
(2017) 07 MP CK 0028

In the Madhya Pradesh High Court

Case No : 17303 of 2016 & 1768 of 1996

Trustees of H.C. Dhanda Trust

APPELLANT

Vs

State of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 31-07-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#),
[Section 304](#), [Section 34](#), [Section 342](#) - Punishment for murder - Punishment for culpable homicide not amounting to

Citation : (2017) 07 MP CK 0028

Hon'ble Judges : Anjuli Palo

Bench : Single Bench

Advocate : Prakash Gupta, Ramesh Kushwaha

Judgement

1. This appeal has been filed by the accused persons, being aggrieved by the judgment dated 4.10.1996, passed by the Sessions Judge Sehore, in S.T. No.222/1995, whereby the appellants have been convicted for the offences punishable under Sections 304 part-II and 342 of the IPC and sentenced to R.I. for ten years with fine of Rs.2,000/- and R.I. for six months with fine of Rs.500/- respectively with default sentence.
2. The prosecution case in short is that, on 21.9.1995 at about 1:10 a.m., in the night Umrao Singh was called by Sahodra Bai. When Umrao Singh went inside her house, he was caught by the appellants and beaten by kicks & fists and sticks. Umrao Singh (since deceased) sustained fatal injuries over his head and other parts of his body. Umrao Singh was brought to the police station and after sometime he died. On the intimation of Shyam Singh, merg

was registered by the Police Ashta, District Sehore. On the dehatinalishi lodged by Umrao Singh, police registered a case against the appellants. After due inquest, offences under Sections 302, 342 / 34 of the IPC and section 3(2) (v) of the SC/ST (Prevention of Atrocities) Act has been registered. Charge sheet was filed before the competent Court against the appellants. Case was committed to the Court of Sessions Judge, Sehore.

3. Charges under Sections 302, 342 and 120(B) of the IPC have been framed by the trial Court. The appellants abjured their guilt. They pleaded that they were innocent and falsely implicated in this case. No witness has been examined by the defence.

4. After considering overall prosecution evidence, learned trial Court convicted the appellants under Sections 304 part-II, 342 of the IPC and sentenced for 10 years RI with fine of Rs.2,000/- and six months RI with fine of Rs.500/- respectively.

5. Heard the learned counsel for the parties and perused the record.

6. As per statement of sub-inspector Shyam Singh (PW-16), in the intervening night of 20 and 21.9.1995 at about 1:10 a.m., on receiving telephonic message at police station Astha, he went to the spot. He lodged Dehatinalishi ExP/30 on the report of Sahodra Bai. Ex.P/31 on the report of the deceased, Sahodra Bai reported that the deceased entered into her house. Therefore, Umrao was tied up at their otlay (Chabutra). On the other hand, the deceased Umrao himself reported Dehatinalishi Ex.P/31 at 1:00 a.m. in the midnight, Sahodra Bai called him inside her home. Thereafter he was caught hold and beaten by the appellants Shiv Narayan, Kanhaiyalal, Ramchander, Asharam and Radheshyam.

7. Learned counsel for the appellants contended that Dehatinalishi has not been lodged by the deceased. This Court is not in agreement with above contention, because so many witnesses saw that the police brought the deceased from the premises of the appellants in injured condition. Gokul Bai

(PW-1) wife of the deceased and Dhapu Bai (PW-5) sister of the deceased heard his cries before his death, from the appellants' house. Learned counsel for the appellants submits that Gokul Bai (PW-1), Phool Singh (PW-2) and Prahlad (PW-3) are relatives and interested witnesses, hence on the basis of their evidence, the appellants cannot be convicted. But in cases of "Waman and others Vs. State of Maharashtra, 2011 Cri.L.J. 4827," "Yogesh Singh Vs. Mahabeer Singh, 2017 Cri.L.J. 291 (SC) and "Dalbeer Kour Vs. State of Punjab, 1976 Cri.L.J. 418" it was held by the Supreme Court that:-

"interested witnesses and relative witnesses are natural witnesses, they are not interested witnesses. Their testimony can be relied upon."

Thus the testimony of the related witnesses cannot be ignored.

8. Learned counsel for the appellants also contended that the statements of the witnesses are contradictory and so many omission were present in their testimony. This Court has not found any material omission and contradiction between them. As per principle laid down by this Court in the case of "Hari Narayan Vs. State of M.P., 2017 Cri.L.J. (NOC) 126 (MP)" and "Yogesh Singh Vs. Mahabeer Singh, 2017 Cri.L.J. 291 (SC) it was held that:-

"Minor discrepancies in statements occurring due to illiteracy of witness and long gap between recording of testimony and offences - Not a ground to discard evidence".

In the light of above principle, this Court does not find any contradiction which adversely effected the prosecution case.

9. ASI Shyam Singh (PW-16) denied the suggestion of learned counsel for the appellant that dehatinalishi report has not been lodged by deceased Umrao Singh. No suggestion has been given to him that at the time of lodging of report, the deceased Umrao Singh was not able to narrate the statement. Thus, it is established that Dehatinalishi (Ex.P/31) was lodged by the deceased himself. It may be considered as "dying declaration" under Section 32 of the Evidence Act. Hence, the same is reliable.

10. As per the statements of Gokul Bai (PW-1) wife of the deceased and another eyewitness Hari Narayan (PW-12), previously the deceased was working at the house of appellant Shiv Narayan. His love relations developed with Madhu, who is the daughter of appellant Shiv Narayan. Therefore, such incident occurred. Hari Narayan (PW-12) deposed that the deceased was arrested earlier on the report of appellant Shiv Narayan. Gokul Bai (PW-1) and Hari Narayna (PW-12) have also stated that at the time of incident, Madhu was staying at her parental house. Naturally, the appellants were annoyed with the deceased. Hence, motive of the accused persons has been proved.

11. It seems doubtful that the deceased trespassed into the house of Sahodra Bai to commit any offence against her. The version of Gokul Bai (PW-1) and Dhapu Bai (PW-15) are found more reliable that at midnight, Omprakash came to their house and called the deceased. Then, deceased Umrao Singh went to house of the accused along with Omprakash. After sometime, Gokul Bai (PW-1) and Dhapubai (PW-5) went towards the spot and heard the cries of deceased, who said "eq>s cpkvkss". Their evidence is quite reliable, which is not rebutted in their cross-examination. Hence, learned trial Court has properly found that the incident took place at the premises of the accused. Ranjeet (PW-4) has also corroborated the prosecution story. He saw the deceased at the spot tied with rope and at that time he was injured. Dilip (PW-7) also saw that police took the deceased from the spot (premises of the accused persons) in injured state.

12. Dhapubai (PW-5) informed the incident to Dev Singh and Meharban Singh. On her request, they went to call her brothers. Phool Singh (PW-2), Prahlad (PW-3) and Meharban Singh (PW-6) have also corroborated the testimony of Dhapubai. Due to fear of the accused persons, Phool Singh (PW-2) and Prahlad (PW-3) directly went to the police station. They saw the deceased at the police station in critical condition.

13. Hari Narayan (PW-12) and Santosh (PW-15) are neighbours of the appellants. This fact has not been challenged by the appellants. Hari

Narayan (PW-12) and Santosh (PW-15) deposed that there was sufficient light in front of their house and they saw that the appellants Shiv Narayan, Kanhaiyalal and Ramchandra were assaulting the deceased by wooden sticks. Thereafter, the appellants tied the deceased with rope. They pushed and dragged him. Even then their objection, the appellants inflicted blows to the deceased. The deceased wanted to drink water but the appellants refused it. Choukidar, Asharam came there and he also saw the incident upto arrival of the police on the spot. The appellants were beating the deceased. Police rescued the deceased and brought him to the police station. Thereafter, Umrao Singh died.

14. Presence of Hari Narayan (PW-12) and Santosh (PW-15) near the spot is unrebutted. Their version has been quite natural and also unrebutted. Accused persons are known to them. It is not difficult to them to recognize the appellants when they assaulted the deceased. Their testimony is wholly reliable, which establish that the appellants knowingly caused fatal injuries to the deceased after detaining him. There is no conflict in ocular evidence or medical evidence. The testimony of eyewitnesses is consistence on all material of particulars is reliable.

15. Therefore, it is found that the finding of learned trial Court is based on reliable evidence available on record. The appellants have been convicted for the offences punishable under Sections 342 and 304 part-II of the IPC .

16. Dr. M.H. Ansari (PW-8) conducted the postmortem of the body of the deceased Umrao Singh and he found the following injuries:-

- (i) Lacerated wounds 3"x1/2"x 1/2" on right side of parietal temporal region with heavy bleeding,
- (ii) both eyes were turned black,
- (iii) one abrasion 2"x1/2" at right side of lip,
- (iv) one abrasion 2 ?"x1" on left side of cheek,
- (v) a contusion 5"x3" with bluish colour over right sholder

(vi) a lacerated wound 1"x1/2"x1/4" on left thumb and index finger,
(vii) nail of left middle finger was loose in condition with bleeding,
(viii) one contusion 4"x3" over right thigh in blackish blue colour,
(ix) a contusion 10"x5" over right thigh and hip,
(x) a contusion 8"x4" over left thigh backside,
(xi) a contusion 2"x1" over right thigh in front part of right thigh,
(xii) abrasion over 1"x1/2" over left knee,
(xiii) contusion over 3"x1" at left lumber region,
(xiv) so many contusions over back of the deceased in different sizes,
After the internal examination, doctor found haematoma over right side of head about 3"x3" along with fracture at right parietal bone. Haematoma about 3"x2" at middle parietal region. Subdural haemorrhage over right parietal brain, right occipital fossa was filled up with blood.

All the injuries were caused within 24 hours from the postmortem and homicidal in nature. Cause of death is due to comma and injuries over vital organs.

17. In the opinion of this Court, number of injuries and nature of injuries also indicate that the deceased Umrao Singh was beaten by more than one person and fatal injuries were caused by the appellants as stated by Hari Narayan (PW-12) and Santosh (PW-15).

18. Dr. Ansari (PW-8) examined wooden sticks, which were seized from the possession of appellants Shiv Narayan and Kanhaiyalal at articles A,B,C,D and E. As per opinion of Dr. Ansari, the injuries of the deceased Umrao Singh can be caused by wooden sticks.

19. On the above discussion, the submissions of learned counsel for the appellant is not found acceptable. There is sufficient evidence against the appellants, which establish that due to love relations with Madhu daughter of appellant Shiv Narayan, they wrongly detained Umrao Singh and knowingly the appellants and other co-accused persons caused the fatal injuries to the deceased, which were sufficient to cause his death. There is absence of kill,

accused persons had not used any sharp cutting weapon against Umrao Singh. Act of the appellants is culpable homicidal not of the amounting to murder, which fall under the provision of Section 304-II of the IPC.

20. "Roop Narayan Mishra Vs. State of U.P., 2017 Cri.L.J.

1487," it was held that:

"Direct evidence- Testimony of the witnesses is clear, cogent and trustworthy as to time, place, manner of committing crime and identification of accused. Prosecution is able to prove its case beyond all reasonable doubts against accused. Accused held guilty of offence."

21. In view of the aforesaid discussion, I am of the view that the learned trial Court has rightly convicted and sentenced the appellants for the offences punishable under Sections 304 part-II and 342 of the IPC . Therefore, the appeal is dismissed.

22. At present, the appellants are on bail. They are directed to surrender before the trial Court immediately to undergo the remaining sentence. Their entire custody period during trial and appeal shall be adjusted with the main sentence.

23. Copy of the judgment be sent to the trial Court along with the record for information and an immediate compliance.