
(2004) 05 MP CK 0010

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 729 of 1998

Premdas and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 10-05-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 304, 341

Citation : (2005) 1 MPLJ 265

Hon'ble Judges : Sugandhi Lal Jain, J

Bench : Single Bench

Advocate : S.C. Datt and S. Pandit, for the Appellant; Ku. Alka Pandya, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Jain, J.

The appellants/accused Premdas, Ram Prasad, Babulal Singh, Anant Singh and Jaisingh, being aggrieved by the judgment and sentence awarded to them by Additional Sessions Judge, Satna in Sessions Trial No. 85/95, have filed this appeal challenging the correctness, propriety and validity of the findings.

The charges against the appellants/accused are that they being members of unlawful assembly, are liable to be punished for the offence committed in furtherance of common object of the assembly to commit the murder of Shokhilal Singh.

Shortly narrated, the prosecution case is that on 16-3-1995, at about 5.30 P.M. deceased Shokhilal along with his son Kailash was going towards the flour mill of Motilal. He wanted to hand over the electricity bill to his father Madho Singh. When the deceased and Kailash reached near the house of appellant Premdas, all the five appellants accosted the deceased and started beating him. He was assaulted by lathis, kicks, shoes and fists. Kailash Singh went to his uncle Motilal Singh and informed him about the incident. Pushpendra Singh went to the house

of deceased and informed his family members about the incident. Having learnt about the incident, Bina Singh, Dani Singh, Gorelal Kamta Singh and Rajesh Singh reached the place of occurrence. Motilal also reached the spot. Meanwhile, the appellants took to their heels. Shokhilal was lying unconscious at the spot. He was taken to police station, Kolgawa where Kailash Singh lodged FIR, Ex. P-15.

Shokhilal Singh was sent to District Hospital, Satna for medical examination. He was examined by Dr. Satyendra Singh. Ex. P-16 is the report of Dr. Satyendra Singh. Shokhilal was admitted in the hospital. He succumbed to his injuries on 17-3-1995 at 7.30 A.M. The inquest on the dead body was conducted by Phool Singh Kushwaha, J.S.I., police station, Kolgawa. The dead body was sent for post-mortem examination. Dr. S.K. Jain conducted the post mortem examination of deceased Shokhilal and found the following injuries:-

(1) Contusion, 4 cms. x 2 cms. on the back of right hand.

(2) Hematoma under left parietal region, left parietal bone was fractured, underneath, there was extra parietal hematoma. Brain matrix was also contused.

Dr. Jain opined that the cause of death was coma due to head injury. He also opined that injuries were and mortem in nature. Ex. P-28 is the report of Dr. S.K. Jain.

During investigation, spot map was prepared. At the instance of appellants, lathis were recovered from each of them. The electricity bill was also recovered from Binu Bai.

After investigation a challan was filed for the offence punishable u/s 304 read with section 149; Indian Penal Code and the case was committed to the Court of Session.

The learned Additional Sessions Judge framed charges against the appellants. All the accused persons abjured the guilt and pleaded that the complainant party had committed the murder of Lalbhai, nephew of appellant Sudarshan Singh and because of this incident they have been falsely implicated. Appellant Anantsingh has pleaded alibi.

After concluding the trial, the learned Additional Sessions Judge found all the appellants guilty of the offences punishable under sections 341, 147 and 304 (Part-II) read with section 149 of the Indian Penal Code and as such convicted and sentenced them to undergo R.I. for one month each, six months each and five years with fine of Rs. 100/- each, in default, to undergo S.I. for fifteen days each, respectively.

Aggrieved by the conviction and sentence recorded by the Additional Sessions Judge, the appellants have filed this appeal.

I have heard Shri S.C. Datt, learned Senior Counsel with Shri S. Pandit, Advocate for the appellants and Ku. Alka Pandya, Government Advocate for the State.

Kailash (PW-7) has stated that on the date of incident at about 5.00 P.M., he was going to Ahri from his house along with his father. The appellants accosted them on their way and assaulted his father by means of sticks, kicks, shoes and fists. Premdas, Ram Prasad and Babulal were armed with sticks and others were empty handed. Due to their fear he ran away and informed his uncle Motilal Singh about the incident. His uncle Motilal Singh, aunt Vimla Bai, Gorelal Singh and Pushpendra Singh reached the place of occurrence. His father was lying unconscious there and was taken to police station in a tractor. FIR Ex. P-15 was lodged at the police station.

Motilal Singh (PW-4) has stated that on the date of incident at about 5 P.M. nephew of Kailash informed him that the appellants have assaulted his father Shokhilal who is lying near the Ahri of Premdas. Shokhilal was taken to the police station in a tractor where his nephew Kailash lodged First information Report.

Ramlakhan (PW-1), Rajesh Singh (PW-3) and Motilal Singh (PW-4) have stated that they saw Shokhilal lying on the way. Thus, the evidence of Lakhan Singh is corroborated, by the evidence of Ramlakhan (PW-1). Rajesh Singh (PW-3) and Motilal Singh (PW-4).

The evidence of Kailash is further corroborated by promptly lodged FIR Ex. P-15. The incident occurred at 5.30 P.M. FIR was lodged at 7.45 PM on the same day. The distance of police station from the place of incident is 16 Kms. Evidence of Kailash is further corroborated by the medical evidence of Dr. S.K. Jain from whose evidence, it is also well established that Shokhilal died a homicidal death.

Learned counsel for the appellant vehemently argued that Kailash is a child witness whose evidence should be accepted with great caution. He is not only a teenager but also a solitary eye-witness. Therefore, his evidence had to be scrutinized with great care and caution as the children have good memory but no conscience.

It is true that while assessing the evidence of a child witness, the Court must be careful to examine the evidence to exclude the possibility of any tutoring but it cannot be laid down as an infallible rule that in no case, the evidence of child below a particular age should be accepted or acted upon. Every case must depend on its own facts. In this case, Kailash is aged about 14 years, he has sufficiently matured understanding. On a careful reading evidence of Kailash, I find that his evidence is free from any chance of tutoring. It is fairly impressive and can safely be regarded as true disclosure of the facts as they occurred. It ought not to be rejected simply because it has come from the mouth of a boy of tender age. Evidence of a boy of 14 years could not be discarded on the ground of he being a tutored witness when he was an eye-witness to the incident of killing of his father.

Learned Trial Judge, who had an opportunity to see and watch the demeanour of the witness, relied on his evidence and this Court cannot discard his testimony on the ground of a danger of he being a tutored witness. No presumption of

untrustworthiness can be attached to the evidence of a boy aged 14 years.

The evidence of Kailash cannot be disbelieved also on the ground that he is son of the deceased. Relationship by itself is not sufficient to discard the evidence of witnesses or to make it unworthy of credit in the absence of other circumstances. Where his presence at the place of occurrence is natural and his evidence is corroborated not only by the FIR but also by medical evidence, absence of other independent witnesses does not render prosecution case suspicious or unworthy of credence. There was no reason for this witness to leave real assailants and falsely involve other persons in place of assailants.

It was also contended that if Kailash was accompanying the deceased at the time of occurrence his natural conduct would have been to physically intervene to save his father.

The contention cannot be accepted. Mere fact that the witness did not intervene, cannot make his presence doubtful because each individual reacts in a different way and there is no standard conduct which can be called as natural conduct. The witness has clearly stated that because of the fear he ran away from the spot to inform his uncle about the incident. On a careful scrutiny of the evidence of Kailash, it inspires confidence.

Appellant Anant Singh has pleaded alibi and examined Ramesh Kumar Mishra (DW-1) in support of his case. This witness who is a cashier at Star Automobiles has stated that appellant Anant Singh came to showroom of Star Automobiles to purchase a Hero Puch vehicle and a gate pass, Ex. D-5 was issued to him at 5.45 P.M. on 16-3-1995. The witness has admitted that it is not necessary that purchaser should come in person to take the delivery of the vehicle, therefore, it cannot be said to be well established that at the time of occurrence, appellant Anant Singh was not at the spot and was at Satna. The onus to establish alibi is on the accused and if it is not discharged by the appellant, the appellate Court will not interfere. Appellant Anant Singh had been a classmate of younger brother of Ramesh Kumar Mishra. It was not difficult for appellant to procure such gate pass from Ramesh Kumar Mishra. The trial Court has recorded reasons for rejecting the plea of alibi and I do not find it appropriate to disagree with the trial Court on this point.

It is also the case of the appellants that the incident occurred on the occasion of Holi festival. Deceased was dead drunk and under the effect of intoxication he fell down and sustained injuries.

Sugriv (DW-2) has stated that on the date of incident at 5 P.M., Shokhilal was coming towards place of incident. He was walking in a zigzag manner and fell down. The witness has admitted that this fact he has narrated for the first time in the Court. If he would have seen the deceased moving in the manner, as stated by him, his natural conduct would have been to inform the police during investigation about the same. His evidence cannot be accepted also for the reason that in the medical evidence it did not come that deceased had consumed

alcohol. Dr. S.K. Jain (PW-14) has specifically stated that no signs regarding the consumption of alcohol was found in the post-mortem examination. Therefore, the trial Court has rightly rejected the evidence of Sugriv Harijan.

Thus, from the evidence of Lakhan Singh which is corroborated by other evidence and also by FIR and medical evidence, it is well establish that the appellants assaulted the deceased.

From the evidence of Dr. S.K. Jain, it is also established that deceased Shokhilal died due to head injury which was antimortem.

Learned counsel for the appellant submitted that Kailash (PW-7) has admitted that only Premdas, Ram Prasad and Babulal were armed with lathis. Other appellants were not armed with lathis, therefore, it cannot be said that it was common object of the appellants to form an unlawful assembly and assault the deceased which is the central fact on which the liability of persons other than the actual doer of the act depends.

The common intention or common object for committing an offence can be developed at the spur of the moment. No pre-concert is necessary at the beginning of the assembly. Where the accused persons came to the spot in a group and proceeded to participate in the attack, they could be held to have shared common object of unlawful assembly viz. to attack and kill Shokhilal. Legally no overt act by the members of the assembly is necessary to attract the applicability of section 149, Indian Penal Code. Therefore, the conviction for offence of culpable homicide not amounting to murder with aid of section 149, Indian Penal Code is proper.

Learned counsel for the appellant also submitted that it has come in the evidence that Lalbhai, the nephew of appellant Sudarshan Singh was killed by the complainant party and the trial in this regard was pending on the date of incident. It is because of this reason that the appellants have been falsely implicated. Enmity is a double edged sword. It, no doubt, often provides motive for false implication but also more often than not provide an incentive for making attack. Mere fact that there is enmity between the complainant party on one hand and the accused party on the other is not sufficient to throw over the testimony of the witnesses, when their evidence is corroborated by the other material on record. The evidence of Kailash and other witnesses cannot be rejected only on the ground of enmity. On a close scrutiny of the evidence, I do not find any reason for the total rejection of the prosecution evidence.

On the basis of above discussion, I find that there is overwhelming evidence against the appellants. The findings of the trial Court are based on cogent reasons. The trial Court has rightly convicted the appellants for the offences punishable under sections 341, 147 and 304 (Part-II), Indian Penal Code. The sentence awarded by the trial Court, under the facts and circumstances of the case, also cannot be said to be unreasonable.

In view of the aforesaid discussion, I do not find any reason to interfere with the conviction and sentences passed against the appellants. The appeal is accordingly dismissed. The impugned judgment and order of the trial Court convicting and sentencing the appellants is hereby maintained.