
(2002) 04 MP CK 0102
In the Madhya Pradesh High Court
Case No : Criminal A. No. 25 of 1990

Roop Singh and others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 326, 34

Citation : (2002) 4 MPLJ 136 : (2002) 4 RCR(Criminal) 580

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Rajendra Singh with R.K. Shukla, for the Appellant; Sanjeev Shukla, Panel Lawyer For State, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

Appellants Roop Singh and Summer Singh have been convicted under sections 326 and 326/34, Indian Penal Code, respectively and each of the two has been sentenced to rigorous imprisonment for five years.

The prosecution case is that on 12-11-1988 at about 12 noon deceased Mannulal was cleaning his clothes on a well in village Par; accused Roop Singh and Summer Singh who are brothers came there; Roop Singh dealt a knife blow on the shoulder of the deceased; Summer Singh caught hold of the deceased and exhorted Roop Singh to inflict more knife blows on him; Roop Singh pierced the knife in the abdomen of the deceased and his intestines protruded; he tried to escape but Roop Singh dealt the third knife blow on his back. The incident is said to have been witnessed by Chhotelal (P.W.1), Thoban (P.W.2) and Balram Patel (P.W.3). The deceased is said to have narrated the incident to Hazari (P.W. 4). Deceased Mannulal was taken to Bina Police Station. He was conscious and able to speak. He lodged the FIR Ex. P-8 at Bina Police Station on the date of incident which was recorded by Ramsevak Pyasi (P.W. 6), A.S.I. Mannulal was sent to the

Government Hospital. He was examined by Dr. N.K. Rohit (P.W.5) and he found three injuries on his body as per his report Ex. P-5. These injuries, according to the doctor, were caused by hard and sharp object. The intestines were protruding from the injury on the abdomen. Mannulal was then sent to Hamidia Hospital, Bhopal. His statement u/s 161, Criminal Procedure Code was also recorded by the A.S.I. when he was at Bina. There was operation of the injury sustained by Mannulal on his abdomen. His dying declaration was recorded by Sudhakar Deshmukh (P.W. 8), Executive Magistrate, on 13-11-1988 and that is Ex. P-18. In all the three aforesaid statements Mannulal described the accused persons as assailants. He died on 23-11-1988 in Hamidia Hospital. The autopsy was conducted by Dr. C.S. Jain (P.W.7) and the post-mortem report is Ex. P-17. The stitched wounds were found infected and it appears that the deceased had developed toxemia. During the course of investigation a knife was recovered from the possession of accused Roop Singh. The charge-sheet was submitted and the accused persons were tried for the offence u/s 302/34, Indian Penal Code.

The accused persons pleaded not guilty. Their defence is that they have been falsely implicated.

During the trial the four witnesses mentioned above who were on the spot including the two brothers of the deceased turned hostile and, therefore, there was no independent eye-witness account of the incident. The trial Court, however, held that the two dying declarations of the deceased - one in the FIR Ex.P-8 and the other in Ex.P-18 recorded by the Executive Magistrate were true and voluntary and convicted the accused persons under sections 326 and 326/34, Indian Penal Code only and sentenced them as stated above.

In this appeal it has been argued that the two statements of the deceased in Ex.P-8 and Ex.P-18 are not reliable and cannot form the basis for conviction. It is contended that the death of the deceased was due to medical negligence in the operation and in the treatment at Hamidia Hospital and not because of the injuries sustained in the incident and, therefore, the statements of the deceased are not admissible as dying declarations u/s 32 of the Evidence Act.

The two statements of the deceased Ex.P-8 and Ex-18 have been closely scrutinized by this Court. Ex.P-8 is the FIR lodged by deceased at 15.40 on 12-11-1988 and the incident had taken place on the same date at 12 noon. The distance of the police station from village Par is eight kilometers. Thus the report was promptly lodged. There was no time for concoction or embellishment. Ramsevak Pyasi (P.W. 6) has deposed that he was Assistant Sub Inspector of Police on that date at Bina Police Station and he had recorded the report lodged by Mannulal. Thus it is clear that Mannulal was in a position to speak and his first version is contained in the F.I.R. Ex.P-8. According to the statement of the deceased in this report accused Roop Singh had inflicted three knife blows on him including the one which caused injury on the abdomen and the intestines came out. This was no doubt a serious injury. Accused Summer Singh is said to have caught hold of the deceased and instigated accused Roop Singh to cause

injuries to him. According to the statement of the deceased accused Roop Singh caused three knife injuries to him. The statement of the deceased in the report is true and voluntary and assumes the shape of his dying declaration as per section 32(1) of the Evidence Act. In Munnu Raja and Another Vs. The State of Madhya Pradesh, it has been held by the Supreme Court that where after making the first information report, the victim succumbs to his injuries it can be treated as a dying declaration and is admissible u/s 32 of the Evidence Act.

Ex.P-18 is the statement of the deceased recorded by Shri Sudhakar Deshmukh (P.W.8), the Naib-Tehsildar and the Executive Magistrate on 13-11- 1988 in Hamidia Hospital, Bhopal. There is a certificate of the doctor at the beginning and also at the end of this statement that the patient is fully conscious and he could give the statement. According to this statement Roop Singh caused two knife injuries to the deceased. The injury on the abdomen is clearly attributed to him. In this statement the deceased said that one of the two remaining injuries was caused by accused Summer Singh. Thus the two dying declarations specifically implicate accused Roop Singh in the crime. He caused the injury on the abdomen by a knife and the intestines of the deceased came out as a result of this injury.

Dr. N.K. Rohit (P.W. 5) has deposed that he was Medical Officer on 12- 11-1988 at Bina hospital and he had examined the injuries of Mannulal. According to his evidence and the medical report Ex. P-5 there were three "lacerations" on his body. Injury No. 3 was on the right illiac fossa size 3x2x4 cms. and the intestines had come out. These injuries were caused by hard and sharp object. His evidence shown that the word "laceration" used by him was inappropriate and the injuries were incised wounds. He has clarified that injury No. 3 was such that it could prove fatal if immediate surgical treatment was not provided and, therefore, he referred the patient to Hamidia Hospital, Bhopal.

Dr. C.S. Jain (P.W.7) has deposed that he conducted autopsy on the body of Mannulal on 23-11-1988 and the post-mortem report is Ex.P-17. According to him "death was due to cardio respiratory failure as a result of abdominal injury and its complications". There was infection in this injury. This infection was not because of any medical negligence. In cross-examination he has stated that there was infection in the brain also. The doctor who performed the operation could not be examined as he had left the Government hospital by the time the summons were issued for his evidence.

Thus medical evidence of the two doctors is fully corroborative of the two statements of the deceased marked Ex.P-8 and Ex.P-18. The death was due to abdominal injury caused by accused Roop Singh.

It has been argued on behalf of appellant Roop Singh that the cause of death was the negligence of the surgeon who conducted the operation and he has not been produced by the prosecution and, therefore, the accused has been prejudiced in his defence. It is pointed out that as per post-mortem report

"stitches were infected" and this is indicative of medical carelessness. It is also pointed out that there was infection in the brain also and it is suggestive of lack of care in proper treatment. The argument which is sought to be built is that the death was not due to the knife injury caused on the abdomen but it was on account of negligence in the treatment and, therefore, the statements of the deceased do not come within the ambit of section 32(1) of the Evidence Act. Reliance is placed on a Division Bench decision of this Court in *Imran Khan Vs. State of Madhya Pradesh*, . In that case the deceased had sustained two simple injuries. There was infection which caused tetanus and the death was as a result of asphyxia caused by tetanus due to infection of the wound. It was found that the death was not "proximate consequence" of the injuries. The causal connection was held too remote. The injuries were not shown to have proximal connection with death and therefore the statement of the deceased could not be treated as his dying declaration u/s 32 of the Evidence Act. The ratio of the decision in this case is stated in para 11 of the judgment as under:--

11 If the complication or development is the natural and probable or necessary consequence of the injury and if it is reasonably contemplated as its result, the injury can be said to have caused death. If, on the other hand, the chain of consequences is broken or if there is unexpected complication causing new mischief, the relation of cause and effect is not established or the causal connection is too remote and the injury cannot be said to have caused death. If the original injury itself is of a fatal nature, it makes no difference that death is actually caused by a complication naturally flowing from the injury and not the injury itself since causal connection is proximate.

Section 32 of the Evidence Act which is relevant for the present purposes provides that the statement of a relevant fact made by a person who is dead is itself a relevant fact when the statement is made by a person as to the cause of his death, or as to any of the circumstances which resulted in his death, in cases in which the cause of that person's death comes into question. Such statement is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death. Thus according to law engrafted in this section it is not required that the maker of the statement should be in expectation of imminent death. It is well settled that if the Court is satisfied that the dying declaration is true and voluntary it can form the basis for conviction. The statement of the deceased showing the circumstances under which the injuries came to be inflicted is admissible in evidence. It is true that where the injury alleged to have been caused by the accused to the deceased is not shown to have "proximal connection" with the death of the deceased, the statement of the deceased cannot be said to be a statement as to the cause of death or as to any of the circumstances which resulted in his death. If the death is due to a cause de hors the injuries the statement of the deceased as to the injuries may not come within the ambit of section 32. But simply because there was infection in the injuries sustained at the hands of the accused it would not take the case out of its ambit. The infection might have been due to the injuries and could not

have been controlled by surgical intervention or medical treatment but that would not be an independent cause of death. Such infection might have accelerated the death. But in such a case the nexus or the proximal connection between the injuries and death is not lost or snapped. The infection may be the natural consequence of the injuries. The surgical intervention is needed to prevent the infection and to save the life of the deceased but if the surgery or medical treatment does not work the cause of death would still be the injuries at the hands of the accused. It has been held by Orissa High Court in *Kulamani Sandha Vs. State of Orissa*, that so far as the transaction is one in which death resulted, the assault by the accused on the deceased which resulted in injuries which developing the infection resulted in his death would undoubtedly be a circumstance of the transaction and the statement being regarding such circumstance is clearly admissible u/s 32(1) of the Evidence Act.

In AIR 1997 234 (SC) it was found that gun shot injury developed toxemia resulting from peritonitis. It was held that all such complications were directly attributable to the injuries suffered by the deceased. The dying declaration of the deceased was held to be admissible in evidence. The Supreme Court observed as under:--

26..... It is quite apparent from the post-mortem report and also from the deposition of the doctor that the injuries suffered by the deceased were serious and were likely to cause death in the ordinary course. Simply because attempt to give him life had been taken by performing operation on the injured but such attempt ultimately failed because he developed toximia resulting from peritonitis on account of the injuries suffered by him, it cannot be held that the death is not due to the injuries sustained by the deceased. The dying declaration is, therefore, admissible in evidence.

Similarly in *G.S. Walia Vs. State of Punjab and Others*, the injuries themselves did not cause the death, they had necessitated bed rest and that led to pulmonary Embolism. It was held that the death was the natural consequence of the injuries caused and it was not because of any negligence or external factor. As the statement of the deceased related to the cause of his death it was admissible in evidence u/s 32 of the Evidence Act.

In *Kans Raj Vs. State of Punjab and Others*, it has been observed that section 32 of the Evidence Act is an exception to the general rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, the Indian Evidence Act, in view of the peculiar conditions of our society and diverse nature and character of our people, has thought it necessary to widen the sphere of section 32 to avoid injustice.

In the present case, as discussed above, the death of deceased Mannulal was due to abdominal injury caused by accused Roop Singh. There was infection in

the wound and toxemia developed. But that was not a totally independent cause of death. The death was basically due to the injury which could not be properly repaired even by surgical intervention and the infection must have been because of the knife used by accused Roop Singh. It would not be a proper approach to distrust the surgical knife. That is definitely more sophisticated than the knife of a criminal. The accused cannot take shelter under the plea that the cause of death was infection and not the injury. The cause of infection was the injury. That was the natural consequence of the injury. That could not be controlled by surgical and medical treatment. The doctor cannot be blamed because the treatment has its own limitations. The proximal connection between the initial injury and the death was not severed. There was no independent supervening cause. The death ensued because of the injury coupled with infection and, therefore, the statements of the deceased as to the cause of his death are covered by section 32 of the Evidence Act.

Accused Roop Singh has been rightly found guilty by the trial Court. However, so far as accused Summer Singh is concerned, he has not caused any injury to the deceased. The exhortation attributed to him in Ex.P-8 is absent in the dying declaration Ex.P-18 recorded by the Executive Magistrate. It cannot be said with reasonable certainty that Summer Singh had caught hold of the deceased when injuries were inflicted on him by accused Roop Singh in the absence of any corroboration. Summer Singh deserves benefit of doubt.

In the result the appeal is partly allowed. The conviction and sentence of appellant Summer Singh are set aside and he is acquitted of the charge u/s 326/34, Indian Penal Code. The conviction of appellant Roop Singh u/s 326, Indian Penal Code is unassailable. The sentence cannot be said to be disproportionate in view of the injuries sustained by the deceased at the hands of accused Roop Singh which led to his death. The trial Court has already been very lenient by convicting him u/s 326, Indian Penal Code only.