
(2010) 02 MP CK 0037
In the Madhya Pradesh High Court

Pillu @ Prahlad and Another

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 304
Penal Code, 1860 (IPC) — Section 294, 302, 304, 307, 323

Citation : (2010) ILR (MP) 1181 : (2010) 2 JLJ 309 : (2010) 5 MPHT 218

Hon'ble Judges : Sushma Shrivastava, J;Rakesh Saxena, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sushma Shrivastava, J.—Appellants have preferred this appeal challenging their conviction and order of sentence passed by Additional Sessions Judge, Narsinghpur in S.T. No. 26/2000, decided on 16.4.2001.

2. Appellants have been convicted u/s 302/34 of IPC for committing murder of Sanju @ Sanjay and sentenced to life imprisonment with fine of Rs. 3,000/- each, in default rigorous imprisonment for six months, by the impugned judgment.

3. As per prosecution case, on 29.9.99 about 10 "O"clock at night at Gotegaon when complainant Shankar was standing on the betel shop of deceased Sanjay Jain (hereinafter referred to as "deceased"), appellants Pillu @ Prahlad and Guddu @ Rajesh came there and asked the deceased not to give evidence in court in fan case. When deceased declined to do so, appellants began hurling abuses. On oppugnation, appellant Guddu @ Rajesh pulled deceased Sanju out of his betel shop by holding his collar, threw him on the ground and exhorted to kill him. Then appellant Pillu @ Prahlad began assaulting him by means of scissors. Both the appellants were telling that they will not leave him alive. It is alleged that co-accused Govind was also exhorted them to kill the deceased. Complainant Shankar tried to intervene, but appellant Guddu @ Rajesh gave him a blow by tubelight causing injuries in his right hand. Deceased was rushed to

the hospital in injured state, but he succumbed to his injuries.

4. The FIR of the incident was lodged by complainant Shankar at Police Station Goteagaon, on the basis of which an offence was registered against the appellants alongwith co-accused Govind and was investigated. Injured Shankar was also sent for medical examination. The intimation of death of Sanju @ Sanjay was sent to the Police by the hospital authorities, whereupon merg intimation was recorded and merg inquest was made. The dead body of deceased Sanju was sent for postmortem examination. Blood stained earth and plain earth was seized from the spot. Blood stained clothes of the deceased were also seized. After due investigation, appellants and co-accused Govind were prosecuted u/s 307, 324, 302, 294/34 of IPC and were put to trial.

5. Appellants and co-accused Govind denied the charges framed against them u/s 302/34 and 323 of IPC and pleaded false implication due to enmity.

6. Learned Additional Sessions Judge, after trial and upon appreciation of the evidence adduced in the case, acquitted co-accused Govind of the charges u/s 302/34, 323 of IPC, also acquitted the appellants of the charge u/s 323 of IPC, but found them guilty u/s 302/34 of IPC, convicted and sentenced them as aforesaid by the impugned judgment, which has been challenged in this appeal.

7. We have heard the learned Counsel for the parties.

8. It was no longer disputed that deceased Sanju @ Sanjay met a homicidal death. It is also reflected from the medical evidence that Sanju @ Sanjay died of bodily injuries. Dr. Vinod Kumar Garg (P.W-7), who conducted the postmortem examination on the dead body of deceased, alongwith Dr. R.K. Pyasi (P.W-8), found following antemortem injuries on his body:

(1) Incised wound through and through present over upper part of pinna of right ear 1cm x 0.2cm.

(2) Incised wound 1.2cm x 0.5cm x bone deep on left frontal region of skull.

(3) Stab wound on left side of chest over fifth costal cartilage and 4th I.C. space obliquely 1.2cm x 0.5cm x depth as probe passing the chest wall easily one inch.

(4) Swelling over the bridge of nose with clotted blood in both nostril.

(5) Incised wound over left phalanx joint cutting the vessels of left ring finger.

(6) Incised wound on little finger middle phalanx.

9. On internal postmortem examination of the deceased, a stab injury 1cm x 0.1cm over right ventricle anterior aspect, pericardial space containing blood at the right border, stab wound 0.6 x 0.1cm x whole of anterior wall musculature were also found.

10. In the opinion of Dr. Vinod Kumar Garg (P.W-7), the cause of death of deceased was shock as a result of external and internal massive hemorrhage due

to injury to the vital organ heart and death was homicidal in nature.

11. There are no reasons to discard or disagree with the aforesaid medical evidence, which remained virtually un rebutted. It was thus clearly evident that death of deceased Sanju @ Sanjay was homicidal in nature.

12. Learned Counsel for the appellants, however, submitted that the trial court gravely erred in placing implicit reliance on the testimony of the so called eyewitness, namely, Rameshwar Prasad (P.W-11) and failed to appreciate that he was a planted witness and did not actually witness the occurrence, erroneously convicted the appellants without their being any cogent evidence against them. In the alternative, it was submitted that the appellants had no intention to kill the deceased and their case would not travel beyond the ambit of Section 304 of IPC.

13. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellants.

14. We have gone through the entire evidence on record.

15. The main evidence is that of Rameshwar Prasad (P.W-11), who is an eyewitness to the incident. Rameshwar Prasad (P.W-11) categorically deposed in his evidence that on 29.9.99 about 9"O"clock at night there was a big rush in front of Ashok Talkies, Gotegaon and he had seen that Sanjay (deceased) was lying down and appellant Guddu was overpowering him, while appellant Prahlad @ Pillu was assaulting him by scissors, sanjay was fluttering, and after sometime he had died. He then went to the place of Sanjay and informed his father.

16. Learned Counsel for the appellant submitted that the aforesaid witness was not named in the FIR; his police statement u/s 161 of Cr.P.C. was also recorded after twenty two days, he was thus a manufactured witness, who did not actually witness the incident.

17. Rameshwar Prasad (P.W-11), however, has given a reasonable explanation in his evidence that after the incident he had gone to Damoh on account of illness of his father and came back after 20-22 days, then he gave statement to the police, the said explanation is found to be reliable and acceptable. The Apex Court in the case of State of U.P. Vs. Satish, has reiterated that if plausible and acceptable explanation is given for the delayed examination of a witness, it cannot be viewed with suspicion. In the instant case, the witness himself, namely, Rameshwar Prasad (P.W-11) had given a satisfactory explanation that he had gone to Damoh to see his ailing father and when he came back after 20 to 22 days, he gave his statement to the Police. Rameshwar Prasad (P.W-11) appears to be a sort of independent witness; he has denied the suggestion of any inimical relations with the appellants or any animosity against them. In view of plausible explanation given by Rameshwar Prasad (P.W-11), his evidence, in our opinion, cannot be discarded and doubted on the ground of his delayed examination by the Investigating Officer.

18. It also transpires from the evidence on record that there was crowd on the place of occurrence; it, therefore, cannot be reasonably expected from the first informer that the name of every onlooker should be mentioned in the FIR. The testimony of Rameshwar Prasad(P.W-11), therefore, cannot be disbelieved on the ground that he was not named in the FIR.

19. The trial Court has given cogent reasons for believing and accepting the testimony of Rameshwar Prasad (P.W.-11), although it disbelieved the evidence of Manju @ Manoj Jain (P.W-12). We also do not find any justifiable grounds to discard the evidence of Rameshwar Prasad (P.W-11). Despite elaborate cross-examination, nothing has been elicited in his evidence so as to doubt his presence on the place of occurrence or to discredit his statement that he witnessed the incident. There are also no cogent reasons for his making false statement against the appellants or for their false implication. In fact, upon close scrutiny of the evidence of Rameshwar Prasad (P.W.-11), his statement that he had seen appellant Pillu @ Prahlad assaulting the deceased by means of scissors and the other appellant overpowering him, is found to be credible and acceptable.

20. Moreover, the evidence of complainant Shankerlal (P.W.-1), who lodged the FIR (Ex. P-1) also indicates that appellants are the perpetrators of the crime. Although, complainant Shankerlal (P.W.-1) turned hostile to prosecution and resiled from the contents of the FIR (Ex. P-1), but he admitted his signatures on the FIR (Ex. P-1) and the factum of lodging the report at the police station. Complainant Shankerlal (P.W.-1) also deposed that about 10 O'Clock at night, he had gone to the betel shop of the deceased for having a betel and at that time, an altercation was going on between the deceased and the appellants over some issue of fan and there was also scuffle between the appellants and the deceased, who subsequently died in the hospital. On being cross-examined by the Public Prosecutor, though Shankerlal (P.W.-1) denied the suggestion that appellants Pillu and Guddu were asking the deceased not to give evidence in the court in the fan case and did not fully support the version of the incident of assault by the appellants, yet his evidence clearly indicates the presence of both the appellants on the place of occurrence, as also an altercation between the appellants and the deceased over the issue of fan followed by a scuffle between them.

21. On considering the entire evidence of Shankerlal (P.W.-1), it appears that he has tried to shield the appellants, nevertheless his evidence clearly reflects the presence of both the appellants on the place of occurrence, as also their complicity in the commission of crime. Although, P.W.-1 Shankerlal was declared hostile by the prosecution, but it is well settled, as reiterated by the Apex Court in the case of Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, , the evidence of hostile witness cannot be treated as effaced or washed off from the record altogether, but the same can be accepted to the extent the version of such witness is found to be dependable on a careful scrutiny thereof.

22. More so, there is clear, cogent and credible evidence of Rameshwar Prasad (P.W.-11) that appellant Pillu @ Prahlad assaulted the deceased by means of

scissors and appellant Guddu @ Rajesh had pressed and overpowered him at the time of assault, leading to his death. There is also corroborative medical evidence on record that deceased Sanjay died of bodily injuries.

23. The medical evidence of Dr. Vinod Kumar Garg (P.W.-7) reveals that there were several antemortem incised wounds on the body of the deceased, besides a stab wound on the left side of his chest, which corroborates the ocular version that the deceased was assaulted by means of scissors. The various incised wounds found on the various parts of the body of the deceased including incised wound on his frontal region and stab wound on his chest also indicate that repeated blows were dealt on the body of the deceased and some of the blows were inflicted on his vital parts like chest and scalp. It is thus clearly borne out from the medical evidence that the repeated blows by means of sharp weapon causing several incised injuries plus stab injury over the chest going into the right ventricle of the deceased were caused by appellant Pillu @ Prahlad.

24. It is also clearly evident from the ocular evidence that appellant Guddu @ Rajesh was pressing or overpowering the deceased when he was being assaulted by appellant Pillu @ Prahlad by means of scissors and he thereby actively participated and accelerated the commission of the crime. It also transpires from the evidence on record that both the appellants, who are the real brothers, had also gone to the betel shop of the deceased at night hours with ill-intent, entered into altercation with him and then one of them i.e., appellant Pillu @ Prahlad assaulted him by means of scissors, while the other appellants facilitated him and thereby caused several incised injuries including a stab wound on his chest, resulting into his instantaneous death. The aforesaid facts per se indicate that both the appellants acted in furtherance of their common intention of causing death of the deceased.

25. In the aforesaid facts and circumstances, we are unable to accept the submission of the learned Counsel for the appellants that appellants had no intention to kill the deceased and their case would be covered u/s 304 of I.P.C. The citation referred to by learned Counsel for the appellants as reported in (2007) 1 Scc 699 Salim Sahab v. State of M.P. has no direct bearing on the facts of the instant case.

26. In view of the forgoing discussion, and the evidence available on record against both the appellants, we are of the considered opinion, that the trial court rightly convicted the appellants u/s 302/34 of I.P.C.

27. We find no merit in the appeal. We uphold the conviction of the appellants and life sentence with fine of Rs. 3,000/- each awarded to them u/s 302 of I.P.C.

Appeal fails and is dismissed.