

(2018) 01 MP CK 0039
In the Madhya Pradesh High Court
Case No : 139 of 2003

Prem Singh and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#) - Examination of witnesses by police
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#) - Punishment for

Citation : (2018) 01 MP CK 0039

Hon'ble Judges : Hemant Gupta, Vijay Kumar Shukla

Bench : Division Bench

Advocate : Anshul Tiwari, Namrata Agrawal

Final Decision : Allowed

Judgement

1. In the instant appeal, a challenge has been made to the order of conviction and sentence dated 20-01-2003, passed by Second Additional

Sessions Judge, Sehore in S.T.No.191/2002, whereby appellant nos.1 and 2 have been convicted under section 302/34 of IPC and sentenced to

undergo imprisonment for life and fine of Rs.5,000/-, in default of fine to suffer further R.I. for 6 months and appellant no.3 has been convicted

under Section 302 of IPC and sentenced to undergo imprisonment for life and fine of Rs.5,000/-, in default of fine to suffer further R.I. for 6

months

2. The case of the prosecution in short is that a dispute over land existed between the appellants and deceased Suraj Singh. At about 6.30 p.m. on

02-09- 2002, the appellants accosted the deceased near the Sonar Chapra rivulet. It is alleged that appellants no. 1 and 2 caught hold of the

deceased while appellant no.3 inflicted injuries with a knife by giving repeated blows. The incident was witnessed by two brothers of the deceased

one Durga Prasad (PW-1) and another Gendalal (PW-2). Information was given to the Kotwar of the village by Man Singh (PW-3). Thereafter

Durga Prasad went to the police station and lodged first information report Ex.P-1.

3. After registering the FIR, Investigating Officer Krishna Chand Ghadi (PW-9) made entry in the Rojnamcha and proceeded to the spot. He

found that deceased Suraj Singh was dead. He stated that near the dead body, a knife was lying and one turban was also found at the spot. He

prepared the spot map Ex.P-21. He seized the blood stained knife , sleepers of the deceased and one bicycle from the spot. He had taken blood

stained soil of the spot vide Ex.P-4. He was informed that the turban which was found to be lying at the spot was belonging to accused Prem

Singh. The same was seized vide Ex.P-5. The knife was seized vide Ex.P-7. The dead body panchnama was prepared and according to him, there

were multiple injuries on the dead body. He had sent the dead body for postmortem vide application, Ex.P-15. He recorded the statements of

Durga Prasad and Man Singh on 06-09-2002 and the statements of Genda Lal, Puran and Gangaram were recorded on 15-09- 2002. He

recorded the statement of Hari Narayan on 06-09-2002. He also made a query from the Doctor vide Ex.P-17 that whether the injuries to the

deceased could have been caused by the seized knife. He arrested the accused persons namely Radhe Shyam, Subhash and Prem Singh on 03-

09-2002. He stated in para-8 of his deposition that he had also seized white colour Kurta belonging to Prem Singh which was blood stained . The

same was seized vide Ex.P-11. In para-9 of his statement, he has stated that he had sent the seized articles including turban, clothes of the

deceased for chemical examination to FSL Gwalior.

4. Learned counsel for the appellants submitted that the conviction of the appellants is not sustainable as the prosecution could not establish its case

beyond any reasonable doubt. The statements of the witnesses were recorded after delay and prosecution case is supported only by the evidence

of two real brothers. FIR was lodged by Durga Prasad (PW-1) but he has not stated in the FIR about the presence of PW-2 Gendalal, who has

also been examined as eye witness by the prosecution. It is also contended that the knife, turban etc. were seized from the spot itself but the prosecution has not filed any expert report about the presence of the blood on the said articles.

5. Per contra, learned counsel for the State submits that the conviction and sentence is legal and valid as the prosecution has established its case beyond any reasonable doubt.

6. The FIR was lodged by Durga Prasad(PW-1), the real brother of the victim. He stated that on the date of incident at around 6.30 PM, when he reached near Tunar Chhapra Nala, he had seen that two appellants Prem Singh and Radhe Shyam caught hold the deceased while appellant no.3

Subhash was giving repeated 8-10 knife blows on the chest and stomach of the deceased. On raising alarm by him, they had run away from the

spot. His brother Suraj Singh had died at the spot itself. He stated that two persons Harinarayan and Gangaram had come to the spot. In this FIR,

he has not mentioned the presence of his other brother namely Gendalal (PW-2). The prosecution has not examined the other person Harinarayan.

He further stated that he lodged the report to the police station and admitted his signature on Ex.P-1 and Ex.P-2. He also stated that at the crime

seen, the knife and one turban were lying there. He admitted his signature on Ex.P-8 map panchayatnama and the supradnama. Another witness

PW-2 Gendalal, who is also real brother of the deceased stated that when he was going from the field to the house of Mograram and when he

reached near Sonarchhapra nala, he had seen that appellants Prem Singh and Radhe Shyam caught hold the deceased and appellant Subhash was

inflicting injuries with repeated knife blows. He stated that he had seen the appellants and his brother Durga Prasad and Nandu remained at the

spot and he had gone to call Choukidar and informed him that the appellants had killed his brother. In the cross-examination, he tried to clarify the

presence of Nandu and his brother Durga Prasad and said that when he reached near Suraj Singh, they asked him to call Choukidar and therefore,

he had gone to call him. In para-6 of his statement, he says that his brother and Choukidar had gone to lodge the report by a jeep. The presence of

two persons has been disclosed in the FIR by Durga Prasad , Harinarayan and Gangaram and none else. In his statement before the court, he

stated about the presence of Nandu and Genda Lal also but in the FIR he has not disclosed the presence of his brother PW-2 Gendalal and

Nandu. Ganga Prasad has been examined by the prosecution as PW-4. He did not support the prosecution case and was declared hostile. The

other witness who was named in the FIR, Harinarayan has not been examined by the prosecution. There is no other ocular evidence except the

testimony of two real brothers of the deceased PW-1 Durga Prasad and PW-2 Gendalal.

7. Investigating Officer Krishnachand Ghadi has been examined as PW-9. He deposed that the intimation regarding the death of deceased Suraj

Singh was given by Durga Prasad on 02-09-2002, which was recorded in Ex.P-1. He admitted his signature on Ex.P-2 and Ex.P-3. He stated

that when he reached at the spot, Suraj Prasad was lying dead and near the dead body, one turban and knife were lying at the distance of 10 ft.

He stated that he seized the blood stained knife, turban, sleeper of the deceased and bicycle. He prepared the map Ex.P-8 and seized the various

articles. The dead body was sent for postmortem. He recorded the statements of Durga Prasad and Man Singh on 03-09-2002 whereas the

statements of Genda Lal and Puran were recorded on 06-09-2002 after 3 days. The statement of Gangaram was recorded on 15-09-2002. In the

statement of Durga Prasad, which was recorded on 03-09-2002, again he did not name the presence of Genda Lal at the spot. The statement of

other witness Genda Lal was recorded on 06-09-2002 first time. He has also stated that one turban alleged to be belonging to accused Prem

Singh was seized vide Ex.P-5. One white Kurta belonging to accused Prem Singh was also seized vide Ex.P-11 including blood stand knife vide

Ex.P-7. In para-9 of his statement he stated that the seized articles were sent for chemical examination to the Regional Forensic Science

Laboratory Gwalior but neither the memos for sending these articles have been produced by the prosecution nor FSL report has been filed .

8. On the close scrutiny of the testimony of PW-1 Durga Prasad and PW-2 Gendalal, it is found that the FIR was lodged by the brother of

deceased Durga Prasad and in the statement recorded on 03-09-2002, he did not mention about the presence of his brother Gendalal at the spot.

In his statement before the court, he stated that his brother Gendalal was present at the spot and he asked him to call Choukidar. It is stated that

thereafter he had gone to lodge the report to the police station. In the FIR and in his statement, he had stated that Gangaram and Harinarayan had

reached at the spot on raising alarm. Ganga Prasad has been examined by the Prosecution as PW-4 but he did not support the prosecution case.

Other witness Harinarayan, who was named in the FIR has not been examined by the prosecution. He also named that Nandu as an witness to the

incident but Nandu has also not been examined by the prosecution. Another witness Genda Lal, who is also real brother of the deceased stated

that he was present at the spot and he had seen the accused persons. If he was present at the spot and was an witness to the incident, then his

brother PW-1 Durga Prasad ought to have mentioned his presence either in the FIR or in his statement recorded under section 161 CrPC. His

statement was recorded by the police on 06-09-2002 after 4 days of the incident and the statement of another witness Ganga Ram, who is said to

be present at the spot by PW-1 was recorded on 19-09-2002. Non-mentioning of presence of these eye witnesses by P.W. 1 Durga Prasad in

F.I.R. and delay in recording statements under Section 161 Cr.P.C has not been explained. The Investigating Officer P.W.-9 Krishna Chand has

not explained delay in recording statement of Gendalal and Gangaram.

9. The conduct of witnesses is relevant to be examined in the present case. None of these witnesses says that they had taken their brother

deceased for the medical aid. PW-1 Durga Prasad says that both of them had left the deceased at the spot. PW-1 Durga Prasad had gone to

lodge the FIR and the same was lodged after about two hours. It has come on record that he had gone on fourwheeler to lodge the FIR but

instead of taking the deceased to the hospital, he preferred to lodge the FIR treating the deceased as dead. In the FIR he did not mention the

presence of his brother and of Nandu and Gendalal. PW-2 has stated that since the Govt. land was granted on lease in favour of his brother Suraj

Singh adjoining to the accused persons and therefore, they used to quarrel with the deceased and there was previous enmity. The previous enmity

amongst the complainant side and the accused is a double edged weapon, which may also be a reason for implicating the accused side.

10. On extensive consideration of the testimony of PW-1 Durga Prasad and PW-2 Gendalal, who are real brothers of the deceased, for the

reasons discussed in the foregoing paragraphs, we do not find the testimony of these witnesses credit worthy. The testimony of these witnesses is not supported by any corroborative evidence of clinching nature. Our view is fortified by the judgment passed by the Apex Court in the case of Brathi alias Sukhdev Singh Vs. State of Punjab, AIR 1991 SC 318 and also the judgment passed by the Apex Court in the case of State of U.P. Vs. Punati Ramulu and others, 1994 Supp(1) SCC 590 . It is held by the Apex Court that in the case of closely related witnesses, the courts have to be very careful in evaluation of such evidence and the same should not be rejected mechanically on the ground of being relative. We are not discarding their testimony merely on the ground that they are real brothers of the deceased but since their testimony is not corroborated with any strong corroborative evidence of clinching nature, therefore, we find that the conviction cannot be based on the testimony of these two witnesses in absence of corroborative evidence.

11. The testimony of these witnesses is not supported by any independent witness. PW-4 Ganga Prasad who did not support the prosecution case. The witnesses who were named in the FIR have not been examined by the prosecution. The turban alleged to be belonging to accused Prem Singh has not been sent for chemical examination and there is no FSL report regarding the presence of blood on the turban and also on the knife, which is alleged to be seized from the spot. Thus, the statement of the witnesses is not corroborated with any other evidence and in absence of any corroborative evidence, we find that the prosecution has failed to prove its case beyond any doubt.

12. In view of the aforesaid assimilation of the entire evidence of the present case, we find that the prosecution has failed to prove its case beyond reasonable doubt. The benefit of doubt is extended to the appellants.

13. Accordingly, the present appeal is allowed. The order of conviction and sentence is set aside. The appellant be set at liberty forthwith, if not wanted in any other case.

14. Before parting, we must put on record our unreserved appreciation for the valuable assistance rendered by the learned amicus curiae. The High Court Legal Services Authority shall remit fee of Rs.4000/- (Rs. four thousand) to the amicus curiae who assisted this court.