

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Criminal Appeal No.676/1995

Dilip s/o Narayan Prasad..... **Appellant**

Versus

State of Madhya Pradesh..... **Respondents**

For the appellants : Mr.Shivam Singh, Advocate

For the respondents:Mr.A.T.Faridi, Government Advocate

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Present: **Hon'ble Mr.Justice J.K.Maheshwari**
Hon'ble Mrs.Justice Anjuli Palo

J U D G M E N T

[17/05/2019]

As per Mrs.Anjuli Palo,J:

This appeal has been filed by the accused/appellant being aggrieved by the judgment dated 21.4.1995 passed by Second Additional Sessions Judge, Katni in Sessions Trial No.464/1993 whereby, the appellant was convicted under section 302 of the Indian Penal Code and sentenced to undergo Life Imprisonment.

2. The prosecution story, in brief, is that on 25.3.1993 at about 2.30 p.m. at Barkheda Road, Bilhari the appellant-Dilip alongwith Prabhu @ Prabhu Dayal had beaten Santosh by use of shoe over an issue of use of water from tubewell. Santosh narrated the said incident to his father, namely, Ramcharan (since deceased). Thereafter, Ramcharan (deceased) came to the place of occurrence and raised objection about their conduct with his son

(Santosh). So that the accused/appellant abused Ramcharan (deceased) and inflicted iron rod blows on his head. Babulal came there to the rescue of Ramcharan. The appellant had also assaulted Ramsakhi, wife of Ramcharan and Neetu @ Mira and Neelu, daughters of Ramcharan. Thereafter, the accused persons fled away from the spot. Ramcharan himself lodged the First Information Report at the Police Station, Out Post, Bilhari for offences committed under sections 323/34 and 294 of the Indian Penal Code against the appellant. Ramcharan had sustained grievous injuries, therefore, he was referred by the Government Hospital to the Medical College, Jabalpur for better treatment. On 01.4.1993 Ramcharan died. Hence, offence punishable under section 302 of the Indian Penal Code was also added by the Police Station. After completing investigation, charge-sheet was filed before the concerned Court.

3. After committal of the case, learned trial Court framed charge under section 302 of the Indian Penal Code against the appellant. The appellant abjured the guilt and pleaded that he is innocent and has been falsely implicated in the crime by the Police.

4. The learned trial Court held that from the testimony of Babulal (PW.6), Neetu @ Mira (PW-8), Neelu (PW-9) and Santosh (PW-10) it is established that, due to quarrel between the appellant-Dilip and Santosh s/o Ramcharan (deceased), the

accused-Dilip inflicted crow bar (iron rod)/('sabbal') blows on the head of deceased-Ramcharan. He also assaulted the daughters of the deceased, namely, Neetu and Neelu. As per the trial Court, from the statements of Dr.Sashi Sarowgi (PW.2) and Dr.R.D.Namdeo (PW-13), it was duly establish that due to aforesaid injuries sustained by the deceased, he died. Nahida Khatun (PW-3) recorded his dying declaration. On the basis of aforesaid evidence the learned trial Court hold the appellant guilty for committing murder of Ramcharan. Hence, the appellant has been convicted and sentenced as mentioned above.

5. The aforesaid finding of the learned trial Court is challenged by the appellant on the grounds that, learned trial Court has wrongly convicted the appellant under section 302 of the Indian Penl Code, even though the appellant had caused single injury to the deceased with crow bar (iron rod). In fact, nobody had witnessed the incident. Thus, the conviction of the appellant is based on unreliable, highly motivated and untrustworthy prosecution evidence. Hence, the impugned judgment is liable to be set aside and the appellant is entitled to be acquitted from the charges levelled against him. Learned counsel for the applicant further urged that facts and circumstances of the case show that the incident had occurred at the spur of moment and particularly it is a case of single blow, therefore, the appellant is liable to be convicted under section 304

Part-II of the Indian Penal Code. Before us, he has not challenged the testimony of eye witnesses, doctors witnesses and medical evidence. As such offence, if any, is punishable under section 304 Part-II of the Indian Penal Code. With this regard, he placed reliance on the decision in the case of *Ankush Shivaji Gaikwad vs. State of Maharashtra*, (2013) 5 SCC 770.

6. We have heard learned counsel for both the parties at length and perused the record. Learned Government Advocate strongly opposed the contentions raised by the learned counsel for the appellant and supported the prosecution's case.

7. The present case is based on the testimony of closely related eye witnesses, namely, Santosh (PW-10)[son of the deceased], Neetu @ Mira (PW-8) [daughter of the deceased] and Balram (PW-7) who came to the rescue of the deceased during the incident. As per the First Information Report Ex-P/8, which has been lodged by the deceased himself, it is apparent that the dispute between both the parties had started for the consumption of water from tubewell. Firstly, the appellant quarrelled with Santosh (son of the deceased), hence the testimony of Santosh (PW-10) is important, which is duly corroborated by the facts that mentioned in First Information Report (Exhibit-P-9) which was lodged by Ramcharan (deceased) and falls under the purview of dying declaration under section 32(A) of the Indian Evidence Act. Hence, at the time of incident his presence with his father is quite

natural. We are not inclined to disbelieve his testimony and his sister-Neetu (PW-8) who also sustained injuries during the same incident. The testimony of injured eye witness has great evidentiary value, which sufficiently establish that at the time of incident witness was present on the spot.

8. In the case *Smt.Shamim vs. State (GNCT of Delhi)*, AIR 2018 SC 4529 the Supreme Court held as under:-

"Evidence of witnesses carries great weightage as it is presumed that being victim to occurrence, witness was speaking truth only."

In the case of of *Bhagirath vs. State of Madhya Pradesh*, 2018 (4) Crimes 380 (SC) the Supreme Court following the principles laid down in the case of *Abdul Sayeed vs. State of M.P.*, (2010) 10 SCC 259 observed that testimony of the injured eye witness stands on a higher footing. In the light of aforesaid principles the testimony of Santosh (PW-10) and Neetu @ Mira (PW-8) inspires confidence. Their testimony is corroborated by her mother-Ramsakhi (PW-5) and sister Neelu (PW-9) also. Their presence on the spot is duly established and not shaken even by the cross-examination.

9. We do not find any appropriate reason to hold that their testimony is unreliable or untrust-worthy, although they are close relatives of the deceased. In any case, in the facts, it is not appropriate to discard their testimony. In the case of *Smt.Shamim*

(supra) also the same question has been considered by the Supreme Court in paragraph 9 and it has been observed as under:-

"9.. In a criminal trial, normally the evidence of the wife, husband, son or daughter of the deceased, is given great weightage on the principle that there is no reason for them not to speak the truth and shield the real culprit....."

10. Independent witness-Balram (PW.6) also corroborates the testimony of interested eye witnesses. The deceased himself has narrated in the F.I.R. that Babulal came to his rescue. Hence, we also inclined to rely on his testimony. His testimony is duly corroborated by the medical evidence also.

11. Dr.Shashi Sarowgi (PW-2) examined the deceased on the date of incident. He found following injury on the deceased:-

"Lacerated wound of 5 cm X 1 cm into deep bone with bleeding on back side on head."

The said injury was caused by hard and blunt object within 6 hours from medical examination. Then he was referred for further treatment. After the death of the deceased, Dr.Namdeo (PW-13) conducted autopsy of the deceased. He found the injury on the head of the deceased. During internal examination, he found depressed fracture on parital and occipital bone about 3 inch X 1 inch long with blood clott. He further opined that injuries were antemortem in nature and were caused by hard and blunt object within 24 hours of examination. The deceased died due to the head injury. As opined by Doctors, it is established that

aforesaid external and internal injuries were sufficient to cause death of the deceased in ordinary course of nature.

12. The Investigating Officer also recovered some incriminating articles and weapon ('sabbal') used by the appellant, according to memo (Exhibit-P-1), on which, human blood was present. After examination of weapon, the doctor gave the opinion, that injuries may be caused by aforesaid weapon. According to him, such weapon is deadly weapon. Therefore, in our considered opinion, the deceased died due to head injury caused by such weapon, which is fatal and homicidal in nature.

12. All these facts and evidences have been duly appreciated by the learned trial Court and in the similar manner as considered by us. Accordingly, we come to the conclusion that deceased himself lodged the F.I.R. (Exhibit-P/8) promptly at Police Station with all details, which were proved by the testimony of the injured eye witness. With regard to Investigating Officer Anup Bajpai (PW.14), he proved FIR (Exhibit-P-8) in proper manner. It may be treated as dying declaration which is duly proved by other cogent evidence also.

14. As urged by the learned counsel for the appellant that the appellant inflicted single blow to the deceased, although on his hand. But, he did not assault the deceased with an intention and in pre-planned manner. Hence, he may be convicted under section

304 Part-II of the Indian Penal Code. After evaluating the evidence on record we find that, there was a dispute between the parties for use of water from the tube- well. It is also mentioned by the deceased in the First Information Report (Exhibit-P/8), which is treated as dying declaration. As per paragraph 15 of this judgment, it is observed that the deceased died due to lacerated wound on his head. The said injury is caused by hard and blunt object. The appellant has not repeated the blow of weapon on the deceased. He has also not used any sharp cutting object. Earlier, the quarrel had not been started with the deceased, but with his son-Santosh. No injury was sustained by Santosh.

16. Considering the clause third of section 300 of Indian Penal Code and reiterating the principles in *Jai Prakash Vs. State (Delhi Administration)*, (1991) 2 SCC 32 the Apex Court in the case of *Nankaunoo Vs. State of Uttar Pradesh*, (2016) 3 SCC 317 has held as under:-

"Intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder. The third clause of section 300 IPC consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death."

17. In the case of *Bhagirath (supra)* the Supreme Court has held that in case of sudden quarrel without premeditation and a

single blow on the head and the appellant has not taken undue advantages of the deceased and accused cannot be convicted under section 302 of the Indian Penal Code. The manner of occurrence and the injuries inflicted on the deceased attracted Exception 4 to Section 300 of I.P.C. in the facts and circumstances of the case the conviction of the appellant is liable to be modified under section 304 Part-I of I.P.C. The case under section 302 of I.P.C. is not made out.

18. After considering the aforesaid circumstances and the nature of injury and weapon used by the appellant and also considering that, there was only single blow, in our considered opinion the case of the appellant falls under the purview of section 304 Part-I of the Indian Penal Code because the appellant had caused injury on the head of the deceased by 'Sabbal' (crow bar).

19. Looking to the nature of offence and aforesaid circumstances, the conviction under section 302 of I.P.C is hereby set aside and the appellant is convicted under section 304 Part-I of I.P.C. and sentence awarded by the trial Court is altered from Life Imprisonment to 10 years of R.I. with fine of Rs.2,000/-, and in default of fine, to suffer further R.I. for 6 months. He is in custody since 04.4.1993 till the bail was granted by this Court on 27.7.1998. Such period of custody shall be set off in the sentence

awarded by this Court.

20. Accordingly, the appeal is partly allowed. Let a copy of this judgment be sent to the trial Court. The bail bond of the appellant is cancelled. The appellant shall surrender before the trial Court within one month for serving the remaining part of the sentence, otherwise he be taken into custody forthwith for serving the remaining jail sentence.

21. Let a copy of this judgment alongwith its record be sent to the court below for information and compliance.

(J.K.Maheshwari)
Judge

(Smt.Anjuli Palo)
Judge