

Criminal Appeal No.236/2006**HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
(DB : SHEEL NAGU, J. & VIVEK AGARWAL, J.)****Criminal Appeal No.236/2006**

Lallu alias Dashrath Baghel

Vs.

State of MP.

Shri Lokendra Shrivastava, learned counsel for the appellant.

Shri G.S. Chauhan, learned Public Prosecutor for the
respondent-State.

Date of hearing : 24.05.2018.

JUDGMENT

(Delivered on 28th May, 2018)

Per Vivek Agarwal, J.

This criminal appeal has been filed under Section 374 (2) of the Criminal Procedure Code being aggrieved by judgment dated 05.01.2016 passed by the Additional Sessions Judge, Seondha, District Datia in Sessions Case No.39/2004 (State of M.P. through Police Station Thareth, District Datia v. Lallu alias Dashrath & one Another), whereby the appellant has been convicted and sentenced under the provisions of Section 302 of the Indian Penal Code (for short 'IPC') with life imprisonment and fine of Rs.200/- and other co-accused has been acquitted. The present appellant has also been acquitted of the charge under Section 307 of IPC.

2. Prosecution story in short is that on 15.10.2003 at about 9.00 AM near "Somla Ki Puliya" close to the road from Village Sikri to Rarua under Police Sation Thareth with common object caused death of Ratan Singh Baghel with .12 bore gun and .315 bore katta so also caused deadly injuries to his wife

Sukhdevi.

3. Charges were framed against the appellant and co-accused. Appellant has been charged under Sections 302 and 307 of IPC, whereas co-accused Balveer and Raju Singh were charged under the provisions of Section 302, 307/34 of IPC and Section 25 (1-B) (A) of the Arms Act. It has come on record that during the trial co-accused Raju Singh absconded from Sub-Jail, Seondha on 15.05.2005 and perpetual warrant has been issued against him.

4. Prosecution has examined as many as 13 witnesses. This appellant has not examined any of the witnesses in defence though co-accused Balveer had examined three defence witnesses DW1 Umesh Kumar Sahu, DW2 Jamuna and DW3 Ballu.

5. Appellant had abjured his guilt and had prayed for fair trial.

6. PW4 Sukhdevi had got recorded *dehati nalishi* (Ex.P/9) on 15.10.2003 at about 11.30 AM at the spot of incidence narrating that on 14.10.2003 she had gone to Village Sikri to attend 13th Day Ceremony function at the house of Bhagoni Baghel (PW6) alongwith her husband Ratan Singh Baghel on his motor-cycle. On 15.10.2003 at about 8.30 AM, both husband and wife and another person, namely, Laxmi wife of Baijnath Baghel (PW10) were travelling on said Rajdoot motor-cycle from Village Sikri to Datia. When motor-cycle reached "*Somla Ki Puliya*" at about 9.00 AM, Lallu son of Ramdas Baghel fired at her husband with .12 '*addhi*', which had hit him in his left hand. Because of such firing, motor-cycle had fallen on the ground and when her husband ran away for his life,

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then Lallu and two of his accomplices, one of whom was having a katta, followed her husband. When she and Laxmi Bai tried to save her husband, then Laxmi Bai was pushed and Lallu with an intention to kill fired at her causing injury in her left thigh. Thereafter, all three accused persons took over her husband and threw him on surface. When Lallu was about to fire by keeping *addhi* on his chest, then she asked Lallu to leave her husband, then she was removed from top of her husband and Lallu and one of his accomplices fired 2-3 shots in chest of her husband, as a result, her husband died at the spot. Thereafter, Lallu and two of his accomplices ran away towards Village Bagheri. She said that she will identify accomplices if they are confronted. It is also mentioned that because of old enmity, her husband has been killed. She had narrated the incident to PW3 Kamlesh and PW7 Prakash Chandra, who had visited the spot.

7. On the basis of the aforesaid *dehati nalishi* (Ex.P/9) and FIR (Ex.P/16) was recorded. Vide Ex.P/14 requisition for medical of Sukhdevi was sent and vide Ex.P/13 requisition for post-mortem of Ratan Singh was forwarded. Copy of medical report of Sukhdevi is Ex.P/1, in which it has come that there was a small penetrating wound at centre of abrasion less than 1/2 cm diameter. Nature of wound and weapon was not clear as the margins were disturbed due to abrasion. Both the injuries were of less than 24 hours duration and she was advised X-ray as per the MLC report dated 15.10.2003 prepared at 5.00 PM.

8. Similarly, in the post-mortem report (Ex.P/13), the following injuries were found on the body of deceased Ratan Singh Baghel :-

Criminal Appeal No.236/2006**(1) Firearm wound :-**

(a) Wound of entry : 1-1/2 cm in diameter situated on the 5th right rib at the level of anterior axillary line. Fracture of the 5th right rib.

(b) Wound of exit : 2-1/2 cm in diameter situated on the left side of back at the level of 8th rib on the posterior axillary line.

(2) Firearm wound :-

(a) Wound of entry : 1 cm in diameter situated on the lateral aspect of the middle of the left arm; blackening and gun power present around wound.

(b) Wound of exit : 2 cm in diameter irregular in shape situated on the middle of the medial aspect of the left arm.

All these injuries are ante-mortem in nature.

9. Dr. N.R. Jatav, the author of such post-mortem, opined that mode of death is syncope (shock) due to rupture of large pulmonary vessel and ascending aorta. Dr. N.R. Jatav has been examined as PW11. Statement of Sukhdevi taken under Section 161, Cr.P.C. is Ex.D/2 and that of Kamlesh son of Bhagoni is Ex.D/1. Similarly, statement of Bhagoni (PW6) is Ex.D/4 and seizure memo of country made pistol of .315 bore from co-accused Balveer is Ex.P/3. Seizure memo of Rajdoot motor-cycle is Ex.P/5 and statement of Laxmi Bai is Ex.P/12. Information of incidental death is Ex.P/17 and that of Roznamcha Sanha are Exs. P/19-20, which reveals that information was received at Police Station at 10.10 AM on 15.10.2003 from Chowkidar Bhagwan Das.

10. Learned counsel for the appellant submits that there are several loopholes in the prosecution story. Appellant has been falsely implicated. The informer Bhagwan Das, Chowkidar as per Roznamcha Sanha (Exs. P/19-20) has not been examined by the prosecution. He could have been a very important

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witness. It is further submitted that the appellant has been falsely implicated. Nature of injury caused to the deceased reveals that there was an entry wound of 1.5 cm on 5th right rib on the chest, as a result 5th rib was fractured. There was an exit wound of 2.5 cm diameter on the left hand side of the back at the level of 8th rib. Another entry wound was of 1.00 cm on the left arm on the outer side. This wound was having blackening and presence of gun powder near it. There was an exit wound of 2.00 cm diameter with irregular boundaries situated on the inner side of the left arm and all such injuries were ante-mortem.

11. PW11 Dr. N.R. Jatav has mentioned that right lung was ruptured alongwith pulmonary blood vessels so also left lung and pulmonary blood vessels and aorta were ruptured.

12. It is submitted that injury no.2, i.e., the wound, which was found on the left arm, was not fatal to convict the appellant under Section 302 of IPC. Wound no.1 having entry close to 5th rib on the chest was fatal and could not have been caused by .12 bore gun attributed to the present appellant.

13. It is submitted that PW10 Laxmi Bai has turned hostile and, therefore, has not corroborated the prosecution story. As she has not corroborated the prosecution story, therefore, in absence of any other eye witness and looking to the fact that PW4 Sukhdevi is not a reliable witness inasmuch as in her MLC (Ex.P/1), no gun shot injury was found to have been caused to her, she appears to be a planted witness and not an eye-witness. He further submits that the injury on the chest could have been caused with .315 bore gun and not with .12 bore gun as the size of the exit wound was bigger than the size of

the entry wound. In view of such submissions, he prays for setting aside of the judgment of conviction and for acquittal of the appellant.

14. Learned Public Prosecutor, on the other hand, supports the judgment and submits that PW10 Laxmi Bai has admitted that while returning from the Village, Sukhdevi was with her. When they reached the place of incidence, i.e., '*Somla ki Puliya*', one person covered with blanket and two persons, who were standing at a distance, fired on Ratan Singh. She further deposed that she was instructed by Sukhdevi to visit Village Sikri to call some person. However, she has turned hostile as to the identity of the accused persons. Thus, she has proved the place of incidence and presence of Sukhdevi at the place of incidence so also the incident of firing on deceased Ratan Singh, who was returning back on motor-cycle alongwith Sukhdevi and PW10 Laxmi Bai. This fact is corroborated by PW6 Bhagoni that Ratan, Sukhdevi and Laxmi Bai had visited his village Sikri to attend 13th Day Ceremony of grandmother of Kamlesh. On 15.10.2003, Ratan, his wife and one lady returned and after one hour, he learnt about murder of Ratan. He had visited the place of incidence, where the motor-cycle alongwith dead body of Ratan was lying and Sukhdevi was crying. Ratan was hit with a bullet on his chest and Sukhdevi had informed him that Lallu had fired at Ratan. This witness is indifferent towards the other co-accused inasmuch as he has specifically mentioned that Sukhdevi had not given the name of any other co-accused. It is further submitted that even in the cross-examination, he has remained consistent about Lallu and deposed that Lallu is resident of Lahra Village and,

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therefore, is known to him. It is submitted that it is a case of blind murder.

15. Learned Public Prosecutor has also drawn attention of this Court to para 26 of the statement of PW4 Sukhdevi, wherein she has denied suggestion that her husband was killed by unknown persons.

16. Similarly, attention has been drawn to the statement of PW13 Hukum Singh Yadav, Head Constable Writer, who admitted in para 4 that FIR was recorded on the basis of *dehati nalishi* (Ex.P/9), but denied the suggestion that *marg* was recorded because the name of the accused person was not known. It is submitted that in *dehati nalishi* (Ex.P/9), the name of Lallu son of Ramdas Baghel has specifically been mentioned and, therefore, there is no iota of doubt about his identity.

17. Learned Public Prosecutor has also drawn attention of this Court to FSL Report (Ex.P/15), wherein opinion has been given that Article A2 is a country made pistol made to fire .12 bore bullets. Its barrel demonstrated some remainants of brown steel gray colour and on chemical examination, nitrate was found in the barrel. It was also found that the gun was working and the bullets fired from it were marked as EC1 to EC3, which are three empty cartridges fired from .12 bore gun. Similarly, Article A1 was .315/8 mm bore country made pistol to fire 8 mm bullets and even nitrate remainants were found in the barrel of this gun.

18. It is also submitted that though co-accused Balveer had examined three witnesses in his defence to show that he was not present at the place of the incident, but no such evidence

has been led by the present appellant.

19. Learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Rampal & Another v. State of Uttar Pradesh as reported in 2007 15 SCC 79** to point out that the Hon'ble Supreme Court has referred to Modi's Medical Jurisprudence and Toxicology, Twenty-third Edition page 723 and while dealing with the topic as to "The Time when a Weapon was Fired", it has been observed that it is never possible to ascertain with any scientific accuracy, the time when a weapon or cartridge was fired. Therefore, he submits that mere presence of nitrate in the barrel is not sufficient to indict him.

20. Similarly, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Ghurey Lal v. State of Uttar Pradesh as reported in (2009) 1 SCC (Cri) 60**. Specific attention has been drawn to para 23 of the judgment to point out that .12 bore gun, as per the evidence of the ballistic expert, cannot be used to fire bullets, but it is only used to fire *chharras* (pellets). Further, the ballistic expert categorically stated that in cartridges of **standard** .12 bore shotguns, bullets from other rifles cannot be used with small and big *chharras* (pellets). Therefore, it is submitted that since the appellant has been charged with wielding .12 bore gun and no *chharras* have been found in the body, the appellant should have been acquitted.

21. Learned counsel for the appellant has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **State of Punjab v. Rajinder Singh as reported in (2009) 15 SCC 612** to support his contention that when eye-

witness account does not support medical evidence and vice versa, then the prosecution story has to be held to be doubtful and benefit of doubt is to be extended to the accused. Placing reliance on such judgments, he prays for acquittal.

22. The Hon'ble Supreme Court in the case of **Thaman Kumar v. State of Union territory of Chandigarh as reported in (2003) 6 SCC 380** has held as under :-

“16. The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eyewitnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third categories no such inference can straight away be drawn. The manner and method of assault, the position of the victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony.”

23. In the light of this judgment, ocular evidence as well as medical evidence is to be appreciated.

24. As far as ocular evidence is concerned, eye-witness is PW4 Sukhdevi. She is the author of *dehati nalishi* (Ex.P/9), in which she has categorically mentioned that one gun shot was fired in the left arm of Ratan Baghel and another round of 2-3 of firearm was in the chest by Lallu and his accomplices. This fact is corroborated from the deposition of PW11 Dr. N.R. Jatav, who had conducted the post-mortem on the body of deceased Ratan Singh. PW10 Laxmi Bai has supported the prosecution case to the extent of presence of PW4 Sukhdevi and firing on Ratan Singh by three unknown persons and this fact has been corroborated by PW6 Bhagoni, who had reached the spot, and PW7 Prakash Chandra. But the fact is that PW7 Prakash Chandra and PW6 Bhagoni are not the eye-witnesses, but had reached at the scene of crime and, therefore, they are hearsay witnesses.

25. No question was put to PW11 Dr. N.R. Jatav by the defence as to whether Article A2 was capable of causing such injury as was found on the body of deceased Ratan Singh or not.

26. Modi's Medical Jurisprudence and Toxicology, Twenty-third Edition under the Chapter "Injuries by Mechanical Violence (Chapter 23)" deals with "Firearm Wounds" on pages 714 and 715 as under :-

"Firearm Wounds

The injuries produced by the projectiles discharged from firearms, may present the characteristics of lacerated wounds, but their appearances vary according to the nature of the projectile, the velocity at which it was

travelling at the moment of impact, the distance of the firearm from the body at the moment of discharge and the angle at which it struck the part of the body and the part of body struck.

The size of the entrance wound due to a bullet gives no direct measurements of the size of the bullet, because the perforation is made with the skin under tension. After the bullet presses through, the skin tends to return to its former size and the margins of the wound contract when the range is short, the perforation or the entry hole is enlarged due to pressure of gases.

Firearm wounds generally produce two wounds or apertures, namely, one of entrance and the other exit of the projectile. When the wound of entrance is present, but not the wound of exit, it means that a bullet is lodged in the body, except in those rare cases where a bullet has been coughed out after entering the respiratory passages or lost in the stool after entering the intestinal tract and also where a bullet by coming in contact with a bone is so deflected as to pass out by the same orifice as it entered. If a bullet gets fragmented inside the body, there may be multiple exit wounds and a single entry wound. It is also possible to have multiple wounds of entrance and exit caused by a single bullet when it passes in and out of two portions of the body. If a bullet is lodged in the body, it must be taken out if death has occurred, and must be forwarded to the forensic science laboratory, in a sealed cardboard pill box containing its description (with an identity mark on the base of the bullet) in the medical officer's handwriting as it forms inherent evidence of the greatest value. While searching for a bullet, it must be borne in mind that it could take a very erratic and unusual course while passing through the body."

27. When this is read in conjunction with Ex.P/15, then the opinion given by the Senior Scientific Officer and Assistant Chemical Examiner of State Forensic Laboratory is that Ex.C1 perfection cap, which is punctured, does not offer sufficient data for conclusive comparison. However, it is mentioned that it was fired with some .12 bore weapon like A2, but in absence of conclusive comparison, it cannot be said that whether it was fired from A2 or not. Ex.EC2 and Ex.EC3 were found to be similar, but different from TC (A2), therefore, they were not fired from Ex.P/2. Ex.EC4 empty cartridge of .315/8 mm bore of KF Brand was found to not have been fired from pistol A1. It is mentioned that Ex.W1 is a plastic bed and Ex.W2 are two pieces of plastic, which can be broken part of Ex.W1. It is further mentioned that Ex.W1 and Ex.W2 are fired bullets of .12 bore like Ex.EC1 to Ex.EC3. When this is compared from the seizure memo Ex.P/5, prepared in regard to goods recovered from the scene of crime, then it is apparent that there were remainants of bullets fired from .12 bore gun. When this documentary evidence is corroborated with ocular evidence, then applying the ratio of law laid down by the Hon'ble Superme Court in the case of **Ghurey Lal (supra)** in para 23, the Hon'ble Supreme Court had reproduced the evidence of the ballistic expert and noted that the ballistic expert categorically stated that in cartridges of **standard** .12 bore shotguns, bullets from other rifles cannot be used with small and big chharras (pellets) and, therefore, the trial Court concluded that both the injuries were not possible by a single firearm.

28. In the present case, the weapon used is a country made

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weapon. It is not a **standard** .12 bore gun of any Company. There is no cross-examination of PM Dr. N.R. Jatav (PW11) on his aspect as to whether injuries found over the body of the deceased could have been caused by .12 bore country made gun (*addhi*). In view of such facts applying the ratio of the law laid down in the case of **Thaman Kumar**, as reproduced above, there is no such material discrepancy so as to discard the ocular evidence vis-a-vis FSL report and report of PM doctor.

29. In view of the aforesaid discussion, the facts of the cases of **Rampal & Another (supra)** and **State of Punjab (supra)** do not apply to the facts and circumstances of the present case because the eye-witnesses have largely supported the medical evidence.

30. Thus, in the opinion of this Court, the appellant is not entitled to any benefit of doubt as the appellant has failed to discharge the burden that such injury could not have been caused by the country made .12 bore gun as was wielded by him. Thus, the appeal fails and is dismissed.

(Sheel Nagu)
Judge
28.05.2018

(Vivek Agarwal)
Judge
28.05.2018

Mehfooz/-