

(2018) 02 MP CK 0233
In the Madhya Pradesh High Court
Case No : 431 of 2004

Umaria @ Umrao and another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-02-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 34](#), [Section 147](#), [Section 324](#), [Section 307](#), [Section 323](#), [Section 148](#)

Citation : (2018) 02 MP CK 0233

Hon'ble Judges : S.K.Gangele, Anjuli Palo

Bench : Division Bench

Advocate : Y.K. Gupta, A.N. Gupta

Judgement

1. Criminal Appeal No.431/2004 has been filed by the accused persons namely Umaria @ Umrao and Kamlesh, whereas Criminal Appeal

Nos.1369/2004 has been filed by the State to set aside the judgment of acquittal from the charges punishable under Sections 307, 147, 148 and

149 of the IPC. Both appeals have been filed against the same judgment dated 25.02.2004 passed in Sessions Trial No.15/01 whereby the

appellant no.1-Umaria @ Umrao was convicted under Section 324 of the IPC and sentenced to undergo R.I. for one year with fine of Rs.1000/-

and appellant no.2-Kamlesh was convicted under Section 324/34 of the IPC and sentenced to pay fine of Rs.2000/-. We propose to deal with

both the appeals analogously and dispose of by this common order.

2. The prosecution story in brief is that on 10.09.2000 at about 4.30 p.m. complainant Mannu Ahirwar lodged an FIR against the appellants

namely Umariya @ Umrao and Kamlesh and other coaccused persons namely

Tularam, Balkishan and Tulsiram at Police Station Hatta that they came to his house. They were demanding money as subscription from him. On refusal by him, on the next date at about 9:00 a.m., they entered in his premises armed with stick, farsa, ballam and axe and beaten Mannu by farsa, lathi and ballam. Co-accused Tulsiram inflicted blow by stone on him. Dayarani, wife of Mannu, and Pappu, son of Mannu, came there to rescue him. The accused persons also assaulted them. Mannu sustained head injury. Police registered offence punishable under Sections 147, 148, 307/149 and 324 of the IPC against the accused persons. After due investigation, charge-sheet was filed before the concerned Court.

3. After committal of the case, charges under Sections 147, 148, 307, 307/149, 323 and 323/149 of the Indian Penal Code have been framed by the learned Trial Court against the appellants. Appellants abjured guilt and stated that they are innocent and falsely implicated by the complainant party.

4. After relying the testimony of Mannu (PW-3), his wife Dayarani (PW-6) and son Pappu (PW-8), learned trial Court found that their testimony is supported by other witnesses Phoolrani (PW-4), Dr. R.K. Bharadwaj (PW-15) and Dr. O.P. Dubey (PW-13). Hence, appellant no.1-Umaria

@ Umrao is convicted under Section 324 of the IPC and appellant no.2- Kamlesh is convicted under Section 324/34 of the IPC and sentenced as mentioned above. Other co-accused were acquitted from the charges levelled against them.

5. Findings of the learned trial Court are challenged by the appellants on the grounds that some prosecution witnesses have not been named in the

FIR. The testimony of other interested witnesses has wrongly been appreciated by the trial Court against the appellants. It was alleged that there

are lot of contradictions, omissions and improvements in their testimony. Medical report is also contradictory. Hence, findings of learned trial Court

are erroneous and liable to be set aside. Appellants prayed that they are entitled to be acquitted from the charges levelled against them.

6. On the contrary, the State filed an appeal against the acquitted persons including the appellants on the grounds 4 that they were wrongly

acquitted from the charges punishable under Sections 307, 147, 148 and 149 of the IPC. It is alleged that at the time of the incident, they were

members of unlawful assembly and armed with deadly weapons. There is sufficient evidence on record to convict them for the aforesaid offences.

Accordingly, the impugned judgment be set aside and respondents-accused persons to be convicted for the offence punishable under Sections

307, 147, 148 and 149 of the IPC.

7. Heard learned counsel for the parties at length and perused the record.

8. Firstly, we consider the medical evidence on record. Dr. R.K. Bharadwaj (PW-15) medically examined the complainant Mannu on the date of

incident. He found Mannu was in critical condition. His pulse was 60 per minute and B.P. was 100/70. He was semi-conscious condition and not

responding anything. He was vomiting of blood. Blood also came out from his neck and mouth. He noticed following injuries on him:-

a. An incised wound about 2 1/2 cm x .5 cm at back side of skull on the left parietal region.

b. A contusion on back part of left shoulder about 2" x 3/4"

9. Dr. Bhardwaj opined that head injury was caused by hard and sharp edged object and other injuries were caused by hard and blunt object.

10. At the same time, he examined Dayarani (PW-6) wife of Mannu. He found following injuries on her:- a. A contusion on left knee about 2" x 3"

caused by hard and blunt object.

11. At the same time, he also examined Pappu (PW-8) son of Mannu. He found following injuries on him:-

a. A contusion 2" x 3/4" on left side of abdomen.

b. A contusion 1" x 3/4" on middle part of right hand.

c. An abrasion on neck about 1.5 cm x .25 cm. All injuries were caused by hard and blunt object. As per the evidence of Dr. Bhardwaj (PW-15)

all injuries were caused by hard and blunt object within 12 hours from medical examinations.

12. We find Dr. Bhardwaj (PW-15) duly proved his reports Ex.P/27, P/18, P/17, P/25 and P/26. In cross-examination, he clearly denied that the

injuries of Mannu were caused due to fall on ground.

13. After X-ray examination on 11.09.2000, Dr. O.P. Dubey (PW-13) opined in his report (Ex.P/22) that Mannu had fracture on right parietal

bone.

14. Dr. Bhardwaj (PW-15) also established that on the date of incident, he noticed eyewitnesses Pappu and Dayarani in injured condition. In

criminal trial the testimony of injured witnesses have great importance. Their injuries itself established that they were present at the time of incident.

15. In case of Chandrasekar Vs State of Tamilnadu [(2017) SCC Online 620], the Supreme Court has held that ""Criminal jurisprudence attaches

great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise.

[See also Brahmswaroop vs. State of U.P. (2011) SCC 288]

16. Hence, in the light of above principle and opinion of Dr. Bhardwaj (PW-15), we re-appreciate the testimony of Mannu (PW- 3), Dayarani

(PW-6) and Pappu (PW-8). All the witnesses clearly deposed that the appellants Umaria, Kamlesh, Balkishan, Tularam and Tulsiram came to

their house to take subscription (chanda) when Mannu refused to pay it, on the next date the accused persons assaulted Mannu by axe, farsa, stick

and stone.

17. Mannu (PW-3) deposed that he sustained head injury. Appellant Umaria inflicted blow of axe on his head, Kamlesh inflicted handle of farsa on

his bakhora, Balkishan inflicted lathi on his back and Tulsiram pelted stones on him, at that time he fell down. Tulsiram again pelted stone on his

bakhora. Meanwhile, his wife Dayarani and son Pappu came there to rescue him. Both were assaulted by the accused persons.

18. The testimony of Mannu (PW-3) was duly supported by Dayarani (PW-6) and Pappu (PW-8). Phoolrani (PW-4) sister-in-law of Mannu also

corroborated their testimony. She was residing beside their house. She saw at the time of incident Mannu fell down on the ground, she came there

(on the spot). She denied that she did not saw the entire incident. On her cross-examination, she admitted that she took pallu on her head, but in

such condition, it cannot be said that she is not able to see the incident.

19. Similarly, an independent eyewitness Sakku (PW-5) corroborated the testimony of Mannu, Dayarani, Phoolrani and Pappu. In cross-

examination, he clearly denied that he is relative of Mannu and said that he is neighbour of the victim. So that he is independent witness. He has no

interest to falsely implicate the appellants in this case. We find that the testimony of Dayarani (PW- 6) and Pappu (PW-8) is unrebutted in their

cross-examination and both were consistently supported the prosecution story. The ocular evidence produced by the prosecution duly

supported/corroborated by medical evidence; hence, inspire the confidence to believe their testimony in support of prosecution story.

20. Inspector V.P. Upadhyay (PW-10) lodged dehati nalshi as per the verbal report of complainant Mannu. We find that the FIR was lodged promptly against all the accused persons.

21. G.P. Dwivedi (PW-14) prepared spot map (Ex.P/19) which was not challenged by the counsel for the accused persons, which established

that incident happened took place in front of the house of Mannu. This circumstance established that the appellants voluntarily came to the house of

Mannu for causing injuries to him. Complainant Mannu and his family members have no enmity against them. Therefore, prompt FIR against them

and evidence of injured eyewitnesses ruled out the possibility that the appellants were falsely implicated in this case by the complainant party with

any ulterior motives. Their testimony are duly corroborated by the medical evidence. Because they were related witnesses their testimony cannot

be discarded.

22. In case of Dhari Vs. State of UP [AIR 2013 SC 308] wherein it has been held that :-

Testimony of related witnesses to be closely scrutinized before passing conviction. Conviction can be relied upon if the testimony of the related

witnesses is found trustworthy.

See also Jodhan Vs. State of M.P. [(2015) 11 SCC 52], Baleshwar Mahto and Ors. Vs. State of Bihar [(2017) (2) MPLJ (Cri) SC 350-351],

Yogesh Singh Vs. Mahabeer Singh & Ors. [2016 SCC Online 1163], Kamta Yadav & Ors. Vs. State of Bihar [2016 (16) SCC 164],

Muttaicose @ Subramani Vs. State of Tamil Nadu [2017 (8) SCC 598]

23. In case of Arjun vs. State of C.G. [2017 (2) MPLJ (Cri.) 305], the Hon''ble Supreme Court has held as under :-

Evidence of related witness is of evidentiary value. Court has to scrutinize evidence with case as a rule of prudence and not as a rule of law. Fact

of witness being related to victim or deceased does not by itself discredit evidence.

(See also Chandrasekar Vs. State of Tamilnadu [(2017) SCC Online 620])

24. Hence, the testimony of related witnesses cannot be ignored. There is no rule to disbelieve the evidence of interested witnesses. In this case,

their evidence is corroborated by the other evidence also. Hence, we relied on it.

25. Learned Government Advocate for the State contended that appellants/respondents are liable to be convicted under Sections 147, 148 and

307/149 of the IPC. At the time of the incident, they were members of unlawful assembly and armed with deadly weapons. Learned trial Court

considered it in paragraphs 35 to 43 of the impugned judgment. Firstly, we considered the nature of jurisdiction of this Court exercises when it

reverses a judgment of acquittal to that of conviction in exercises of appellate jurisdiction.

26. In case of Chandrappa vs. State of Karnataka (2007) 4 SCC 415, the Supreme Court culled out the general principles regarding powers of

the appellate Court while dealing with an appeal against the judgment of acquittal. The principles are enumerated below:-

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the

evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted

conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such

phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to

curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the

presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be

innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his

innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal

recorded by the trial court.

[See also Pawan Kumar Vs. State of Himachal Pradesh (2017) 7 SCC 780]

27. Learned trial Court thoroughly described the evidence against the respondents Tularam, Balkishan and Tulsiram held that offence has not been proved against them.

28. Mannu (PW-3) sustained only two injuries. Other eyewitnesses also sustained 1 to 3 simple injuries.

29. Respondents Tulsiram and Balkishan are close relatives of Umaria and Kamlesh. There is a tendency of the complainant party to involve all the

family members of the main culprit. In such circumstances, we do not incline to interfere in the findings of the learned trial Court in favour of the

respondents Tularam, Balkishan and Tulsiram. Therefore, in our opinion, the appeal filed by the State against the respondents Tularam, Balkishan

and Tulsiram is liable to be dismissed.

30. With regard to the appeal filed by the State against Umaria and Kamlesh, we are not with agreement the findings of the learned trial Court that

there is no evidence on record to prove that in the incident Munnu sustained grievous injuries on his head. Testimony of Dr. O.P. Dubey (PW-13)

clearly proved that Mannu sustained fracture on right parietal bone. As per Dr. Bhardwaj (PW- 15), this head injury was caused by the appellant

Umaria through an axe.

31. Learned trial Court convicted the appellant Umaria under Section 324 of the IPC. In our opinion, there is an error which has been committed

by learned trial Court in convicting the appellants namely Umaria and Kamlesh for committing offence under Sections 324 or 324/34 of the IPC.

32. Mannu (PW-3), in his chief examination, deposed that after sustaining the injuries he admitted in the Hata hospital about 18 days. Then, he

referred to the District Hospital, Damoh. Again he was admitted for 21 days at Hata Hospital. This testimony is found unchallenged in his cross-

examination in paragraph 6. In paragraph 7, he strongly opposed that the appellant Umaria did not inflict blow of axe on him. His testimony is

supported by injured eyewitnesses Dayabai (PW-6), Pappu (PW-8), Phoolrani (PW-4) and Sakku (PW-5).

33. After considering the entire direct and medical evidence, in our considered opinion that the case under Section 326 of the IPC is clearly made

out against the appellant no.1 Umaria @ Umrao and under Section 326/34 of the IPC is clearly made out against the appellant no.2 Kamlesh.

34. We do not find any possibility that appellant no.1 Umaria caused head injury by an axe on Mannu with an intention to kill him. There is a single

head injury about 2 1/2 cm x .5 cm with fracture. It is not dangerous to his life and was not sufficient to cause his death immediately. Therefore, the

offence under Sections 307 or 307/34 of the IPC has not been made out against the respondents. Hence, appeal filed by the State against

respondents Umaria and Kamlesh are liable to be partly allowed.

35. Thus, the conviction of appellant no.1-Umaria @ Umrao under Section 324 of the IPC is converted to 326 of the IPC and the conviction of

appellant no.2-Kamlesh under Section 324/34 of the IPC is converted to 326/34 of the IPC. Hence, their conviction under Sections 324 and

324/34 of the IPC and sentenced are hereby set aside. Appellant no.1-Umaria @ Umrao is convicted under Section 326 of the IPC and appellant

no.2-Kamlesh is convicted under Section 326/34 of the IPC and sentenced to undergo R.I. for five years with fine of Rs.2000/- each, in default of

payment of fine amount, the appellants shall further undergo six months R.I. After deposition of fine amount Rs.3000/- be disbursed in favour of

injured Mannu by the Trial Court.

36. Accordingly, Criminal Appeal No.431/2004 filed by the appellants Umaria @ Umrao and Kamlesh is hereby dismissed.

37. Criminal Appeal No.1369/2004 filed by the State is partly allowed in respect of respondents Umaria and Kamlesh.

38. Appellant no.1-Umaria is on bail. His bail bonds stand canceled. Appellant no.1-Umaria and appellant no.2-Kamlesh are directed to

surrender immediately before the concerned trial Court to undergo the jail sentence as awarded herein above, failing which the trial Court shall take

appropriate action under intimation to the registry.

39. Copy of this order be sent to the Court below for information and compliance alongwith its record.