave a farsa blow on the skull of Yusuf Khan. Irshad came to save then Harnam gave a luhangi blow. All the accused persons also inflicted injuries to Rubina, Aashama and Rajjo Bai.

13. Rubina (PW/1) stated that the accused Yusuf caused injury to Prakash by sharp portion of farsa, however, Dr. Vijya Sakpal (PW/12) clearly stated that no injury of sharp object was found on the skull of Yusuf. According to Dr. Vijya Sakpal, Yusuf received lacerated wound on the parietal region and back portion of the head which is caused by hard and blunt object.

14. The prosecution examined a number of eye witnesses namely Irshad, Rubina, Hanif, Yusuf Khan, Jameel Khan, Aashama, Rajmohammad and Rajjo, who had also suffered injuries which were certified by Dr. Vijya Sakpal (PW/12) and there is no reason to discard the evidence of these injured witnesses whose injuries would at least permit a reasonable interference and they were present at the time of occurrence. All these witnesses have consistently deposed that the appellant Prakash Singh armed with farsa gave a farsa blow on the head of the deceased Ayub Khan. Rubina (PW1), Rajiya Khan (PW2), Irshad (PW3), Habib Sheikh (PW4) and Jamil Khan (PW5) clearly stated that Prakash Singh had used only the sharp edge site of the said weapon but no incised wound was found due to that impact then it is possible that farsa was not so sharp and therefore, lacerated wound could be caused. A similarity is found on the nature of the wounds caused by the appellant Prakash Singh. Size of such wound i.e. 3 cm was lengthy and 1 cm deep. If it was caused by any hard and blunt object like luhangi or lathi, then would could not be 1 cm deep. Hence, would no.1 clearly indicates that the wound was caused by a sharp cutting weapon though it was not finely sharp. Thus, the injury No.1 clearly shows that it could be caused by a farsa wherein edge of farsa was not so sharp. Under these circumstances, the medical evidence completely supports the version of eye witnesses and it is proved beyond doubt that the appellant Prakash gave a blow of farsa on the parietal region of the head of the deceased Ayub Khan.

15. As per the opinion of Dr. Vijya Sakpal the deceased Ayub Khan died due to

rupture of his spleen. There is no evidence on record which shows that the appellant Prakash was aware with the fact that spleen of the deceased is enlarged and with intent to cause his death, he inflicted injuries on the said part of the body of the deceased Ayub Khan. It is alleged that single blow was given on the head of the deceased Ayub Khan. Therefore, it cannot be said that the appellant had intended to commit murder of deceased looking to all these facts and feature of the case, but at the same time he can be attributed knowledge that because of his act there was likelihood of death of deceased. Therefore, the act of the appellant would not fall within any of the category of culpable homicide amounting to murder under Section 300 of the IPC.

16. Dr. Vijya Sakpal (PW/12) admitted that he died due to rupture of his spleen. Two lacerated wounds were found on the parietal region but there was no corresponding internal injury and as per the statement of the witnesses, the appellant Prakash Singh gave a single blow on the head of the deceased Ayub Khan. Dr. Vijya Sakpal admitted in his cross- examination that head injuries received by the appellant are not sufficient to cause his death in the natural course of life.

17. In the case of *Molu & Others Vs. State of Haryana* reported in AIR 1976 SC 2499, the Apex Court has considered this aspect. In this case the appellant was tried for commission of two murders. Deceased number one suffered 14 external injuries whereas number two suffered 16 injuries. Deceased died because of damage to the big blood vessels and crack fracture of upper arm. Though for causing injuries to deceased persons piercing sharp edged weapons as well as hard and blunt object were used, there was no opinion given by the medical expert that injuries were sufficient in ordinary course of nature to cause death. In the opinion of the medical expert, deceased persons died due to shock and hemorrhage as a result of multiple injuries. In this case, the Apex Court has convicted the appellant under Section 304 Part II of the IPC. In the present case, the allegation against the appellant is that he gave a single blow on the head of the deceased Ayub Khan and as per the medical opinion, this injury was not found to be sufficient in the ordinary course of nature to cause his death and he died due to rupture of his spleen which was enlarged. Therefore, the act of the applicant in our considered view would fall within the purview of culpable homicide not amounting to murder under punishable under Section 304 Part II of the IPC.

18. In the case of *Mer Dhana Sida vs State of Gujarat* reported in 1986 CAR 22 (SC), the Hon''ble Supreme Court held that :- "8. It must at once be mentioned that Karan Malde succumbed to his injuries soon after he received them. He had suffered as many as 10 injuries including fracture of tenth and eleventh ribs on the left side of mid-axillary line. On internal examination it was found that he had suffered rupture of the spleen. In the opinion of PW 1 Dr.B.B. Shah all the injuries were possible by some hard and blunt substance like a stick and the cause of death was shock and hemorrhage mainly due to rupture of the spleen.

There is a concurrent finding that accused 2, 4 and 5 simultaneously attacked Karsan Malde with sticks and caused injuries to him and accused 3 shared their common intention. This concurrent finding was not questioned before us. If accused 2, 4 and 5 simultaneously attacked Karsan Malde with sticks and caused as many as 10 injuries one of them being the fracture of tenth and eleventh ribs and rupture of the spleen, one can gauge the ferocity of the attack. All persons participating in such an attack could at least be imputed with the knowledge that they were likely to cause injuries which were likely to cause death. In our opinion the High Court was right in holding that on factual and medical evidence accused 2, 3, 4 and 5 were guilty of committing an offence under Section 304 Part II read with Section 34 of the Indian Penal Code. We agree with the High Court and confirm the conviction as also the sentence of 5 years imposed on each of them."

19. In the case of Karam Singh vs. State of Punjab reported in 1994 SCC (Cri) 64, the Hon'ble Apex Court held that :- "The doctor PW/2, who conducted the post-mortem found ten injuries. Some of them were abrasions. A lacerated was also found on the head but there was no corresponding internal injury. The contusions on the chest and injury Nos. 5 to 7 resulted in the fracture of the ribs which caused his death. The doctor in his evidence has admitted that the fracture of the ribs could have in turn cause the rupture of the liver and the spleen. Under these circumstances it is difficult to hold that the appellant intended to cause the injuries to the liver and the spleen which unfortunately proved to be fatal. Having regard to the nature of the weapon used and the parts of the body on which blows were dealt, it is difficult to hold that he intended to cause the death or intended to cause that particular injuries to the liver and the spleen. However, under the circumstances he must be attributed to have the knowledge that by dealing such blows he was likely to cause the death of the deceased in which case the offence is one punishable under Section 304 part II IPC ."

20. In the result, this Criminal Appeal No.604/1999 filed on behalf of the appellant Prakash is allowed in part. The conviction and sentence of the appellant under Section 302 of IPC sentenced to RI for life are hereby set aside instead of he is convicted under Section 304 (Part II) of IPC, sentenced to RI for 5

years with fine of Rs.6000/-, in default of payment of fine he shall undergo further RI for the period of which the appellant suffered the custody during the pendency of trial and shall be adjusted.

21. So far as the sentence is concerned, the appellant Prakash Singh remained in custody since 13.11.1997 upto 08.05.2001 i.e. 3 years 4 months 25 days. His offence falls within the purview of Section 304 (Part-II) of IPC and, therefore, it would be also appropriate to impose a jail sentence to the appellant Prakash Singh for the period in which he has remained in custody during trial and appeal.

22. Irshad, Rubina, Hanif, Yusuf Khan, Jameel Khan, Aashama, Rajmohammad stated in their statements that the accused Ram Bahadur, Rakesh, Ram Gulam, Harnam Singh, Roop Singh, Sobhagya Singh and Ramdayal inflicted injuries to

them by luhangi and stick due to which they received injuries. Dr. Vijya Sakpal (PW/12) on examination of injuries on the part of the body of the above injured persons which have been caused by hard and blunt object, therefore, the trial Court has rightly convicted the above appellants/accused for the offence punishable under Section 323 (7 counts) of IPC .

23. Learned counsel for the appellants also submitted that they have not challenged the conviction imposed by the trial Court but learned counsel for the appellants further submitted that the above appellants have no criminal antecedents and they are all the first offenders. The appellants namely Ram Bahadur, Rakesh, Ram Gulam, Roop Singh, Sobhagya Singh and Ramdayal have already been imprisoned about 3 months 29 days, 5 months 29 days, 5 months 29 days, 5 months 4 days, 5 months 28 days and 2 months 27 days respectively. Having regard to the facts and circumstances of the case, it is just and proper to reduce the sentence to the period already undergone by the appellants Ram Bahadur, Rakesh, Ram Gulam, Roop Singh, Sobhagya Singh and Ramdayal. However, they are directed to pay Rs.1000/- each to the injured persons Irshad, Rubina, Hanif, Yusuf Khan, Jameel Khan, Aashama, Rajmohammad and Rajjo as compensation under Section 357 of Cr.P.C within a period of 60 days from today. Accordingly, the appeal No.541/1999 is partly allowed in the aforesaid terms.

24. The appellants are on bail. Their presence is no more required before the trial Court and, therefore, it is directed that their bail bonds are now discharged. A copy of the judgment be also sent to the trial Court alongwith record for information.