

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
D.B: HON'BLE SHRI JUSTICE ALOK VERMA AND HON'BLE SHRI
JUSTICE VED PRAKASH SHARMA
Cr.A. No.681/2013

Jagannath @ Jagan and another

Vs.

State of M.P.

Cr.A. No.1126/2013

Raghunath @ Rugga

Vs.

State of M.P.

Shri P. Newalkar, learned counsel for the appellants in Cr.A. No.681/2013.
Shri Aditya Bhargava, learned counsel for the appellant in Cr.A.
No.1126/2013.
Shri C.S. Ujjainia, learned counsel for the respondent/State.

J U D G M E N T
(Delivered on 07/04/2017)

Per Alok Verma, J.

This common order shall govern disposal of jail appeal Cr.A.
No.681/2013 & Cr.A. No.1126/2013.

2. These appeals arise out of judgment of conviction and sentence passed by the learned Additional Sessions Judge, Dharampuri, District Dhar in Session Trial No.138/2012 dated 29.04.2013 wherein the learned Additional Sessions Judge convicted the appellants-

Jagannath @ Jagan S/o Chiter Bhil in Cr.A. No.681/2013 and Raghunath @ Rugga S/o Bachu Bhil under Section 302 r/w Section 34 of IPC (on two counts) for murder of deceased Rukhadia Bhil and his wife Kolibai in the intervening night of 01.03.2012 and 02.03.2012 and sentenced them to life imprisonment (on two counts) and fine of Rs.2,500/- each. They were further ordered to suffer rigorous imprisonment for six months each, in case of default in payment of fine.

3. The prosecution story in brief is that the Sarpanch of Village Kachhvania, Karan Singh, gave an information to Police Station Dhamnood telephonically regarding murder of Rukhadia Bhil and his wife Kolibai. After receiving the information, the Station In-charge, Police Station- Dhamnood Sunil Jolly proceeded to village Kachhvania and recorded dehati nalish on the basis of information given by Sakharam. In dehati nalish, the said Sakharam S/o Badrilal intimated the police that on 01.03.2012 at about 8.00 pm, he was sitting in his shed situated on his field. When he heard cries of deceased Rukhadia Bhil and his wife Kolibai. They were shouting for help. He went to their shed and there he saw the present appellants beating them. According to dehati nalish, the appellant Raghunath was having axe in his hand and appellant Jagannath was having piece of wood, used as spoke in wheels of bullock-cart in villages and known as Kherala. They were inflicting injuries on the deceased. When Sakharam tried to stop, they also threatened him and asked him that the deceased constructed a house on their land and when they were constructing their house,

nobody intervened and threatened Sakharam that if he would intervene, they would kill him also. On this, the prosecution witness came back his shed and went to sleep. In the morning, when he went to shed of Rukhadia and Kolibai, he saw them lying in a pool of blood and they were dead, and therefore, he informed the incident to Sarpanch Karan Singh, who intimated the police station.

4. After due investigation, the charge-sheet was filed. The learned trial Court recorded evidence of both the sides, examined the accused under Section 313 of Cr.P.C. and passed the impugned judgment of conviction against which these appeals are filed. In Cr.A. No.1126/2013 following grounds are raised :- (i) the trial Court failed to take into consideration the facts that the prosecution story is a false story, cooked to falsely implicate the present appellants (ii) there are serious discrepancies in the statements of eye witness Sakharam and Sarpanch- Karan Singh, and therefore, conviction cannot be based on their statements, which are totally unreliable.

5. On these grounds, learned counsel appearing for the appellants pray that the appeals be allowed and conviction and sentence awarded on the appellants be set aside.

6. Learned counsel for the State supports the impugned judgment and submits that it should be confirmed.

7. In this case, it is not much in dispute that deceased Rukhadia and Kolibai died a homicidal death. There is no challenge given by the defence side to the fact that both the deceased suffered a homicidal death. Dr. Amit Neema (P.W.-9) also gave an opinion that both the

deceased died due to injuries in their head and also resulting injuries in their brains, and therefore, it is apparent that they died a homicidal death.

8. The learned trial Court placed reliance on statement of Sakharam (P.W.-1), who is also an author of dehati nalish (Ex.P-1). The learned trial Court found that there were three eye-witnesses. According to prosecution story, one was Sakharam (P.W.-1), whose statement was found reliable by the trial Court. The second was Jamsingh. This witness turned hostile and Jitendra (P.W.-6), who was a child witness, but in his cross-examination, he admitted that he gave the statement under Section 161 Cr.P.C. to the police which is Ex.P-15. In Ex.P-15, he stated that at about 7.00 pm on 01.03.2012, he alongwith Varsingh went to the house of deceased Rukhadia, where he saw the present accused Raghunath and Jagannath. They were fighting with Rukhadia. Appellant- Raghunath was having an axe in his hand while Jagannath was having kherala, the wooden piece. Therefore, they came back without talking to Rukhadia. In the morning, they came to know that Rukhadia and his wife Kolibai both died and they were lying death in front of their shed. He went to see them and they were lying in pool of blood. He further submitted that after he and Varsingh came back, the present accused killed the deceased. Jitendra is third eye-witness, who is a child witness, however, his statement was not found reliable by the trial Court because he admitted in para 4 of his statement that he was giving the statement, as he was asked to give by his uncle Dulichandra, and therefore, learned Court found his statement

unreliable being a child witness and also a tutor witness.

9. Now, under these circumstances, only the statement of Sakharam (P.W.-1) remains to be examined. It is a trite law that when prosecution story is based on single witness, the statement of that witness has to be examined meticulously and when the statement is found reliable in every respect, the conviction can be based on such statement.

10. This witness, in examination-in-chief, supported the prosecution story that he went to the shed of accused Raghunath and Kolibai at about 8.00 pm on 01.03.2012. He saw the present accused inflicting the injuries by axe and kherala. He tried to stop them, but they continued asking him to leave or they would kill him also. According to him, they were beating the deceased saying that they constructed house on their land and they also said to him that when they were constructing the house why he did not intervene. Fearing threat on his side, he came back and slept. In the morning, he went to check and he found both the deceased lying dead. In para 4, he stated that he was not literate but he knew how to sign. The police came on the spot at 8.00 am in the morning. Thereafter he, Jamsingh, Varsingh, Jitendra, Dulichandra and Karansingh and many other residence of the village came on the spot. The police asked everybody. According to this witness, he did not lodge the report but Karansingh lodge the report. He signed on the report as written by the police. He did not place his thumb impression on the report. The police wrote the report according to them. In para 6, his attention was drawn to the fact that

there is a thumb impression on dehati nalish (Ex.P-1). On this, he said that he signs, he never places his thumb impression anywhere and when he was asked to sign the order-sheet by Judge, he signed it. In para 8, he admitted that one Tolia is also having a shed on his field which is about 100 feet away from the shed of the deceased Rukhadia. In this shed, Tolia and his family lives. There is no other house nearby. In para 12 of his cross-examination, he said that in the night on 01.03.2012, he did not go to the village to tell everybody about the incident, but he came back to his shed and slept. In para 13, he admitted that in the morning, the dead body was first seen by Kunti, who is grant-daughter of deceased Rukhadia, who raised the cry, and thereafter, Karansingh, Jamsingh, Varsingh and Jitendra all came on the spot. Thereafter, about one hour police came.

11. The fact that the dead body was first seen by Kunti was not mentioned in dehati nalish, which was recorded at 9.30 am on 02.03.2012. In dehati nalish, it was stated that in the morning on his own, the prosecution witness Sakharam (P.W.-1) went to shed of the deceased Rukhadia and Kolibai and there he saw them lying dead. Thereafter, according to dehati nalish, he informed the other villagers and also to Karansingh, the Sarpanch. This is a material discrepancy in his statement that Karansingh came on the spot hearing cries of Kunti and not because he informed him. Further, he was present when Karansingh reached the spot or when he stated him about the incident. However, the entry in daily diary of the police station, which is Ex.P-23 and which was entered in the daily diary of the police station

at 8.05 a.m., it was mentioned therein that an information was received telephonically from village Kachvania from Sarpanch Karansingh that Rukhadia and his wife were murdered and their dead bodies were lying in front of their house, and therefore, police party should be sent to the village immediately. This information was given to the Station In-charge, who was present there. This is very surprising that when Karansingh was knowing that the present appellants committed the murder, he did not inform the police on phone that the present appellants committed the murder.

12. Karansingh, who gave information telephonically to the police is examined as P.W.-2. He stated that the incident took place on 01.03.2012 at about 8.30 pm, but he was not knowing what happened on that day. According to him, next day, on 02.03.2012 at about 7.30 am Sakharam came and informed him that the present appellants killed the deceased. He also informed him that he (Sakharam) went there but the present appellants threatened him, and therefore, he came back, and thereafter, he informed the police. This is a contradiction with his statement under Section 161 Cr.P.C., which is Ex.D-2, in which, he stated that on 02.03.2012, Punja Bhil informed him that Rukhadia and Kolibai were murdered and they were lying dead in front of their house. He also informed him that Kunti saw them lying dead and she informed him and on this, he informed the police. They all went to the spot, where Sakharam came and informed him that a day before he saw the present appellants killing the deceased. Thus, there is material contradiction in the prosecution story and the prosecution evidence in

respect of intimation given to Karansingh (P.W.-2) about the crime, such discrepancy is not explained properly by the prosecution, and therefore, the statement of Sakharam is not so reliable. Apart from these, statement of Sakharam is also unnatural in many respect when he saw inflicting injuries on old man by axe and kherala, which are dangerous weapon, if used to inflict injury on vital part of the body, he should have informed other persons. He also admitted that another villager Tolia is living near about 100 feet away with family, he could have gone there and informed him about the incident, but he chose to come back to his shed and went to sleep. There is also a discrepancy in respect of putting his thumb impression and putting his signature on dehati nalish. A notice for inquest is Ex.P-2, on this, Sakharam signed the document from A – A on Ex.P-4 also it is a notice for inquest in respect of Kolibai, Sakharam signed from A – A. There is no explanation why he placed his thumb impression on Ex.P-1. He also denied that dehati nalish was written, as stated by him but he said that either police officer himself prepared the report or Punja (P.W.-4) had stated the facts to the police on which the report was written, and therefore, dehati nalish Ex.P-1 is doubtful.

13. The motive behind the murder is that Chitar father of appellant Jagannath sold the land to the deceased Rukhadia on which Dulichandra S/o Rukhadia constructed a shed in which the deceased was living. Father of the appellant is dead now. However, whether there was any enmity between Jagannath and Rukhadia is proved by any direct evidence by the prosecution.

14. The second eye witness is Jamsingh but in his statement, he stated that he did not see the present appellants inflicting any injuries on deceased and then he admitted in para 5 that next day when police came to the village he was called at police station and there his statement was recorded as Ex.P15. According to Ex.-P15, the statement was recorded on 02.03.2012 which again created doubt whether all the statements were recorded on 02.03.2012 or after that and were all ante-dated. This witness went to the spot with Varsingh but Varsingh was not examined by the prosecution, and therefore, no benefit could be given to the prosecution about statement of this witness. The third eye witness Jitendra is already as stated is a child witness and is not reliable.

15. Apart from all these, the Investigating Officer- Sunil Jolly (P.W.-12) admitted in para 13 that there was no entry of signing counter part of FIR under Section 157 Cr.P.C. to the Court of concerning Magistrate. He admitted that when such intimation is sent to the Court of Magistrate, entry is made in the Dak-book.

16. Accordingly, there are material contradiction in the statements of eye-witness Sakharam, prosecution witness Karansingh, who reached the spot before police and also informed the police, who was also the Sarpanch of the village. The motive and enmity is also not fully proved. The present appellants were arrested next day from village Kachvania at 6.00 pm in the evening . What action was taken by the police immediately when on reaching spot, they came to know at 9.30 a.m. only when dehati nalish was prepared to arrest them and

try to locate their whereabouts. There is no evidence to show that they were not available in the village, and therefore, from their conduct also it cannot be presumed that after the incident, their conduct was suspicious and indicated towards their guilt.

17. Learned counsel for the appellants submit that the medical evidence also did not support the prosecution story. The postmortem was performed by Dr. Amit Neema (P.W.-9). The doctor found two injuries on body of the deceased Rukhadia. One was contusion 15x12 c.m. in front of his head and second was lacerated wound on back of his head. There was no incised wound on the body of Kolibai. Only two injuries were found. One was lacerated wound in front side of her head and other was contusion on her face and nose. Learned counsel for the appellants places reliance on judgment of Hon'ble Apex Court in case of **Hallu and others vs. State of Madhya Pradesh; AIR 1974 SC 1936** in which it was held that normally when a witness says that an axe or a spear is used there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that is the implication then it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp edged or a blunt side was used. However, in the present case not only an axe but a kherala, which is a piece of wood, is also used, and therefore, it does not help much the defence in this case. Accordingly, on the basis of discussion above it is apparent that the sole eye witness Sakharam (P.W.-1) is not reliable. There are material contradiction in his statement. Ex.P-1 is also doubtful and appears ante-timed. There is a

possibility of false implication of the appellants, and accordingly, in our considered opinion, the trial Court erred in placing reliance on statement of sole eye-witness Sakharam (P.W.-1). Accordingly, the appeals are liable to be allowed and are allowed accordingly. The conviction and sentence against the appellants under Section 302/34 of IPC is set aside. The appellants are acquitted from charge under Section 302/34 of IPC. The bail and bonds are cancelled.

18. The fine amount if deposited by them may be refunded to them.

19. The order of the trial Court in respect of disposal of seized property is hereby affirmed.

(Alok Verma)
Judge

(Ved Prakash Sharma)
Judge