

(2007) 09 MP CK 0050
In the Madhya Pradesh High Court

Prahalad Singh and Another, Dullam and Ram Milan and
Another

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 157, 161, 174
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307

Citation : (2007) 09 MP CK 0050

Hon'ble Judges : S.A. Naqvi, J; Arun Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.

1 The appeals have been preferred by five accused appellants aggrieved by their conviction. Rammilan has been convicted u/s 302 IPC for committing murder of Ganeshram, other accused persons have been convicted u/s 302 read with Section 149 of IPC, they have been sentenced to undergo life imprisonment, accused Babulal was also convicted u/s 307 IPC for causing injury to Annilal (PW.2). Other accused persons were convicted u/s 307 IPC with the aid of Section 149 IPC and sentenced to three years R.I., each of the accused has also been punished u/s 148 IPC and ordered to undergo one year R.I. Rammilan has also been convicted u/s 27 of Arms Act and sentenced to three years R.I.

2. Appellant Babulal has died as such appeal has not been pressed on his behalf by Shri Jagatsher Singh, learned Counsel, thus, the appeals are being heard with respect to other four accused persons.

3. Prosecution case in short is that on 30th September, 1996, the accused persons formed unlawful assembly, when deceased Ganeshram was going along with Annilal (PW.2) and his son Chandan Singh (PW.5), they crossed Narmada

river on the boat, while they were crossing the field of Thamman Kotwar on foot, all of a sudden Rammilan Lodhi, Babulal Lodhi armed with guns, Dullam, Hukum and Prahlad armed with Lathis came out of bush behind which they were hiding, on seeing them accused exhorted to kill them, Prahlad exhorted to fire, Hukum also exhorted that nobody should escape, at that time Rammilan fired on Ganeshram which hit him on abdominal area, he died on the spot, Babulal fired second gun shot on Annilal (PW.2) causing injury on his head, Chandan Singh was left behind at some distance owing to the fact that he stopped for answering the call of nature, he witnessed the entire incident, thereafter the accused persons went away towards highway. Chandan Singh (PW.5) took injured Annilal to the village after applying a cloth on his head and informed the incident to Sahab Singh. They went on a tractor to the Village Tindani. Matholi, Annilal and Sahabsingh reached to the police station by the tractor. FIR (P/6) was lodged by Annilal. It was recorded by Dilip Shrivastava, Sub-Inspector of Police. Dr. S.K.Nema examined the injured Annilal and found gun shot injury on his forehead. He was admitted in District Hospital, Narsinghpur. The injuries were caused within 12 hours. Dilip Shrivastava (PW.7), Sub-Inspector of Police, the investigating officer reached the spot pursuant to notice (P/11) prepared the inquest (P/12). Body of Ganeshram was sent for autopsy to District Hospital, Narsinghpur as per requisition memo (P/2), spot map (P/13) was prepared. Blood stained and control soil were seized from the spot. Dr.S.K.Nema (PW.1) performed the autopsy and found gun shot injury on the person of deceased, handed over the clothes to the Constable. 11 injuries of the pallets were found. Some of the pallets were taken out and handed over to Constable. At the instance of accused Rammilan,pursuant to the information furnished by him u/s 27 of the Evidence Act,muzzle loading gun was seized along with pallets, gun powder and brass metal cap. Armourer Narayan Prasad (PW.3)on examination found the gun to be in working order.

4. Accused abjured the guilt and contended that they were falsely implicated in the case.

5. Prosecution has examined seven witnesses, in defence Sitaram has been examined. Aggrieved by the aforesaid conviction and sentence imposed, the appeals have been preferred by the accused.

6. Shri Jagatsher Singh and Shri Anand Naik, learned Counsel appearing for accused/appellants have submitted that Annilal (PW.2), the injured witness, has not supported the prosecution case. Statement of Chandan Singh (PW.5), son of deceased, does not inspire confidence, his conduct goes to indicate that he had infact not witnessed the incident, he did not take care of his injured father, left him on the spot. In the inquest details as to the incident were not mentioned as the names of assailants were not known. Strict compliance of Section 157 Cr.P.C. has also not been established. The dispersion of pallets found on person of deceased indicates that shot must have been fired at the distance of about 50 fts. Thus, ocular evidence is belied by medical evidence as the sole eye witness

Chandan Singh (PW.5) has stated that gun shot was fired from a distance of 8 steps, i.e., about 15 fts. only. Alternatively, the counsel has submitted that exhortation by three of the accused persons has not been proved. They could not be said to be having common object nor said to be the members of unlawful assembly. It was individual act of Rammilan for which he was responsible. Consequently, other accused persons be acquitted.

7. Shri S.K.Rai, learned GA submitted that there is evidence of Chandan Singh (PW.5), son of deceased, his name finds place in the FIR, the gun shot was fired from muzzle loading gun, thus, there was more dispersion found and the distance given by the witness was on the basis of approximation, there was possibility of some more distance as the distance has not been stated with precision by the witness in the Court. Annilal (PW.2), the injured witness, has not supported the prosecution case for the reason that he is common relative of the accused as well as deceased. He has sustained gun shot injury on the head, but no dent is caused by his turning hostile in view of the statement of Chandan Singh (PW.5), it was not necessary to mention the details in the inquest as FIR had already been recorded by that time in which the accused were specifically named, police statements were also recorded on the same day, FIR was lodged promptly, investigation was set in without any delay. The Investigating Officer has stated that provision of Section 157 of Cr.P.C. was complied with, thereafter the cross-examination was stopped, the cross examiner did not elucidate the facts further nor the Dakbook was called by the defence. Medical evidence is not at all contrary to the ocular evidence. Armourer has stated that gun was found in working order, he was not cross-examined as to the distance. Doctor could not opine as to distance for the reason that gun was not sent to him for inspection. Thus, in the circumstances of the case, statement of Chandan Singh (PW.5) could not have been discarded. Thus, trial Court has rightly recorded and conviction and sentence.

8. After hearing learned Counsel and going through the evidence, it is apparent that incident had taken place in the agricultural field of Thamman Kotwar. After deceased Ganeshram and Annilal had crossed Narmada river while they were crossing field of Thamman Kotwar, accused who were hiding behind the Soyabeen bush, came out and then Rammilan had fired a gun shot which hit the deceased Ganeshram, Babulal fired yet another gun shot causing injury to Annilal (PW.2). Other three accused persons as per the prosecution case exhortated.

9. FIR (P/6) was lodged by Annilal (PW.2). Incident took place at about 12.30 PM, report was lodged at about 2.45 PM. Distance of police station was 20 kms. away from the place of incident. In the FIR lodged promptly accused were named specifically, Rammilan and Babulal Lodhi were armed with gun, Dullam, Hukum and Prahlad were armed with lathis. Dullam, Prahalad and Hukum exhortated that Ganeshram. should be killed. First shot was fired by Rammilan, other shot was fired by Babulal on Annilal. Name of Chandan Singh (PW.5) was also mentioned as eye witness of the incident. After incident took place, Annilal

along with Chandan came on the other side of the river in the boat, accused ran away towards the highway.

10. Investigation was set in. Inquest (P/12) was prepared, no doubt about it that details of incident were not mentioned in it, but it was not necessary to mention the details of the incident in view of the fact that in the FIR already recorded earlier to that the names of accused were specifically mentioned. Apex Court in Amar Singh Vs. Balwinder Singh and Others, has laid down that requirement of Section 174 is that the police officer shall record the apparent cause of death describing the wounds as may be found on the body and also the weapon or instrument by which they appear to have been inflicted and this has to be done in the presence of two or more respectable inhabitants of the neighbourhood. The section does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the inquest report. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely whether it is suicidal, homicidal, accidental or by some machinery etc. Therefore, merely because the facts about the occurrence were not mentioned in the inquest report, it could not be said that at least by the time the report was prepared the investigating officer was not sure of the facts of the case. In the instant case, FIR had already been recorded by the time inquest was prepared. Thus, absence of names in the inquest report caused no dent to the prosecution case.

11. Annilal (PW.2) was referred for medical examination. Dr. S.K.Nema (PW.1) medically examined Annilal and on the back of requisition (P/1), he mentioned the following injuries found on the person of Annilal:

(1) Punctured wound over forehead 2 mm x 1 mm 1" above middle of Rt. eye brow bone deep margins irregular.

(2) Punctured wound over forehead near hair line Rt. side 1 1/2" above & lateral to No.1. Size 3 mm x 1 mm bone deep margins irregular.

X-ray examination of skull was advised to know the nature & cause of injury. Duration of injury was within 12 hours. Patient was fully conscious, no neurological deficit, his bed head ticket (P/4) has also been produced.

A query was also made to Dr. Nema, he has opined in response to the query on the back of (P/4) that injury on Annilal was grievous in nature and caused by fire arm weapon. Statement is supported by bed head ticket placed on record regarding treatment of Annilal. Thus, Annilal sustained injury in the incident stands established by the medical evidence and also by ocular version of Chandan Singh (PW.5).

No doubt about it that Annilal (PW.2) turned hostile as it is not in dispute that Annilal's sisters were married in the family of accused as well as in the family of deceased, Annilal was common relative of the rival parties in the incident. Annilal (PW.2) has tried to wriggle out of the earlier version recorded in the FIR,

however, no dent is caused to the prosecution version as presence of yet another witness Chandan Singh (PW.5) was mentioned in the FIR. His presence finds support from the FIR. In spite of suffering injury, Annilal (PW.2) has not supported the prosecution case, but causing of injury on his person supports the prosecution case. Injury has been medically corroborated.

12. Coming to the statement of important witness in the incident Chandan Singh (PW.5), son of deceased Ganeshram. As already mentioned, FIR was lodged promptly without any deliberations or consultations, presence of Chandan Singh was mentioned as an eye witness in the FIR, Chandan Singh being a related witness and the sole eye witness, his deposition requires close scrutiny. We have gone through the entire deposition with the help of counsel for appellants. Chandan Singh (PW.5) has stated that he was going to Dogargaon, his father and Annilal were going towards the field for seeing Soyabean crops, he also accompanied them, they crossed the river Narmada in a boat, he stopped for a while so as to answer the call of nature after crossing the river, his father and Annilal were 20-25 steps ahead of him, when they were in the fields of Thamman Kotwar, he saw Rammilan and Babulal armed with guns, Dullam, Prahalad and Hukum armed with lathis, witness stopped at the place where he was. Dullam, Prahalad and Hukum exhorted to kill and to fire gun shot and that nobody be spared. First gun shot was fired by Rammilan on his father Ganeshram, thereafter Babulal fired another gun shot on Annilal who suffered injury, he came back to the village along with Annilal and thereafter proceeded to police station, Annilal (PW.2) had lodged the report in police station, thereafter witness went to agricultural field along with police. Body of Ganeshram was sent for autopsy, accused belonged to the party of Khobaram, his elder brother Sahabsingh was a candidate to the post of Sarpanch and contested the election against Khobaram, his brother won the election. He had applied bandage of cloth on the forehead of Annilal. His statement was not recorded at the police station though he had accompanied Annilal for lodging the report. He denied the suggestion that he had not accompanied Annilal (PW.2) to the police station. He has stated that at the time of inquest he was present on the spot, however, yet another witness Sahabsingh (PW.6) has stated that Chandan Singh was not present at the time of inquest. This is an insignificant contradiction. This does not impinge upon the veracity of the version of Chandan Singh, an eye witness of the incident. May be that at the time of inquest Chandan Singh had reached the spot after some time.

Learned Counsel on behalf of appellants have submitted that there was omission in the police statement of Chandan Singh with respect to exhortation made by Dullam, Prahalad and Hukum. We have gone through the statement of Chandan Singh recorded u/s 161 Cr.P.C. Counsel for appellants thereafter fairly admitted that there was no such omission as suggested in the cross-examination para 16 of Chandan Singh. Thus, we find that with respect to exhortation there was no omission. Even otherwise whether there was exhortation or not, facts were writ large in the instant case, accused had assembled on the spot with the purpose of killing and they did what they intended. Thus, their conduct on the place of

incident, the weapons they carried clearly indicated that they formed an unlawful assembly and in furtherance of common object the offence was committed causing death of Ganeshram and grievous injury by gun shot on the person of Annilal (PW.2).

13. Coming to the submission that statement of Chandan Singh is belied by medical evidence. In postmortem report (P/3) following injuries were found on the person of deceased:

Superficial burn over forehead face, Rt.forearm & hand, left upper arm & hand, Medial side of thighs, both legs & dorsum of foot.

(1) Holes with burn margins at 11 places above umbilicus with blackish area surrounding the hole size and hole varying from 1 to 1 1/4 cm. diameter communicating in abd.cavity.

(2) Holes with burn margins at 5 places below umbilicus abdomen size 1 to 1 1/2" diameter. Omentum protruding out through left iliac fossa a whole of 2 cm. diameter.

(3) Blackish spot of burn skin over sternal area chest 3/4 cm. in diameter.

(4) 5 holes with burn margins over skin left groin size from 2 1/2 to 3 cm. surrounding skin blackish underlying muscles also burn in direction of tract left femur bone fractured at neck. Femoral vessels near below injured ligament.

(5) 2 holes on the medial side of the thigh with burn margin and underlying muscles size of hole at skin 2 cm. diameter.

(6) one hole over left buttock of 1 cm diameter lateral to sacrum.

(7) one hole over Rt. buttock of 1 cm. diameter lateral to sacrum.

Dr.S.K.Nema (PW.1) has proved the aforesaid postmortem report. Thus, it is apparent that on forehead, face, right wrist and left, the inner thighs, both legs of the deceased there were injuries, above umbilicus area there were 11 pellets injury of 1 x 1/4 cm. diameter. 5 pellets wounds were found of 1 x 1/2 cm. diameter, out of one injury omental had come out, on the chest above sterno there was injury of 3/4 cm.diameter, on left groin 5 pellet injuries of 2 1/2 x 3 cm. were found, femur bone was found to be broken. There were wounds towards the inner side of left thigh, on the outer side of left and right sacrum one injury was found of 1 cm. diameter, all these were caused by pellet. The gun fired was muzzle loading gun. Chandan Singh (PW.5) in his cross- examination has stated on being questioned that gun was fired at the distance from 30 yards, he stated that gun was fired from in front and he pointed out to an object in the Court by which the Court has assessed the distance to be approximately 8 fts. In the spot map it was mentioned that it was fired from 6 paces, thus, distance comes to approximately 18 fts. as per spot map, it cannot be said to be the precise distance stated by Chandan Singh, he was at a distance of at least 20-25 paces from the place of incident, meaning thereby that he was approximately

70-75 fts.away from the place of incident. Dispersion from muzzle loading gun depends upon the gun powder, size of pellets,quantity of gun powder filled in the muzzle and cap applied. Dr.S.K.Nema in his cross examination was unable to state the distance from which gun shot had been fired in the instant case as he had not seen the gun by which the shot was fired. It is not in dispute that dispersion would depend upon the type of gun used interalia on the other factors.

Shri Jagatsher Singh, learned Counsel has relied upon the observation at page 269 of Modi's Jurisprudence that at a distance of about 50 feet a pattern measuring about 14 inches from a fully choked barrel and about 28 inches from an unchoked barrel are produced and at about 100 feet the spread pattern on the target is about 30 inches from a fully choked barrel and 50 inches from an unchoked one. A rule of thumb in long usage is that the diameter of the spread of the shot pattern on the skin in inches is roughly equal to the distance from the muzzle in yards. The scattering of shot depends upon the choke of the gun, the charge of the powder and the distance of the gun from the body, the dispersion of pellets should however be studied with the gun and similar ammunition in question. But the aforesaid is discussion admittedly with respect to 12 bore gun whereas the gun in question is muzzle loading gun which is to be filled by gun powder and considering the nature of injuries found on deceased Ganeshram and Annilal, injured and also the ocular evidence, it was muzzle loading gun which was fired at and we find that doctor has not at all contradicted the ocular version of Chandan Singh (PW.5). Doctor could not opine in the instant case with respect to distance as he had not seen the gun. Doctor was justified in making aforesaid version. However, the ocular version is otherwise found reliable, no dent is caused to the prosecution by the aforesaid statement of doctor. The Apex Court in State of Uttar Pradesh Vs. Sughar Singh and Others, has observed that in view of direct evidence of eye witness of available on record, even if some inconsistencies relating to distance from which gun shots were fired between evidence of medical expert and eye witness would be of no consequence whatsoever. Reliance was placed on Commissioner of Income Tax, West Bengal III Vs. Balkrishna Malhotra, . In the instant case, we have found that medical evidence is not contradictory to ocular version at all, on the other hand Armourer Narayan Prasad (PW.3) has seen the gun and has tested it, he has found the gun in question in working condition by which gun shot was fired on deceased , he was not subjected to cross-examination with respect to distance, he could have stated something as to the distance. Thus, we are unable accede to the submission raised by appellant that medical evidence contradicts the ocular evidence or that gun must have been fired from distance of 50 paces.

14. Coming to the submission raised by learned Counsel for appellants that compliance of Section 157 Cr.P.C.has not been proved in the instant case, we have found that the FIR was not ante time in the instant case, it was recorded promptly immediately after the incident, investigation was done and in postmortem requisition also details of the incident were mentioned. Merely absence of details in the inquest prepared caused no dent in view of the

aforesaid discussion. Apart from that I.O.Dilip Shrivastava (PW.7) has stated that provision of Section 157 Cr.P.C.was complied with, intimation was sent to the concerned magistrate, it was sent by concerning clerk and was handed over by head constable Shersingh to the Magistrate, but in the cross-examination when it was infact sent was not asked nor the Dakbook was summoned in case defence wanted to establish that it was not sent and that too timely. Apart from that, we find mention in the intimation (P/10) recorded u/s 174 Cr.P.C.by the police that copy of the same was to be sent to concerned Magistrate. In the intimation also it was mentioned that Rammilan had fired the gun shot on the deceased, other facts were also mentioned including presence of Chandan Singh (PW.5) on the spot, thus, in our opinion Section 157 Cr.P.C. stood complied with in the instant case, even otherwise as FIR was recorded timely in the instant case, we have found the submission to be baseless.

15. Coming to the last submission made that three other accused persons who were carrying the gun were not members of unlawful assembly, we have discussed aforesaid aspect and we have no hesitation in rejecting the submission made by appellants' counsel. The learned trial Court has rightly convicted the accused persons for commission of offence and the sentence imposed upon them call for no interference in appeals.

16. As the counsel has not pressed the appeal with respect to Babulal, however, fact as to his death still require verification. As the appeal has not been pressed on his behalf, we direct concerned CJM, Narsinghpur to conduct an enquiry into the factum of death of Babulal and send a report to this Court. Govt. Advocate also to verify the factum of death of Babulal as appeal on his behalf has not been pressed, his conviction remains as it was.

17. We dismiss the appeals with respect to four appellants and affirm the judgment and order of conviction and sentence imposed upon them. Three accused persons Prahlad, Hukum and Dullam are stated to be on bail. Their bail bonds are cancelled. They are directed to surrender forthwith. With respect to disposal of property, order of trial Court is affirmed.