

(2018) 06 MP CK 0121

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 589 Of 2005

Raju Darbar @ Rajendra Singh

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 26-06-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 174, 374
Indian Penal Code, 1860 — Section 302, 304I, 304II, 307, 326, 452
Arms Act, 1959 — Section 25(1B), 25(1)(B), 27

Citation : (2018) 06 MP CK 0121

Hon'ble Judges : PANKAJ KUMAR JAISWAL, J;SUNIL KUMAR AWASTHI, J

Bench : Division Bench

Advocate : Amit Dubey, Bhuwan Gautam

Final Decision : Partly Allowed

Judgement

S.K.Awasthi, J.

The appellant has preferred present appeal under Section 374 of the Cr.P.C. being aggrieved with his conviction by the judgment dated 12/04/2005

passed by Sessions Judge Dewas in S.T.No. 185/2004, by which the appellant has been convicted for the offence punishable under Sections 452 and

302 of the IPC, Section 25(1)(B) of the Arms Act and sentenced to undergo R.I. for 1 years, life imprisonment and R.I. for 1 years with fine of

Rs.2,000/-, Rs. 500/- and Rs.500/-respectively with usual default stipulation.

2. It is admitted fact that the Madanlal (PW 1) and Santosh (PW 3) are the real brothers of the deceased Mohanlal; whereas Kamal Kishore (PW 5)

is their cousin.

3. The prosecution story is in short is that the Police-Station-Barotha, District-Dewas received a complaint on 12/05/2004 at 14:30 p.m. by Madanlal

(PW 1), who is the real brother of the deceased, which referred to an incident that had occurred on 12/05/2004 at about 14:10 p.m.. According to the

complaint on the aforesaid date and time complainant Madanlal going from hotel to his residence for taking lunch. He saw that the appellant/accused

Raju @ Rajendra, carrying sword entered in the house of Mohanlal at that time Mohanlal was sitting in his house. After seeing Raju, Madanlal

followed him and he saw that after entering in the house of the Mohanlal, accused-Raju @ Rajendra gave a blow of sword on Mohanlal, when

Mohanlal tried to stop it by his right hand then Raju gave another blow of sword on his right hand, due to which his right hand cut down, after that

accused-Raju had inflicted injuries on the head and leg of the deceased. Thereafter, Mohanlal shouted and became unconscious. Madanlal (PW 1) call

for help then so many persons came there and after seeing the crowd the accused Raju ran away with the sword leaving its sheath on the spot.

4. On the basis of the aforesaid complaint, the police registered an FIR bearing Crime No. 89/2004 under Sections 452 and 307 of the IPC alongwith

Section 25(1)(B) of the Arms Act. Mohanlal was brought to the hospital by the persons who came on the spot. On the examination in the MG

Hospital, Dewas the injured Mohanlal was declared dead. Then police registered a Merg under Section 174 of the Cr.P.C. During the Merg inquiry

the Police prepared lash panchnama of the deceased Mohanlal and his body was sent for the postmortem. The Investigating Officer collected the

blood stained and pieces of earth from the spot and prepared seizure memo. He also seized one blood stained white bed-sheet and sheath of sword

from the spot vide seizure memo Ex.P/17. He prepared spot map (Ex. P/2). He record the statement of the witnesses and arrested the appellant. On

12/05/2004 police recorded his memorandum under Section 27 of the Evidence Act and recovered one blood stained white pant, yellow sky blue

coloured Shirt and sword from his house under seizure memo (Ex.P/6). The seized articles were sent for Regional Forensic Science Laboratory, Rau,

Indore. After completion of the investigation charge-sheet was filed before the JMFC, Dewas, who committed the case to the Court of Sessions.

5. The appellant abjured his guilt. He did not take any specific plea but he has denied the charges on the pretext that he has been falsely implicated in

the matter, however, in defence he has not examined any defence.

6. To bring home the charge, the prosecution has examined 10 witnesses including eye-witnesses-Madanlal (PW 1) and Shehjad (PW 2), Santosh (PW3),Bahadur (PW 4), Kamal Kishore (PW 5), Antar Singh(PW6), S. Swami (PW 7), Dr. Shakir Ali (PW 8), Head Constable-Banne Singh (PW 9) and Investigating Officer-Akhilesh Dwivedi (PW 10).

7. After examination of the entire evidence lead by the parties, the trial Court has convicted the appellant for the offence under Sections 452 and 302

of the IPC alongwith Section 25(1)(B) of the Arms Act and sentenced him as mentioned above.

8. Learned counsel for the appellant has invited the attention of this Court to the statement of the prosecution witness Madanlal (PW 1), Shahjad (PW

2) and Bahadur (PW 4) and pointed out that there is apparent contradictions between the contents of the FIR and in their statements recorded under

Section 161 of the Cr.P.C.. He further pointed out that the presence of the Shahjad (PW 2) on the spot at the time of alleged occurrence is doubtful

because he is a resident of Sonkatch, Dewas, which is about 26 Kms. from the place of incident and he seems to be a chance witness. He further

submitted that as per Dr. Shakir Ali (PW 8), who conducted the post-mortem of the Mohanlal except injury No.1, which is found on the right hand of

the deceased, all other injuries were found simple in nature, which clearly demonstrates that the applicant was having no intention to cause the death

of the deceased. Therefore, he submitted that conviction recorded by the court below is erroneous and deserves to be set aside. Learned counsel for

the applicants has alternatively submitted that the injuries inflicted by the appellant comes within the category of 'grievous hurt' which is punishable

under Section 326 of the IPC.

9. Per contra, learned counsel for the respondent supported that the findings recorded by the trial Court and submitted that, there is sufficient direct

and circumstantial evidence available on record against the present appellant to established the charges levelled against him.

10. We have carefully examined the record and considered the rival contention canvassed by both the parties.

11. Following questions are arises for consideration before this Court:

1. Whether the statement of the prosecution witnesses established beyond reasonable douts that the appellant caused injuries to the deceased or not ?

If yes what were the surrounding circumstances leading to the same.

2. Whether the trial Court erred in convicting the appellant for the offence punishable under Sections 452, 302 of the IPC alongwith Section 25(1)(B) of the Arms Act.

12. According to the complainant-Madanlal (PW 1), he is running a hotel in the bus-stand road, Barotha. In the month of May, 2004 at about 14:00

p.m., he was going from hotel to his house situated at hospital Road, Barotha for taking lunch. When he passed near the shop of Nirbhay Singh Nagar,

he saw that accused Raju Darbar @ Rajendra Singh, who is having sword entering in the house of his brother-Mohanlal. Thereafter, he followed the

appellant and reached to the house of Mohanlal(deceased), where he saw that his brother-Mohanlal was sitting in the bed and accused gave a blow of

sword, which was stopped by Mohanlal from his left hand, as a result he received injury on his left hand. Then accused gave another blow of sword to

the Mohanlal, which is stopped by his brother by right hand and after that accused inflicted 2 to 3 sword blows to the Mohanlal, by which he sustained

injuries on his head, shoulder and thigh. He screamed at this and after hearing hue and cry so many persons of the locality came there. After seeing

them the accused thrown his sheath of sword ran away from the spot. He further stated that accused borrowed some money from his brother and due

to dispute of money, the appellant has committed the aforesaid incident, then he lodged the FIR (EX. P/1) at Police-Station-Barotha. Injured-Mohanlal

was brought to the Barotha hospital by the persons, who were came to the spot from where he was shifted to the MG Hospital, Dewas, there he was

delcared died. Police came to the spot and prepared spot map. (Ex. P/2).

13. All similar lines were narrated by the Shahjad (PW 2). He has stated that 6 months back in the afternoon around 2.00 p.m. to 2:15 p.m., he had

come to Barotha for selling fruits. When he was passing through street, he hear some noise from the house of Rajmal Mahajan then he set his bicycle

there and entred into the house, where he saw that the appellant/accused Raju Darbar was inflicting the blows of sword to the Mohanlal, by which his

right hand was cut down and blood was oozing from the head of Mohanlal, who was lying on his bed. Thereafter, the brother of the Mohanlal came

outside the room and started weeping, then accused Raju Darbar came out from the house and fled away with the sword. After that he has gone to

Sonkatch. Later on he came to know that Mohanlal has died.

14. Santosh (PW 3), Bahadur (PW 4) and Kamal Kishore (PW 5) are the witnesses, who were not present on the spot at the time of occurrence,

having claims that on 12/05/2004 at about 02:15 p.m., they were present on the hotel of Santosh, which is situated at bus-stand. At that time

appellant/accused-Raju came there with having blood stained sword and said them that he has killed Mohan. Thereafter, Madanlal (PW 1) informed

them that accused committed murder of Mohan.

15. Akhilesh Dwivedi (PW 10), deposed that on 12/05/2004, at about 14:30 p.m. he lodged the FIR (Ex.P/1) on the basis of information given by the

complainant Madanlal (PW 1). After that he reached on the spot and prepared spot map (Ex.P/2). He had received information from MG Hospital,

Dewas that Mohanlal has died, then he recorded the Merg intimation (Ex. P/14) and after preparing his lash panchnama sent his dead body for post-

mortem to the MG Hospital, Dewas. He collected the blood stained and plain piece of the floor, one blood stained bed-sheet, blood coloured sheath

from the spot, vide seizure memo (Ex. P/17). On 12/05/2004, he arrested the appellant/accused and recorded his memorandum under Section 27 of

the Evidence Act and seized one blood stained sword, one blood stained white pant and yellow sky blue coloured Shirt from the house of the appellant.

16. Independent witness of memorandum and seizure Bahadur (PW 4) and Antar Singh (PW 6) have supported the statement of the Investigating

Officer-Akhilesh Dwivedi (PW 12).

17. Dr. Shakir Ali (PW 8), who performed the post-mortem of the dead body of the deceased-Mohanlal given post-mortem report (Ex. P/14). He

found 7 injuries to the deceased, out of which two injuries on his left hand and right hand and one injury each on his left shoulder, right thigh and right

hand. His right hand was found cut from the elbow. The cause of death of the deceased was Hemhoregic shock, due to excessive bleeding and his

death was found within 24 hrs. from the post-mortem.

18. Although, the Shahjad (PW 2) claims that he was also present on the place of occurrence at the time of alleged incident and he wathced the

incident, however, his testimony is not found believable, because he belongs to the town of Sonkatch, District-Dewas which is 26 Kms. away from the

village Barotha, where the incident happens. As per Shahjad he is a fruit

merchand and sale the fruits door to door, however, in the FIR (Ex. P/1) his presence on the spot is not placed and after the incident neither he stay at the spot nor he has given any information to the police regarding the alleged incident.

In the spot map also no point was mentioned from where he saw the incident. His statement was recorded after 5 days of the alleged incident. Even in the statement of the Madanlal (PW 1), which recorded in the Court, he has not admitted the presence of the Shahjad (PW 2) on the spot, under these circumstances, his presence has rightly been discarded by the trial Court treating him as a chance witness.

19. The incident has been committed on 12/05/2004 at around 14:10 p.m. and the information was given to the police at 14:30 p.m. i.e. after 20

minutes of the incident, which shows that there is no delay in lodging the report. The FIR was clearly named the appellant/accused-Raju Darbar @

Rajendra Singh for commission of the offence as mentioned hereinabove. The evidence of the Madanlal (PW 1) has corroborated the prosecution

story verbatim, which less much credibility to his statement. There is no material, which has come on record to indicates that the complainant had any

previous enmity with the appellant/accused Raju Darbar @ Rajendra Singh. Post-mortem report proved by Dr. Shakir Ali (PW 8) confirms the

version of the witnesses that various injuries were found on the body of the deceased as described by the eye witness Madanlal (PW 1). Hence, the

evidence of the Madanlal is believable.

20. Learned counsel for the appellant submitted that the trial Court has failed to appreciate the evidence properly. There are discrepancies and

contradictions are present in the statements of the witnesses. The contention raised by the counsel, in our opinion, has no substance as the

discrepancies or contradictions pointed out by the learned counsel are not so material which affect the credibility of the evidence of the witnesses and

on the basis of which the judgment of conviction can be reversed.

21. Hon'ble apex Court, in the case of State of Rajasthan vs. Smt. Kalki, AIR 1981 SC 1390, has held that :

â??6. The second ground on which the High Court refused to place reliance on the evidence of P.W. 1 was that there were ""material discrepancies"".

As indicated above we have perused the evidence of P.W. 1. We have not found

any "material discrepancies" in her evidence. The discrepancies referred to by the High Court are, in our opinion, minor, insignificant, natural and not 'material'. The discrepancies are with regard to as to which accused "pressed the deceased and at which part of the body to the ground and sat on which part of the body; with regard to whether the respondent Kalki gave the axe blow to the deceased while the latter was standing or lying on the ground, and whether the blow was given from the side of the head or from the side of the legs. In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of the P. W. 1.â??

22. In the case of Baijnath and another vs. State of MP [ILR (2009) MP 3041] it has been observed by Hon'ble apex Court as under:

5. We have given very careful consideration to the matter, more particularly, as we are dealing with a judgment of reversal. It is true that the trial

court has given certain findings with respect to the evidence which had led to the acquittal, but we are of the opinion that some of the findings

recorded by the trial Court wereunjustified and unrealistic. The broad principles dealing with appreciation of evidence in a criminal matter have been

laid down in Bhoginbhai Hirjibhai vs. State of Gujarat [AIR 1983 SC 753], and we respectfully produce the same:-

.....Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may

notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall

the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the

moment 1.1 at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters.

Again, it depends on the time- sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span.

A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of

nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-

conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a

truthful and honest account of the occurrence witnessed by him- Perhaps it is a sort of a psychological defence mechanism activated on the spur of

the moment.

(8) Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue

importance.

More so when the all important ""probabilities-factor"" echoes in favour of the version narrated by the witnesses.

23. Learned counsel for the appellant submitted that Madanlal is the brother of the deceased and he deposed in his examination-in-chief that on

hearing the hue and cry the residents of locality were came to the spot, however, the prosecution has failed to examine those witnesses, therefore, the

statement of Madanlal can not taken into account. This contention of the applicant can be best observed by referring to 2 observation given by the

apex Court in the case of Jayabalan vs Union Territory of Pondicherry, 2010 (1) SCC 199 in the following manner:

23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court, while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

24. In another judgement by Hon'ble Supreme court in the case of Seeman @ Veeranam vs State, By Inspector Of Police (2005) 11 SCC 142, following has been observed:

24. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested sole witness. The prosecution's non-production of one independent witness who has been named in the FIR by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution case. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement.

25. In the context of the above reproduced portion of the judgment, if the contention of the learned counsel for the appellant is examined, then we have no hesitation to conclude that the statement of complainant-Madanlal (PW 1) is consistent and establish the prosecution story. He clearly narrated the events as he transpired on 12/05/2004 and the role played by the

appellant which found support from the post-mortem report (Ex.P/1).

Therefore, merely because this witness is relatives of the deceased Mohanlal, his testimony cannot be discarded. Other relevant features of the case

is that the blood stained sword, which was used in the alleged incident was recovered on the basis of disclosure statement of appellant and these

documents were also found proved by the statement of independent witnesses namely, Antar Singh (PW 6) and Shailendra Soni (PW 7).The Police

has also seized blood stained bed-sheet and sheath of sword from the spot and all these articles were sent to the Regional Forensic Science

Laboratory, Rau, Indore for chemical analysis and as per FSL report the same blood group was found in these articles, which also confirmed the

involvement of the appellant in the present crime.

26. The next contention canvassed by learned counsel for the appellant is that the trial Court ought to have convicted the appellant under Section 304

Part-II of IPC for the reason, it is apparent from the evidence of Dr. Shakir Ali (PW 8) that no vital part of the body of the deceased was found

ruptured due to the blows inflicted by the appellant and except the injury No.1 all the injuries were found to be simple in nature. The injury No.1 has

also not found in any vital part of the body, however, the deceased, was died due to excessive bleedings. In this connection learned counsel for the

appellant has placed reliance on the judgment passed by the apex Court in the case of Bunnilal Chaudhary vs. State of Bihar (2007) 1 SCC (Cri) 66 in

which it is observed that if the doctor has not opined that the injuries found to the deceased were sufficient to cause his death in natural course of his

life or no injury was such that the death was likely to be caused, in such case if accused was not intended to kill the victim then the offence shall fall

within the purview of Section 304 (Part-II) of IPC.

27. Similarly a reliance is placed upon the judgment passed by the Apex Court in 'Balkar Singh vs. State of Uttarakhand' [2009 Cri.L.J. 2980]] in

which also it is held that if there was no intention of the accused to kill someone and injuries could be fatal then offence under Section 304 (Part-1) of

IPC shall be constituted.

28. In the present case if factual position of the case is considered, then the appellant Raju Darbar @ Rajendra Singh had inflicted 7 injuries to the

deceased-Mohanlal, however, these injuries were not fatal in nature. According to

the Dr. Shakir Ali, no vital part of the body was found ruptured and in his opinion the deceased has died to to excessive bleeding and subsequently heart failure. Under such circumstances, in the light of aforesaid judgments, the overt act of the appellant Mata Prasad shall fall within the purview of Section 304 (Part-2) of IPC.

29. The trial Court has also convicted the appellant for the offence under Section 25 (1-B) of the Arms Act. As discussed above, it is proved beyond

doubt that the sword has been recovered on the instance of the appellant, which is used in the incident and therefore, the trial Court has rightly convicted

the appellant for the offence under Section 25(1)(B) of the Arms Act.

30. On the basis of aforesaid discussion, this appeal is partly allowed. Conviction for offence under Section 452 of the IPC alongwith Section 25(1)(B)

of the Arms Act is affirmed; whereas the conviction under Section 302 of the IPC is altered into offence under Section 304(II) of the IPC and he has

sentenced to undergo R.I. for 10 years and to pay fine of Rs.2,000/-and in default of payment of fine amount, he shall further suffer RI for 5 months.

The appellant is in custody since 12/05/2004, therefore, he has already undergone the jail sentence awarded to him.

31. The appellant is in jail and, therefore, the Registry is directed to arrange for issuance of a supersession warrant relating to the appellant Raju

Darbar @ Rajendra Singh so that he may be released without any delay.

32. A copy of the judgment be sent to the court below along with its record for information.