
(2018) 06 MP CK 0070

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 213, 247, 370, 415 of 2008

Pramendra @ Praveen And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 20-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 147, 149, 302, 341

Citation : (2018) 06 MP CK 0070

Hon'ble Judges : S. K. GANGELE, J; RAJENDRA KUMAR SRIVASTAVA, J

Bench : Division Bench

Advocate : Alok Vagrecha, B.K. Upadhaya, Aditya Jain

Final Decision : Allowed

Judgement

S.K. Gangele, J.

These four appeals have been filed against the common judgment dated 14.01.2008, passed by 1st Additional Session Judge, Hoshangabad in Session

Trial No. 48/2007 . The appellants were tried for commission of offences punishable under Sections 302, 149, 147 and 341 of the I.P.C.

2. Prosecution story in brief is that there was quarrel between accused, Surendra (absconded co-accused) and deceased, Maheshchandra Choudhary.

Sukhdeo @ Baba pacified the quarrel. Thereafter these accused persons- present appellants alongwith other accused persons went on the spot. The

present appellants were armed with lathis and other accused persons were armed with farsa, sword and axe. They had beaten the deceased. He was

died on the spot. The Station Officer received information on phone that somebody was killed. He reached on the spot and registered Dehati Nalishi

Ex. P-7. Thereafter investigation was conducted and police filed the charge-sheet. Seven persons were made accused. These four persons were tried

separately, one accused was tried in other trial and two accused persons are absconding.

3. Appellants abjured their guilt during trial and pleaded that they have been falsely implicated in the case. The trial Court held the appellants guilty for commission of offences punishable under Sections 302, 149, 147 and 341 of the I.P.C. and awarded the sentence as mentioned in the impugned judgment.

4. Learned counsel for the appellants have contended that as per the evidence of prosecution, the appellants were armed with lathis and they had inflicted injuries on the person of the body of the deceased by lathis. However, as per the postmortem report except injury no. 10, there was no injury caused by lathi on the person of the deceased. The injury no. 10 could be caused by falling down on the ground. It is further submitted by the learned counsel for the appellants that there are major discrepancies in the evidence produced by the prosecution Investigating Officer prepared the documents after sometime of the incident. The lathis seized from the appellants were not sent to Forensic Laboratory for examination. The trial Court has committed an error in holding the appellants guilty for commission of offence beyond reasonable doubt. Learned counsel for the appellants further contended that the alleged eye witnesses are relatives of the deceased, hence their evidence is not reliable. In support of their contentions, learned counsel for the appellants relied on the following judgments of the Apex Court :

- (1) Datar Singh Vs. The State of Punjab reported in (1975) 4 SCC 272.
- (2) Mahavir Singh Vs. State of Madhya Pradesh reported in 2016 (10) SCC 220.
- (3) Juwar Singh and others v. State of Madhya Pradesh reported in 1980 CRI. L. J 1418 Supreme Court.
- (4) Jodhan Vs. State of Madhya Pradesh reported in (2015) 11 SCC 52,
- (5) Abdul Sayeed Vs. State of Madhya Pradesh reported in (2010) 10 SCC 259.

5. Learned counsel for the State has submitted that the presence of the eye witnesses on the spot was natural. FIR was lodged promptly. In the FIR, names of the present appellants have been mentioned. The appellants were armed with lathis and they had participated in the offence. Trial Court has rightly convicted the appellants and awarded proper sentence. In support of his contentions, learned counsel for the State relied on the judgment of the

Apex Court in the matter of Rajnath Shamrao Dhas Vs. State of Maharashtra reported in 2009 (4) SCC 33.

6. Conviction of the appellants is based on the testimony of eye witness Mahesh Chandra Choudhary (PW-3), who is the uncle of the deceased. He

lodged the FIR. He deposed that on the date of incident at around 6-7 O' clock in the evening, I and Sukhdeo were coming to our house with grass.

Near Gumti of Devendra there was quarrel between Surendra and Kallu @ Keerat. I and Sukhdeo pacified both of them. After one hour of the

aforesaid incident, Surendra, Chiman, Omprakash, Devendra, Ramendra, Matru and Jiwan armed with lathi, ballam, farsa, sword and axe came there.

They were shouting, where is Kallu. Kallu had ran away from the house of Sukhdeo. He reached in front of house of Lakhan, thereafter Surendra

inflicted a blow of farsa on the neck of the deceased, thereafter, other accused persons had beaten him. He specifically deposed that the present

appellants Devendra, Pramod, Jiwan and Matru were armed with danda (wooden stick) and they had beaten the deceased with sticks. I, Sukhdeo,

Nakul, and Akhilesh tried to save the deceased. The accused persons had also tried to beat us. We ran away from the spot up to some distance. Kallu

was died on the spot, his motorcycle was also damaged. There was an enmity with the accused persons because of land dispute and Panchayat

Election. Police came on the spot at 10.00 Oâ??clock in the night. I told the police about the incident, thereafter Dehati Nalishi (Ex. P-7) was

recorded. I signed the same. I also signed Ex. P-8.

7. Akhilesh Choudhary (P.W.6) is another eye witness. He is the son of Maheshchandra Choudhary (PW-3). He also deposed the same facts as

deposed by Maheshchandra Choudhary. He specifically deposed that present appellants were armed with danda and the accused persons had beaten

the deceased by danda. Deceased received injuries on his body. On the instructions of my father, I informed the police from my mobile and after an

hour police reached on the spot.

8. Nakul Choudhary (PW-4) turned hostile. He simply deposed that he had seen that the deceased was lying on the spot. Similarly Sukhdeo @ Baba

(P.W.-5) also turned hostile. P.K. Raikwar (PW-7) recorded FIR (Ex.P-9) and Marg (Ex.P-10). He admitted his signature on both the documents.

Ram Shankar (P.W.-8) turned hostile. Similarly Naveen Tiwari (P.W.-9) also

turned hostile.

9. Pankaj Choudhary (P.W.-1) admitted his signature on Exhibit P-1 and dead body Panchnama Ex.P- 2.

10. Dr. A.D. More (P.W.-2) performed postmortem of the deceased. He deposed that I noticed following injuries on the person of the body of

deceased:-

1- dVl gqvk ?kko] xnZu esa nkbZ vksj Dysfody ds Bhd Å...ij 8 ls- eh- x 4 ls-eh- x 6 ls-eh-A

2- dVl gqvk ?kko pksV Å?- 1 ls nks ls-eh- Å...ij xnZu ij 8 ls-eh- @2 ls-eh- x 6 ls-eh- dk FkkA

3- dVl gqvk ?kko xnZu ij pksV Å?- 2 ds ,d ls-eh- Å...ij 8x2x6 ls-eh- dk FkkA

4- dVl gqvk ?kko xnZu ij chpksachp 9 ls-eh- x 2 ls-eh- x 6 ls-eh - dk FkkA

5- dVl gqvk ?kko xnZu ij nkbZ vksj Å...ij dh rjQ nkfgus tcM+s dh gM~Mh ds uhps 8 ls-eh- x 3 ls-eh- x 4 ls-eh- dk FkkA

6- dVl gqvk ?kko xnZu esa ihNs dh vksj nkfgus dku ls vkM+k xnZu dh nwljh rjQ dk Fkk ftldk vkdkj 18 ls-eh- x 4 ls-eh- x 6 ls-eh- FkkA

7- dVl gqvk ?kko xnZu esa ckbZ rjQ uhps dh vksj 5 ls-eh- x 4 ls- eh- x 7 ls-eh- dk FkkA

8- xnZu esa ckbZ vksj Å...ij dh rjQ ?kko ckbZ tcM+s dh gM~Mh ds uhps 7 x 3 x 4 ls-eh- dk FkkA

9- dVl gqvk ?kko ekFks ij ckbZ vksj 7 ls-eh- x 1 ls-eh- x 1@2 ls-eh- dk FkkA

10- QVl gqvk ?kko nkfguh HkkSag ij 2 ls-eh- x 1@2 x 1@2 ls-eh- dk FkkA

11- dVl gqvk ?kko xnZu esa ihNs dh vksj 3 ls-eh- pksV Å?- 6 ds uhps Fks] ftldk vkdkj 16 ls-eh- x 4 ls-eh- x 4 ls-eh- dk FkkA

12- dVl gqvk ?kko nkfgus da/ks ij 7 ls-eh- x 3 ls-eh- x 2 ls-eh- dk FkkA

13- dVl gqvk ?kko nkfgus gkFk ij dksguh ds uhps 10 ls-eh- x 6 ls- eh- x 5 ls-eh- dk FkkA

14- dVl gqvk ?kko ck;as gkFk esa ckbZa dykbZ ds Å...ij 7 ls-eh- x 2 ls - eh- x 1 ls-eh- dk FkkA

15- dVl gqvk ?kko ck;sa gkFk ij gFksyh ds mYVh rjQ NksVh maxyh ij 11 ls-eh- x 1 ls-eh- x 1@2 ls-eh- dk FkkA

16- dVl gqvk ?kko nk;s gkFk ij 3 ls-eh- ckbZ vksj pksV Å?- 15 ls Fkk] ftldk vkdkj 6 ls-eh- x 1 ls-eh- x 1@2 ls-eh- dk FkkA

17- dVl gqvk ?kko ck;sa gkFk dh vaxwBh okyh maxyh ij 3 ls-eh- x 1@2 ls-eh- x

1@2 ls-eh- dk Fkka

18- dVv gqv k?kko ckfguh gkFk dh rtZuh maxyh ij 2 ls-eh- x 1@2 ls-eh- x 1@4 ls-eh- dk Fkka

19- dVv gqv k?kko isV ij ckbZ vksj lekukarj ukHkh ls 3 ls-eh- Å...ij 17 ls-eh- x 5 ls-eh- x 2 ls-eh- dk Fkka

20- dVv gqv k?kko ck;sa ikao ij ck;sa V[kus ls Å...ij ihNs dh vksj 10 ls-eh- x 4 ls-eh- x 2 ls-eh- dk Fkka

21- dVv gqv k?kko ck;sa ikao ij vkxs dh vksj chpkas chp 10 ls-eh- x 4 ls-eh- x 2 ls-eh- dk Fkka

22- dVv gqv k?kko ihB ij chpkas chp lekukarj 16 ls-eh- x 4 ls-eh- x 8 ls-eh- dk Fkka

23- dVv gqv k?kko ihB ij nkbZ vksj chpkas chap 10 ls-eh- x 3 ls-eh- x 3 ls-eh- dk Fkka

24- dVv gqv k?kko ihB ij nkfguh vksj uhps dh rjQ 8 x 2 x 2 ls-eh- dk Fkka

25- dVv gqv k?kko ihB ij nkbZ vksj pksV Å?- 24 ls nks ls-eh- ls uhps 10 ls-eh- x 3 ls-eh- x 3 ls-eh- dk vkdkj dk Fkka

26- dVv gqv k?kko pksV Å?- 25 ls nks ls-eh- uhps 8 ls-eh- x 2 ls-eh- x 2 ls-eh- ds vkdkj dk Fkka

27- dVv gqv k?kko pksV Å?- 26 ls 3 ls-eh- uhps chpkas chp 3 ls-eh- x 1 ls-eh- x 1 ls-eh- dk Fkka

28- dVv gqv k?kko ihB ij ckbZ vksj uhps dh rjQ 11 ls-eh- x 4 ls-eh- x 3 ls-eh- dk Fkka

Out of the total 28 injuries, injury no. 10 is the lacerated wound which was on right eyebrow 2cm. Å— Å½ Å— Å½ cm.

11. Investigating Officer K.P.S. Chouhan (P.W.-10) deposed that I was posted as Station House Officer-In-Charge, Police Station Hoshangabad. I

received information on phone that on 06.10.2006 somebody was died. I reached at the village and noticed that the dead body was lying by the side of

the road. I inquired about the incident from Maheshchandra. He told me that accused persons had killed the deceased. I recorded Dehati Nalishi

(Ex.P-7) and signed the same. I prepared the Panchnama of dead body and the spot map on the next day in the morning. Spot map is Ex.P-23. I also

seized plain earth, red earth and some clothes from the spot vide Seizure Memo (Ex.P-22) and a motor bike. Thereafter, I signed all the documents

and I recorded statements of Sukhdev, Nakul and Mahesh. Accused persons were

arrested on 13.10.2006. At the instance of appellant-Devendra

from his possession cloths were seized by Seizure Memo (Exhibit P-18), from the possession of appellant-Matru, at his instance, cloths and Danda

were seized by Ex.P-19. Similarly, from the possession of appellant-Jivan Lal, Danda was seized by Ex.P-20.

12. Dehati Nalishi is Ex.P-7. It is mentioned in the Dehati Nalishi that the present appellants were armed with dandas and they had beaten the deceased by dandas. Same facts have been mentioned in the FIR (Ex. P-9).

13. As per the Dehati Nalishi, FIR and evidence of witnesses. The present appellants were armed with dandas and they had beaten the deceased with dandas. This fact has been established from the evidence of Maheshchandra Choudhary (PW-3) and Akhilesh Choudhary (PW-6), who are the

eyewitnesses. Maheshchandra Choudhary (PW-3) is the uncle of the deceased. Akhilesh Choudhary (P.W.-6) is the son of Maheshchandra

Choudhary (P.W.-3), both witnesses are relatives of the deceased.

14. The Honâ??ble Apex Court, in regard to credibility of related witnesses in the case of Jodhan Vs. State of Madhya Pradesh reported in 2015

(11) SCC 52 has held as under:-

â??24. First, we shall deal with the credibility of related witnesses. In Dalip Singh v. State of Punjab (AIR 1953 SC 364), it has been observed thus:

(AIR p. 366, para 25)

25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the

foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we

know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common

to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. State of Rajasthan, AIR 1952 SC54.

In the said case, it has also been further observed:- (AIR p. 366, para 26)

26. 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. In *Hari Obula Reddy v. State of A.P.*, (1981) 3 SCC 675, the Court has ruled that evidence of interested witnesses per se cannot be said to be unreliable evidence. Partisanship by itself is not a valid ground for discrediting or discarding sole testimony. We may fruitfully reproduce a passage from the said authority:-(SCC pp.683-84,para 13)

13. 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.

26. The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought to be rejected. That apart, when a witness has a motive or makes false implication, the Court before relying upon his testimony should seek corroboration in regard to material particulars. In the instant case, the witnesses who have deposed against the accused persons are close relatives and had suffered injuries in the occurrence. Their presence at the scene of occurrence cannot be doubted, their version is consistent and nothing has been elicited in the cross-examination to shake their testimony. There are some minor or trivial discrepancies, but they really do not create a dent in their evidence warranting to treat the same as improbable or untrustworthy.

The Apex Court has specifically held that the principle of law is that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible and if the testimony after careful scrutiny is found

unreliable and improbable or suspicious it ought to be rejected.

15. On the basis of above principle of law, we would like to scrutinize the testimony of Maheshchandra Choudhary (P.W.-3) and Akhilesh Choudhary

(P.W.-6). Both the witnesses have stated that these appellants were armed with dandas and they had inflicted injuries on the deceased with wooden

stick (danda). Dr. A.D. More (P.W.-2), who performed autopsy of the deceased deposed that he noticed total 28 injuries on the body of the person of

the deceased, except injury No.10, all other injuries were incised injuries. Injury no.10 is lacerated wound it was on the right eyebrow. It could be

caused by falling the deceased on the ground.

16. There is a discrepancy in regard to ocular evidence and medical evidence. The Honâ??ble Apex Court in case of Mahavir Singh Vs. State of

Madhya Pradesh reported in (2016) 10 SCC 220 in regard to appreciation of evidence medical evidence vis-a-vis ocular evidence has held as under:-

â??18. The High Court has attached a lot of weight to the evidence of the said Madho Singh (PW 9) as he is an independent witness. On perusal of

the record, it appears that the said person already had deposed for the victim family on a number of previous occasions, that too against the same

accused. This being the fact, it is important to analyze the jurisprudence on interested witness. It is a settled principle that the evidence of interested

witness needs to be scrutinized with utmost care. It can only be relied upon if the evidence has a ring of truth to it, is cogent, credible and trustworthy.

Here we may refer to chance witness also. It is to be seen that although the evidence of a chance witness is acceptable in India, yet the chance

witness has to reasonably explain the presence at that particular point more so when his deposition is being assailed as being tainted.â??

17. The Honâ??ble Apex Court has considered in detail. The appreciation of ocular evidence as well as medical evidence and held as under:-

32. ,In Ram Narain Singh v. State of Punjab (1975) 4 SCC 497, this Court held that where the evidence of the witnesses for the prosecution is

totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and

unless reasonably explained it is sufficient to discredit the entire case.

33. In State of Haryana v. Bhagirath, (1999) 5 SCC 96, it was held as follows: (SCC p. 101, para 15)

15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject." (Emphasis added)

34. Drawing on Bhagirath's case (supra.), this Court has held that where the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".

35. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities can not be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.

21. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

(Vide Thaman Kumar v. State of Union Territory of Chandigarh, (2003) 6 SCC 380; and Krishnan v. State, (2003) 7 SCC 56). at SCC pp. 62-63, para 21)

36. In Solanki Chimanbhai Ukabhai v. State of Gujarat, (1983) 2 SCC 174, this Court observed, (SCC p. 180, para 13)

13. Ordinarily, the value of medical evidence is only corroborative. It proves that

the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence." [Emphasis added]

37. A similar view has been taken in *Mani Ram v. State of U.P.*, 1994 Supp (2) SCC 289; *Khambam Raja Reddy. v. Public Prosecutor*, High (2006)

11 SCC 239; and *State of U.P. v. Dinesh*, (2009) 11 SCC 566.

38. In *State of U.P. v. Hari Chand*, (2009) 13 SCC 542, this Court reiterated the aforementioned position of law and stated that,

13â?|â?|â?|...In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy.

18. In the aforesaid judgment, the Honâ??ble Apex Court has considered number of previous judgments on this point and held as under:-

â??39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the

effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular

testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far

that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.â??

19. P.W.-3 and P.W.-6 are the related witnesses. Their evidence has to be appreciated carefully. As per the medical evidence there was one

lacerated wound on the person of the deceased. All other injuries are incised wound. It is not possible that four persons armed with lathis and they had

beaten the deceased with lathis, then the doctor, who performed postmortem did notice only one lacerated wound on the person of deceased. The

prosecution has not asked any question from the doctor that whether it is possible that if the injuries were caused by lathis and those injuries could

have been went unnoticed.

20. In our opinion the evidence of P.W. -3 and PW-6 against the appellants is unreliable. Looking to the large number of accused, it cannot be ruled

out that the interested witnesses may have been roping the aforesaid appellants.

21. Apart from this seized wooden sticks (danda) were not sent by the prosecution for examination to forensic laboratory, hence prosecution has not

proved that there were any blood stains on the wooden sticks (danda) seized from the appellants. Trial Court convicted the appellants on the basis of

assumption that it may be possible that appellants had inflicted injuries by wooden sticks (danda) and those injuries were not found on the body of

deceased. This is an hypothesis. In our opinion the appellants are entitled for benefit of doubt.

22. Division Bench of this Court in the case of Mahesh Vs. State of M.P. Reported in I.L.R. (2008) M.P., 582 has also held that the conviction of the

appellant is not proper in absence of injuries which could be caused by lathi, as per the medical evidence.

23. Learned Government Advocate placed reliance on the judgment of Honâ??ble Apex Court in the case of Rajnath Shamrao Dhas Vs. State of

Maharastra reported in 2009 (4) SCC 33. However, this judgment is distinguishable on facts because in this judgment, it has been held that medical

evidence is not a total variance with ocular evidence later cannot be discarded.

24. Similarly judgment of Honâ??ble Apex Court, Anil Kumar Vs. State of U.P. reported in 2004 (13) SCC 257 is also distinguishable on facts.

25. Consequently, the appeals filed by the appellants are hereby allowed. The appellants are acquitted from the charges. The judgment passed by the

trial court is hereby set aside. The appellants are on bail their bail bonds are hereby discharged.