
(2018) 04 MP CK 0089
In the Madhya Pradesh High Court
Case No : Cr.A. No.1245 OF 2007

Saleem @ Ajju & Ors

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 12-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 148, 149, 302

Citation : (2018) 04 MP CK 0089

Hon'ble Judges : S.K.GANGELE, J;ANJULI PALO, J

Bench : Division Bench

Advocate : P.L. Shrivastava, Siddharth Sharma, Ajay Shukla

Final Decision : Dismissed

Judgement

1. Criminal Appeal No.1245/2007 has been filed by appellantsÂ Saleem, Fareed, Waseem and Naseem Noor and Criminal Appeal No.1248/2007 has

been filed by appellant Javed Ali @ BhaiyaÂ being aggrieved by the commonÂ judgment dated 15th May, 2007 passed by 10thÂ Additional

Sessions Judge, (Fast Track) Bhopal,Â Â in Sessions TrialÂ No.10/05,Â whereby the appellants have been convicted and sentencedÂ as follows :

We propose to deal with the matter analogously and dispose of both these appeals by this common judgment.

2. It is not in dispute that all the appellants except Javed Ali @ Bhaiya are real brothers.

3. Brief facts of the case are that on 14.10.2004, at about 8.30 pm complainant-Kalim Akhtar was sitting in the Fire Brigade Office, Fatehgarh,

Bhopal. He was working there as a driver. He saw Laique and Iftekhar (since deceased) were standing near the milk booth. SuddenlyÂ the

appellants came there in an auto-rikshaw and inflicted blows by knife on

Iftekhar. Iftekhar tried to save himself, however he failed to do so. All the appellants surrounded and assaulted him with their knives. He sustained near about 26 injuries caused by knife. He fell down on the ground even then appellants assaulted him. Laique and complainant Kalim also tried to save Iftekhar but they also failed to do so. Thereafter the appellants ran away from the spot. Kalim, Laique and one autorikshaw driver Kabir brought injured Iftekhar to Hamidiya Hospital. Doctor declared him dead. On the report of Kalim (PW8), FIR has been lodged against all the appellants at Police Station, Talaiya. After investigation, charge sheet has been filed under Sections 148 and 302 read with Section 149 of IPC.

4. The trial Court framed charges against the appellants. They abjured guilt and claimed to be tried. Some defence witnesses have been examined by them.

5. Trial Court found the appellants guilty for committing murder of deceased- Iftekhar by forming unlawful assembly in furtherance of their common object, hence, they have been convicted and sentenced as mentioned above.

6. Appellants have challenged the findings of the trial Court on the ground that the findings of the trial Court are based on conjecture and surmises. The testimony of Laique (PW6), Kalim (PW8), Mohd. Shahid (PW9) are unreliable. They are interested witnesses and have enmity with the appellants. Independent prosecution witnesses have not supported the prosecution story and have turned hostile. However the trial Court held the appellants guilty by relying on the prosecution evidence. Hence, the appellants have prayed to set aside the impugned judgment and they be acquitted from the charges levelled against them.

7. Learned Govt. Advocate has vehemently opposed the submissions of the appellants and contended that the learned trial Court has rightly held the appellants guilty for committing the offences. Findings of the learned trial Court are based on the evidence on record, hence it cannot be interfered with.

8. We have heard learned counsel for the parties and perused the record.

9. The number and nature of injuries and weapon used for inflicting the injuries clearly establish that such injuries were caused by more than one person knowingly and intentionally to cause death of the deceased. Dr. Jayanti

Yadav (PW-4) conducted autopsy of the deceased on 15.10.2004

and noticed following injuries on:-

(1) Stab wound 3 cm above the umbilicus on abdomen, of size 2.5 x 0.5 cm. x 10 cm. deep, which ruptured the liver of the deceased.

(2) Stab wound present over right side of abdomen. 5 cm medial to anterior superior iliac spine 2.5 x 0.5 cm obliquely. Injuries were deep upto 13 cm.

About 800 cc blood was present on retroperitoneum cavity.

(3) Stab wound on left side of chest, 4 cm medial to anterior axillary line at level of axilla 4x1 cm vertical. Depth of wound was 11 cm. 800 cc half clot

blood was present in thoracic cavity.

(4) Stab wound back side of left forearm 7 cm. below the tip of left shoulder about 2.2 x 0.5 cm. Obliquely vertical. Depth of the wound was 6 cm.

Due to these injuries, muscles were in cutting condition.

(5) Stab wound over medial aspect of left upper arm in axillary region, 1.5 x 0.5 cm. Obliquely. Wound was 4 cm long from below upwards, lateral to

medial and from anterior to posterior direction reaching up to the axilla.

(6) Stab wound on left upper arm from 3.5 cm below the injury no.5 of size 1.8 x 0.5 cm. There is muscles in cutting condition about 7 cm deep.

(7) Stab wound over medial aspect of left upper limb 8cm below axillary pit 2.2x0.5 cm vertical.

(8) Stab wound inside on left thigh just above size of 3 x 0.7 cm from patella. Injury was 9 cm. long and muscles were in cutting condition.

(9) Incised wound present over right side of clavicle at medial end, 0.5 cm below root of neck size 1.5 x 0.5 cm, obliquely transverse. Wound has

given a nick to cartilage at manubrium, which shows clean cut margins surrounding muscles and tissues are ecchymosed.

(10) Incised wound present over chest on right side 5 cm below injury no.9, 1.8 x 0.5 cm oblique with lower end medial. Upper end is lateral and

narrow with tailing effect present from this end going laterally upwards for 2.5 cm long. The wound is bone deep touching the lateral border of

sternum between 2nd and 3rd rib.

(11) Incised wound on right side of chest at level of axillary pit 6 cm medial to anterior axillary fold 1 x 0.5 cm obliquely vertical, lower end being

medial. Underneath subcutaneous tissues are ecchymosed.

(12) Incised wound present just medial to right nipple 7 x 2 cm. vertical subcutaneous tissue deep.

(13) Incised wound present just lateral to left nipple 1 x 0.5 cm. oblique lateral end is up. Subcutaneous tissue deep.

(14) Incised wound present lateral aspect of left upper arm, 13 cm. below tip of shoulder 2.5 x 0.5 cm vertical, subcutaneous tissue deep.

(15) Incised wound present on lateral aspect of left upper arm just above cubital crease 0.5 x 2 cm vertical, medial margin having slicing effect

while flapping effect evident on lateral margin. The wound is muscle deep.

(16) Incised wound present on medial aspect of left forearm 5 cm above the lower end of ulna 2.2 x 0.5 cm obliquely vertical and muscle deep, upper

end is narrow and anterior.

(17) Incised wound 'L' shaped present over flexor aspect of right forearm nearly at mid. The vertical limb is 6 x 3 cm which the transverse limb is 6 x

2 cm. The muscles were in cutting condition.

(18) Incised wound present on posterior aspect of mid of right pinna with tailing effect. Wound is 2 x 5 cm vertical, tailing from lower margin and

posterity for 5 cm length.

(19) Incised wound present over right frontal region just right to mid line 10 cm. above right eyebrow 5.5 x 1 cms transverse underneath sharp cut mid

evident on frontal bone.

(20) Lacerated wound present on left forearm posterior aspect, 3 cm below olecranon 3 x 1 cm vertical with flapping of skin upwards.

(21) Abrasion 2 in numbers present on lateral aspect of left elbow medial one is 1 x 0.2 cm vertical while lateral one is 0.5 cm diameter 0.5 cm

apart from each other.

(22) Superficial linear abrasion 3 cm long present over right ankle extending from lateral malleolus anteriorly.

(23) Abrasion present on medial aspect of right foot, 1 cm below the base of great toe 4 x 2 cm vertical interrupted.

(24) Abrasion just anterior to right medial malleolus 1 cm in diameter

(25) Contusion with abrasion present against right lateral incisor tooth over right lower lip 0.5 cm in diameter.

(26) Contusion with lacerated wound present against left lateral incisor 0.5 cm

diameter at mucocutaneous junction.

Ecchymosis evident in all the wounds.

Dr. Jayanti Yadav (PW4) opined that injuries no.1, 2, 3 & 8 are stab wounds and have been caused by sharp weapon. Injuries no.4, 3, 7 & 8 are

stab wounds which could have been caused by pointed and sharp edged weapon may be knife.

Injuries no.1,4,5,6, 7 and 8 are stab wounds, which could be caused by sharp edged weapon.

Dr. Jayanti Yadav (PW4) opined that deceased died due to shock and haemorrhage as a result of stab wounds. The injuries were caused by hard, sharp and penetrating object and death of the deceased was homicidal in nature.

Hence, like the trial Court, we also find above medical evidence in support of the prosecution story.

10. Prosecution examined Laique (PW-6), Kalim Akhtar (PW-8), Mohd. Shahid (PW-9) and Firoz (PW-11). All the above witnesses stated that they

witnessed the incident. Their version is that at about 08:30 pm Laique (PW-6) was standing with Mohd. Iftakhar (since deceased) at the Milk

Booth near the Office of Fire Brigade. Suddenly appellants Farid, Ajju, Bhaiya and Wasim Nasim came there in an auto-rickshaw. They started

assaulting Mohd. Iftakhar by inflicting blows of knife. Mohd. Iftakhar tried to save himself, but he failed to do. All the appellants inflicted

blows by knife on his chest, stomach, hands and legs. He fell down on the ground still the appellants assaulted him. Laique (PW6) and Kalim (PW8)

tried to save him, but they failed to do so. Thereafter, the appellants fled away from the spot in auto-rickshaw.

11. The learned counsel for the appellant-Javed contended that there are major contradictions and omissions in the evidence of Laique (PW-6) and

Firoz (PW-11). Firoz (PW-11) stated that at the time of incident, three appellants were sitting in the autorickshaw and two others inflicted blows by

knife on Iftakhar.

12. We are not inclined to accept the aforesaid contention because Farid came along with other appellants and inflicted blows by knife on the

deceased and other appellants also continuously assaulted Iftakhar. As per testimony of Firoz (PW11), firstly three persons were sitting in the

autorikshaw and two appellants were assaulting the deceased. Thereafter, Firoz (PW11) also disclosed that all the five appellants had assaulted

Iftekhar and the registration number of aforesaid autorikshaw was MP04-D/1957 in which the appellants fled away from the spot. Such type of

contradiction is not sufficient to disbelieve the other evidence on record, which is sufficient to establish the acts of all the appellants during incident.

It is also important to mention here that Firoz (PW11) was not cross-examined by counsel for the appellants, hence his testimony is sufficient to

establish that all the five appellants had assaulted the deceased by knife in his presence.

Thereafter they fled away in the autorikshaw bearing No.MP04D/1957.

13. Learned counsels for the appellants have not indicated any material contradiction in the testimonies of Laique (PW-6), Kalim Akhtar (PW-8),

Mohd. Shahid (PW-9) and Firoz (PW-11). We do not find any material contradiction and omission in the testimony of Laique (PW-6), Kalim Akhtar

(PW-8) and Firoz (PW-11). Their testimonies are duly supported by the prosecution story and established the active involvements of all the appellants

in the crime.

14. After the incident, FIR (Ex.P-25) has been lodged by Kalim (PW-8), in which he named all the appellants. FIR had been lodged on the same

day of the incident at about 09:10 pm at Police Station, Talaiya. In the FIR all the materials facts have been narrated by Kalim (PW-8). It is

also narrated in the FIR that during the incident Kalim (PW8), Laique (PW6) and Kabeer (PW15) all were present on the spot. They witnessed the

incident.

They brought injured Iftekhar by the autorikshaw of Kabeer (PW15) to Hamidia Hospital, where doctor declared him dead. Postmortem report of

the deceased (Ex.P-5) also corroborated the version of eye witnesses. Thus we find that the ocular evidence is duly supported by the

medical evidence also.

15. S.M. Jaidi (PW-14) established that on 14.10.2004, he registered the FIR. Thereafter, he went to the spot. On the same day he arrested the

appellants and recorded their memorandums.

Memorandum of appellant Farid is Ex.P-14, appellant Salim is Ex.P-25, appellant Wasim is Ex.P-16. He has further stated that as per the aforesaid

memorandums, he seized knives separately from appellants Farid vide seizure memo (Ex.P-17), from Wasim vide seizure memo (Ex.P-17) and from Salim @ Ajju vide seizure memo (Ex.P-18) from their possession.

16. He also recorded the memorandum of other appellant Naseem @ Lallu (Ex.P-30) in which he has stated that he threw the knife in the drain. He

recorded memorandum of appellant-Javed. Javed had hidden his autorikshaw nere Gohar Mahal and kept his knife under the seat of aforesaid

autorikshaw which was used for committing the crime. According to his testimony, he recovered the autorikshaw and the knife. He further stated that he also seized the blood stained clothes of the appellants.

17. Thereafter he sent all the articles for chemical examination to FSL Sagar. As per FSL report, presence of blood has been confirmed on the

knives recovered from appellant Fareed, Salim, Wasim, Lallu and Javed. Further it was found that on the clothes of Wasim, Farid and Salim human blood was present.

18. Learned counsel for the appellants contended that all the witnesses are interested witnesses, hence their testimony cannot be relied upon for conviction of the appellants. In our opinion witnesses have no relation with the deceased or the appellants. Testimony of Laique (PW6) is duly corroborated by Firoz (PW11) and Kalim(PW8).

19. Kabir (PW15) auto driver also corroborated the testimonies of aforesaid witnesses. He deposed that he had an autorikshaw bearing registration No.MP04-T-2816. On the date of incident, 2-3 persons took one injured person to the hospital.

They reached the hospital, where doctor declared injured Iftekhar dead. In his cross-examination he admitted his signature on Ex.P29, Ex.P30,

Ex.P31, Ex.P32, even though he turned hostile. Other evidence on record is sufficient to establish the guilt of all the appellants beyond any reasonable doubt.

20. Learned counsel for the appellants contended that the appellants are not known to the witnesses, hence without their identification through test

identification parade the testimony of eye witnesses cannot be used for conviction of the appellant. All the eye witnesses duly identified all the

appellants in the court also. Hence, this contention cannot be accepted. In case of Romesh Kumar and Ors. Vs. State of Punjab [1994 SCC (Cri.) 67]

the Supreme Court has held that :-

“If the witness stating that he knew the assailants. Even otherwise he had been in their company for about 3 hours and witnessed the incident.

There was no question of holding any test identification parade.”

Learned counsel for the appellants has further contended that appellant-Javed has no nick name or known as Bhaiya. All the eye witnesses did not

identify him as Javed Ali. They stated about one “Bhaiya”, who is another person. Hence no case is made out againstÂ appellant-Javed Ali.

Similar arguments have also been raised byÂ Smt. P.L. Shrivastava, learned counsel for appellants-Salim, Farid and Wasim.

21. Learned counsel for the State has opposed the above contention and submitted that all the witnesses and the appellantsÂ knewÂ to each other

very well. In the accused statement of appellants, they have stated that the eye witnesses have enmity with them which impliedly establish the fact

that before the incident they knew each other by name and by face. We are also not inclined to accept the aforesaid arguments of defence counsel.

22. Appellant-Nasim had pleaded that he was not present on the spot. Due to neuro disease he was under treatment of Dr. Chachru. We find that the

learned trial Court on proper reasoning andÂ grounds denied to accept the aforesaid version of said appellant.

23. Learned counsel for the appellants has contended that the testimony of Laique (PW6) and Kaleem (PW8)Â are not conclusive in nature. They

have changed their version in their crossexamination. Hence, conviction cannot be based on their testimony.

It is on record that chief-examination of Laique was recorded in July, 2005. Cross-examination was adjourned on the request of defence counsel till

13.7.2006.Â SimilarlyÂ the chief-examination of Kaleem (PW8) was recorded on 4.1.2006. Thereafter it was adjourned for cross-examinationÂ till

February, 2006. Chief examination of Mohd. Saeed (PW9) was recorded on 4.1.2006. It was adjourned on the request of defence counsel for

crossexamination up to March, 2006. Chief-examination of Firoz (PW11) was recorded on 5.1.2006. It wasÂ adjourned for crossexamination up to

3.3.2006.Â Trial Court discussed the aforesaid facts in Para 22 and 23 of the

impugned judgment. We are in the agreement with the findings of the trial Court. We find that the defence counsel or the appellants got an opportunity to win over the aforesaid witness by hooks and crooks. They have succeeded to the some extent. During the cross-examination Laique and Kabeer admitted some suggestion of counsel for the appellants in favour of the appellants. But still their testimonies corroborate the prosecution case.

24. We are also in agreement with the findings of the trial Court. Hence, in our opinion, the appellants put forth their defence as an afterthought. No suggestion has been given by them to the eye witnesses with regard to the identification of their nick names.

25. After re-appreciating the entire prosecution and defence evidence, we come to the conclusion that the appellants have rightly been convicted by the trial Court. In view of the aforesaid discussion, in our considered opinion the appellants committed murder of the deceased. The deceased sustained multiple lacerated wounds, stab wounds and fatal injuries. Hence, these appeals have no merit. Accordingly, both the appeals are hereby dismissed.

26. Appellants are on bail, their bail bonds are cancelled and they are directed to surrender before the concerned trial Court within 15 days to undergo the remaining sentence, failing which the trial Court shall take appropriate action against the appellants for suffering the remaining sentence.

27. Copy of this judgment be sent to the trial Court for information and compliance alongwith the record immediately.