

The High Court of Madhya Pradesh: Bench at Indore

Case Number	CRA No.555/2008
Parties Name	Akram S/o Amanat Khan & Fazal S/o Taki Khan Vs. State of M.P.
Date of Order	29/11/2021
Bench	<u>Division Bench:</u> Justice Sujoy Paul Justice Pranay Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri Nisha Jaiswal, learned counsel for the appellant No.1. Shri Pradeep Kumar Gupta, learned counsel for the appellant No.2. Shri Shrey Raj Saxena, learned Dy. Advocate General for the State.
Law Laid Down	<p>*Chance Witness- Interested witness-Evidentiary value- (i) If presence of witness is satisfactorily established, his statement cannot be discarded by treating him as mere "chance witness". The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. (Judgment of Supreme Court in <i>AIR 1983 SC 680, Rana Pratap and Others vs. State of Haryana</i> relied upon.)</p> <p>(ii) Related witness is not equivalent to 'interested' witness, A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation or in seeing an accused person punished.</p> <p>*Singular witness-Evidentiary value- Conviction can be recorded solely on the basis of a singular witness if his statement inspires confidence.</p>
Significant Paragraph Numbers	16, 17 & 18

J U D G M E N T**(Delivered on 29th November, 2021)****Sujoy Paul, J.:**

This Criminal Appeal filed under Section 374 of the Criminal Procedure Code, 1973 seeks to challenge the judgment dated 16/04/2008 passed in Sessions Case No.385/2007 whereby the Court below convicted the appellants for committing offence under Section 302 r/w Section 34 of IPC. The appellant No.1 Akram is acquitted from Section 25(1-B)(b) of the Arms Act.

2) In short, the case of the prosecution was that complainant Raees Shah (PW-1) was working as a Mechanic and was returning from his shop for taking lunch at his house. At around 01:45 PM, he witnessed that in front of house of his uncle, Munawar (PW-11), the appellant Akram, Rehan and Fazal were assaulting his mother Kunni Shah and sister Nikki @ Nikhat. Because of multiple injuries caused by aforesaid persons, his mother and sister fell down. The complainant directly reached the nearby police station and lodged the report at 2 PM.

3) It is alleged in the prosecution story that against Akram and his brother Wasim, his mother Shakur Bee and Fazal, Nikki lodged a report in police station regarding theft of a mobile phone. Akram on 20/07/2007 approached Nikki and persuaded her to go to the Court for the purpose of settlement. Nikki did not agree with such proposal of settlement. Akram became annoyed because of said denial on the part of Nikki. In turn, he came with Fazal, Rehan and Bhayu and they jointly assaulted Nikki and her mother Kunni Shah by means of knives.

4) The stand of prosecution is that police report was lodged in Police Station-Raoji Bazar, Indore which is about 1 kilometer away from the scene of crime. The report was reduced in writing by Constable Chetan Singh (PW-15). Police reached the scene of crime at

02:15 PM on 20/07/2007 itself. After fulfilling the formalities, the dead bodies of Kunni Shah and Nikki were sent for postmortem. The *merg* intimation is Ex.P/20-C. Dr. AK Lanjewar (PW-14) conducted the postmortem of said two bodies. The postmortem report was exhibited before Court below as Ex.P/27 & P/28. On 21/07/2007, Akram and Fazal were arrested. On the basis of information furnished by accused persons, iron knives were recovered through Ex.P/16 & P/17. The report lodged by deceased Nikki against Akram and Fazal regarding theft of mobile phone was marked as Ex.P/34.

5) Before the Court below, both the appellants denied the allegations and prayed for conducting a fair trial. In turn, the Court below recorded the evidence of the parties and in turn, passed the impugned judgment.

6) Shri PK Gupta, learned counsel for the appellant No.2 submits that as per prosecution story, eyewitness of the incident are Raees Shah (PW-1), Rajiya Bee (PW-2), Mehboob Bee (PW-3), Nazma Bee (PW-4), Nadeem (PW-5) and Munawar (PW-11). The conviction of appellant No.2 is solely based on the testimony of PW1-Raees Shah. The other eyewitnesses have not stated anything regarding involvement of appellant Fazal. The statement of Raees Shah (PW-1) is not trustworthy because (i) he is a chance witness and (ii) there is no corroboration of his statement by other prosecution witnesses. (iii) As per spot map (Ex.P/2), it is clear that Raees Shah (PW-1) was at spot No.3 whereas incident had taken place in front of a house marked as spot No.5. (iv) The complainant (PW-1) is close relative of the deceased person and, therefore, solely on the basis of his statement, conviction cannot sustain judicial scrutiny. By taking this Court to the cross-examination of PW-1 Shri Gupta, learned counsel for appellant Fazal submits that this witness deposed that from the turn of the lane, he could witness the incident of assault on said deceased persons and from there itself, he directly went to the police station. By placing

heavy reliance on para-18 of this statement, Shri Gupta urged that this statement does not inspire confidence. No doubt, submits Shri Gupta that conviction can be based on the sole testimony of a single witness, provided said witness is wholly reliable. Reliance is placed on the judgments of Supreme Court in *Anil Pukhhan vs. State of Asam* reported in (1993) 3 SCC 282, *Chacko alias Aniyam Kunju and others vs. State of Kerala* reported in (2004) 12 SCC 269 and *Birappa and Anr. Vs. State of Karnataka* reported in (2010) 12 SCC 182.

7) By taking assistance of said judgments, it is strenuously contended that it was not safe to record conviction of appellant No.2 solely on the basis of statement of Raees Shah (PW-1). The other witnesses did not take the name of appellant No.2. Lastly, it is submitted that no independent witness of locality was examined by prosecution though available. The complainant (PW-1) is close relative of the deceased person and, therefore, solely on the basis of his statement, conviction cannot sustain judicial scrutiny.

8) Ms. Nisha Jaiswal, learned counsel for the respondent No.1 Akram borrowed the argument of Shri Gupta and in addition, contended that there is glaring contradiction in the version of alleged eyewitnesses. By taking this Court to the statements of eyewitnesses, it is urged that certain witnesses have stated that incident had taken place inside the house of Munawar whereas story narrated by Raees Shah (PW-1) is quite different.

9) Shri Shrey Raj Saxena, learned Dy. Advocate General supported the impugned judgment and by taking this Court to the statement of eyewitnesses urged that the involvement of appellants cannot be doubted.

10) The parties confined their arguments to the extent indicated above.

11) We have heard the parties at length and perused the record.

12) The incident had taken place at around 01:45 PM on 20/07/2007. In Raoji Bazar Police Station, the FIR was lodged within 15 minutes by complainant Raees Shah (PW-1) and in next 15 minutes, police reached to the scene of crime. Pertinently, in the named FIR, the complainant has taken the name of both the appellants and other accused persons.

13) Dr. AK Langewar (PW-14) in his statement deposed that on the person of Nikki Shah, 10 stab injuries were found whereas 5 chopping incised wounds and 3 stab incised wounds were found on the person of Kunni Shah. As per PM report and statement of this witness, the reason of death is said injuries and excessive bleeding.

14) The Court below in para-31 of the judgment opined that the knives were recovered from an open public place which is accessible to the public. In this backdrop, the Court below opined that it was not established that the said seized knives were used in commission of crime. Resultantly, appellant No.1 was acquitted from Section 25(1-B) (b) of the Arms Act.

15) The Court below treated the statement of Raees Shah (PW-1) as trustworthy. After taking into account the statement of Raees Shah (PW-1) and other witnesses, the Court below held that the prosecution could establish its case beyond reasonable doubt.

16) As noticed above, Shri Gupta urged that the complainant Raees Shah (PW-1) was a chance witness and, therefore, his statement could not have been reason to hold the appellant as guilty. We do not see any merit in this contention. The Apex Court in *AIR 1983 SC 680 (Rana Pratap and Others vs. State of Haryana)* opined as under:-

“If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere ‘chance witnesses’. The expression ‘chance witnesses’ is borrowed from countries where every man’s home is considered his castle and every one must

have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses' even where murder is committed in a street, is to abandon good sense and take a shallow view of the evidence."

(Emphasis Supplied)

17) The principle laid down in the case of *Rana Pratap* (supra) was followed in *AIR 2004 SC 5039 (Sachchey Lal Tiwari vs. State of U.P.)*. In clear terms, it was held that if presence of a witness is satisfactorily established, his statement cannot be discarded by treating him as mere 'chance witness'. This Court followed the said *ratio decidendi* in *ILR (2007) MP 1698 (Lilli vs. State of MP)*. A careful reading of statement of Raees Shah (PW-1) shows that he has assigned justifiable reason for witnessing the incident. It was lunch time and he was returning back from his shop to his house to take the lunch. Thus, this witness cannot be treated as a 'chance witness' and his statement cannot be disbelieved for this reason.

18) Another argument to demolish the statement of Raees Shah (PW-1) based on his close relation with deceased person also deserves to be rejected. "Related", is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation or in seeing an accused person punished. (See: *AIR 1981 SC 1390-State of Rajasthan vs. Kalki & Anr.*). This principle was consistently followed in *(2008) 15 SCC 590 (Arumugam vs. State)*, *(2006) 11 SCC 444 (Pulicherla Nagaraju alias Nagaraja Reddy vs. State of A.P.)*. From the cross-examination of PW-1, nothing could be established that he was an interested witness. Since nothing could be elucidated from cross-examination to shake the testimony of PW-1, we are unable to hold that statement of PW-1 was not trustworthy or his statement is insufficient to hold the appellants as guilty. It is relevant to mention here that in both the judgments cited by Shri Gupta, the Apex Court opined that conviction

can be recorded solely based on a singular witness. The only caveat is that his statement must inspire confidence.

19) If statement of Raees Shah (PW-1) is examined by taking into account the spot map, we are unable to persuade ourselves with the argument of learned counsel for the appellants that the place from where he had seen the incident was outside his view. The spot map does not throw any light on this aspect. PW-1 on a question asked by the Court deposed that incident had taken place in front of house of Raziya wife of Munawar. In para-18, he clearly stated that incident was clearly witnessed by him. This statement of PW-1 could not be demolished by the defence.

20) Raziya Bee (PW-2) stated that Akram and Rehan had a quarrel with Nikki Shah and Kunni related to a mobile dispute. She was inside her house. Akram and Rehan brought Nikki inside her house and assaulted them. Mother of Nikki came inside the house to save her daughter then she was also assaulted by Akram and Rehan by means of knives. Thus, this witness has seen that part of the assault and incident which had taken place inside her house. There is no contradiction in the statement of PW-1 & PW-2. The number of injuries found on the person of the deceased clearly supports the story.

21) Similarly, Nazma Bee (PW-4) deposed that while Nikki bleeding inside the house, thereafter Rehan and Akram came inside the house forcibly took her outside the house.

22) Nazma Bee (PW-4) also deposed in tune with the statement of PW-2 & PW-5. It is stated that Nikki entered the house while profusely bleeding and Rehan and Akram took her outside the house. In her statement, Court appended a note that witness is weeping badly. This also shows the impact of murder on this witness.

23) Nadeem (PW-5) is a child witness, aged about 13 years. He had seen the incident from the bathroom. He deposed that Nikki came inside his house and behind him came Akram and Rehan. They

assaulted Nikki by means of knives and took her forcibly away from the house.

24) In view of foregoing analysis, it cannot be said that statement of PW-1 is not sufficient and trustworthy to hold the appellants as guilty. The said witness cannot be said to be an interested or chance witness. His statement was rightly relied upon by the Court below. The prosecution, in our view by leading cogent evidence has successfully established its case beyond reasonable doubt. Two innocent persons were brutally murdered by the appellants in broad day light. The Court below has rightly applied the doctrine of proportionality and sentenced the appellants adequately. On this account also, we see no reason to interfere.

25) Resultantly, appeal fails and is hereby **dismissed**.

(Sujoy Paul)
Judge

(Pranay Verma)
Judge

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