

A.F.R.

Judge

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

SINGLE BENCH : HON'BLE MR. JUSTICE N.K.GUPTA, J.

Criminal Appeal No.1555/1997

Sikandar Singh

VERSUS

State of Madhya Pradesh

Shri H.S.Dubey, Senior Advocate with Shri Abhinav Dubey,
Advocate for the appellant.

Shri Siddharth Singh Chouhan, D.G.A. for the State/
respondent.

J U D G M E N T

(Delivered on the 30th day of July, 2015)

The appellant has preferred the present appeal being aggrieved with the judgment dated 3.7.1997 passed by the Sessions Judge, Raisen in S.T.No.44/1995, whereby the appellant has been convicted of offence under Section 304 (Part-2) of IPC and sentenced to 7 years rigorous imprisonment.

2. The prosecution's case, in short, is that, on 29.7.1994, at about 00.30 a.m., the deceased Prem Singh as well as the appellant were working in Ralson Factory, Mandideep, which was a tyre factory. Suddenly, the victim sustained an injury on his

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neck by sharp cutting weapon. Ramdhani Paswan, Shift Incharge rushed to the spot and with the help of Jung Bahadur and Bheem Singh, the deceased Prem Singh was sent to Hamidia Hospital, Bhopal in a vehicle. However, the deceased Prem Singh had expired. A merg intimation, *Ex.P/10* was recorded at Police Station Mandideep, Bhopal on the basis of information given by Radio Operator, Non-Urban Control, Bhopal. On the same day, at about 9.40 a.m., Ramdhani Paswan had lodged an FIR, *Ex.P/1* that a quarrel took place between the appellant and Prem Singh and therefore, the appellant gave a blow of rubber cutter on the neck of the deceased Prem Singh. The incident was seen by Kamta Prasad (P.W.2), Sohan Yadav, Trilokinath, Ramnath, Arjun Das Sharma and Mahendra Pandey. The dead body of the deceased was sent for post-mortem. Dr.C.S.Jain (P.W.5) did post-mortem upon the body of the deceased Prem Singh and gave his report, *Ex.P/9*. A typography photo of the injury was given in the connected document, *Ex.P/9-A*. He found one stab wound on left side of his neck and one incised wound on right knee of the deceased. After due investigation, a charge-sheet was filed before the concerned JMFC, who committed the case to the Court of Sessions and ultimately, it was transferred to the Sessions Judge, Raisen.

3. The appellant abjured his guilt. He took a plea that the deceased sustained injuries while he was working on a machine and the appellant was falsely implicated by the office bearers of the factory, so that they could be saved from giving any compensation to the family of the deceased Prem Singh. However, no defence evidence was adduced.

4. Sessions Judge after considering the evidence of the prosecution, acquitted the appellant from the charge of offence under Section 302 of IPC but, convicted him of offence under Section 304 (Part-2) of IPC and sentenced as mentioned above.

5. I have heard the learned counsel for the parties at length.

6. Dr.C.S.Jain (P.W.5) has done post-mortem on the body of the deceased and he found two incised injuries on the body of the deceased. First wound was a stab wound on left neck from Jaw to neck and various vital organs of that place were found cut. Second injury was an incised wound on right knee. Full pant over the right knee was also found cut. According to Dr.C.S.Jain, the deceased could not remain conscious for more than half a minute after getting injury No.1 and he would have died within two minutes of the injuries caused. Dr.C.S.Jain did not give any cogent information as to whether the death of the deceased was homicidal or not. Primarily he gave a opinion that the death of the deceased was

homicidal but, in the cross-examination he has accepted that nature of death could be decided on the basis of other evidence.

7. In the present case, Ramdhani Paswan (P.W.1) has stated that he was informed by Sohan Yadav that the appellant gave a blow of knife on the neck of Prem Singh then, he went to the spot and found that blood was oozing from the neck of Prem Singh and therefore, he transmitted the deceased Prem Singh to Hamidia Hospital with help of Jung Bahadur and Bheem Singh. Thereafter, in the morning at about 9.40 a.m., he had lodged the FIR, *Ex.P/1*, in which he mentioned the name of eye witnesses, such as Sohan Yadav, Trilokinath, Ramnath, Arjun Das Sharma and Mahendra Pandey. The eye witness Kamta Prasad (P.W.2) has turned hostile. He did not claim himself to be an eye witness. According to him, when he went to the spot, the appellant, Sikandar and one witness Ramnath were holding the neck of the deceased covering with some cloth. However, Bihari Shah (P.W.4) has stated that the appellant assaulted the victim Prem Singh. It is surprising that only one eye witness was examined against the appellant whose name was not mentioned in the FIR. Out of the eye witnesses mentioned in the FIR, only one Kamta Prasad was examined. When Kamta Prasad was examined on 4.8.1995, the eye witnesses Ramnath and Arjun Das Sharma have been given up on the same day. Again on the next day, the eye witness Trilokinath was given up and on 9.8.1996, learned Public Prosecutor has expressed that he did not want to examine

any of the witnesses except Sub Inspector S.K.Tiwari and therefore, out of so many eye witnesses only Bihari Shah was examined whose name was not mentioned in the FIR. Hence, an adverse inference should be drawn against the prosecution that all the eye witnesses whose names were mentioned in the FIR would not have supported the prosecution's case, if they were examined. Bihari Shah (P.W.4) has accepted that after the incident, he did not inform the concerned supervisor or Manager about the incident and he continued with his work. He has also accepted that he was still working in the same factory when he appeared as a witness. He has also accepted in para 4 of his statement that 3-4 officers of the factory were present in the Court when he was giving his statement before the trial Court. Hence, possibility cannot be ruled out that Bihari Shah has given his statement under pressure of the officers of the factory otherwise, he would also have turned hostile. However, his testimony should be assessed on the basis of other circumstantial evidence.

8. Circumstances as proved by the prosecution are adverse to the testimony of Bihari Shah. The FIR, *Ex.P/1* was proved as a corroborative piece of evidence. However, Ramdhani (P.W.1) could not give any explanation as to why he did not lodge the FIR at Police Station Mandideep soon after the incident. The incident took place at 00.30 a.m. and FIR was lodged at 9.40 a.m. though the deceased was sent to Hamidia Hospital, Bhopal with two labours. There was no reason with

Ramdhani for having lodged the FIR, soon after the incident. Initially, he has stated that he himself went to lodge the FIR but, thereafter, he has accepted that he was sent by Makkhan Singh, Manager of the factory alongwith other witnesses to lodge the FIR. According to Bihari Shah, he went with the complainant Ramdhani to the Police Station and all the eye witnesses were kept at Police Station up to 7 p.m. in the evening. It appears that since the management could not decide till morning that what would be the text of the FIR lodged by the supervisor and therefore, Ramdhani was not in a position to lodge the FIR before the police station soon after the incident. Such fact may also be collected from merg intimation, *Ex.P/10* in which radio operator of non urban control, Bhopal has given an intimation to Police Station Mandideep that from Ralson Factory, Mandideep, 3-4 persons had brought the deceased Prem Singh to Hamidia hospital and informed that the deceased Prem Singh was caught by a machine having rubber cutter and he was declared dead by the concerned doctor.

9. Ramdhani Paswan (P.W.1) had sent Jung Bahadur and Bheem Singh alongwith the deceased Prem Singh. These two persons have been given up by the prosecution. If Ramdhani was informed that the incident was caused due to assault done by the appellant then, that fact must be in the knowledge of Jung Bahadur and Bheem Singh then, certainly

these two persons have given a similar intimation to the Radio Operator, Non Urban Control, Bhopal relating to death of the deceased but, in that intimation it was mentioned that injury was caused due to an accident. Hence, the delay in lodging the FIR is fatal and possibility cannot be ruled out that to avoid payment of compensation to the legal representatives of the deceased Prem Singh, the case of accident was converted into a case of murder and the appellant who was resident of Bihar was implicated in the matter.

10. The aforesaid doubt is also confirmed by other circumstances. If it is accepted that the appellant assaulted the victim Prem Singh by a rubber cutter on his neck then, no explanation was given either by Bihari Shah or Ramdhani Paswan as to how the deceased sustained the injury on his knee as found by Dr.C.S.Jain (P.W.5). If the deceased was caught by a machine and sustained injuries by rubber cutter then, such two injuries were possible to be caused otherwise, the eye witness Bihari Shah did not give any information about the second injury caused to the victim Prem Singh on his knee. Secondly, a rubber cutter is shown to be seized from the appellant by the document, *Ex.P/4*. Sub Inspector S.K.Tiwari (P.W.7) has proved the document, *Ex.P/4*. In the document, *Ex.P/4*, it is mentioned that a rubber cutter having sharp edges was recovered whose sharp edges were in 'U' shape. Hence, it

was necessary for the investigation officer to send the seized article to Dr.C.S.Jain to know as whether the injury of the deceased Prem Singh could be caused by that 'U' shaped rubber cutter? Shri Tiwari did not send that seized rubber cutter to Dr.Jain for his opinion. Looking to the description of injuries caused to the deceased Prem Singh, such injuries could not be caused by that rubber cutter because of its shape on sharp side, if the deceased was assaulted by that rubber cutter then, two parallel injuries should have been caused on the neck of the deceased due to its shape.

11. Under such circumstances, the testimony of eye witness Bihari Shah cannot be believed. Bihari Shah was examined under the pressure of his employers and he was not a named witness in the FIR, whereas all the named eye witnesses were not examined before the trial Court, without giving any reason for their non examination. Hence, in such a circumstance, the chain of circumstantial evidence is to be examined by the Court. Ramdhani Paswan (P.W.1) has stated that he was informed by Sohan that such an incident took place in the factory and thereafter, he went to the spot. At that time, Ramnath and others have held the neck of the deceased Prem Singh with cloth. Ramdhani has stated that the deceased Prem Singh told him about the incident and hence, he tried to establish an oral dying declaration given by the deceased but,

according to Dr.C.S.Jain (P.W.5) after getting such an injury, the deceased Prem Singh would have become unconscious within half a minute and he would have died within two minutes. After the incident, Sohan went to the place of Ramdhani and informed about the incident then, Ramdhani went to the spot. Hence, in doing so, it cannot be said that Ramdhani went to the spot within half a minute of the incident or the deceased was in a position to give any dying declaration. The evidence of oral dying declaration given by deceased to Ramdhani is nothing but, a bundle of falsehood, which was given by Ramdhani due to pressure of his employers, whereas he was working as a supervisor in the factory. His conduct is visible that he did not lodge the FIR for at least 4-5 hours. Hence, the story of oral dying declaration goes away.

12. Prosecution has tried to prove that weapon of offence was recovered from the appellant. However, Sub Inspector S.K.Tiwari (P.W.7) did not give any reason as to why he took an interested person Ramdhani Paswan as a witness in seizure memo of the weapon. Also, the weapon was sent to the Forensic Science Laboratory and blood was found on weapon but, the report, *Ex.P/13* does not reveal that blood found on the weapon was human blood. Also, when a worker enters in a factory then, certainly he could not take any objectionable material alongwith him and therefore, it was not possible for

the appellant to take rubber cutter inside the factory. Bihari Shah has accepted in his cross-examination that deceased Prem Singh was working on a machine, which was automatic. It is not a case of prosecution that a rubber cutter was found loose at the spot and the appellant picked up that rubber cutter and assaulted the victim. Also, the appellant could not take that blood stained rubber cutter with him when he left the factory, whereas the rubber cutter is shown to be recovered from his house. Hence, possibility cannot be ruled out that one rubber cutter was separated by the management of the factory from the machine and it was shown to be seized from the appellant.

13. Ramdhani Paswan (P.W.1) has stated that one rubber cutter was recovered from the appellant before him. However, he has accepted that he did not visit the house of the appellant. Signatures of witnesses were taken by Shri Tiwari in the factory itself. Secondly, description of rubber cutter as given in seizure memo, *Ex.P/4* reveals that handle of the rubber cutter was covered with rubber, whereas Ramdhani has stated that handle of the seized rubber cutter was covered with a cloth. Such statement given by Ramdhani indicates that at the time of alleged seizure Ramdhani could not even see the weapon of offence, which was shown to be

recovered from the appellant. Under such circumstances, the testimony of Ramdhani as well as Sub Inspector Shri Tiwari cannot be relied and it is not proved beyond doubt that any rubber cutter was recovered from the appellant.

14. If the appellant would have assaulted the victim Prem Singh by a sharp cutting weapon in such a forceful manner so that a stab injury would have been caused and the deceased Prem Singh had died then, certainly there must be a motive with the appellant to kill the deceased. Neither Ramdhani, nor Bihari Shah could tell about the motive of the appellant to kill the deceased Prem Singh. According to them, a sudden quarrel took place between them. When the witness Bihari Shah could see that the appellant assaulted the victim by a rubber cutter then, he must know the reason by which sudden quarrel took place between them but, if evidence of Bihari Shah is considered he could not give any reason for that sudden quarrel. Under these circumstances, in absence of any motive or any reason for sudden quarrel, it was not possible for the appellant to give a blow of rubber cutter on the neck of the deceased. In this context, the judgment passed by the Apex Court in case of “Surinder Pal Jain Vs. Delhi Administration”, [AIR 1993 SC 1723] may be referred, in which it is held that the absence of motive, however, puts

the Court on its guard to scrutinize the circumstance more carefully to ensure that suspicion does not take the place of legal proof. Also, in case of “Varkey Joseph Vs. State of Kerala”, [AIR 1993 SC 1892] it is held by the Apex Court that suspicion is not the substitute for proof. There is a long distance between “May be true” and “Must be true” and the prosecution has to travel all the way to prove its case beyond all reasonable doubt.

15. Also, Ramdhani Paswan (P.W.1) has accepted in para 4 of his statement that soon after the incident, the appellant was present in the factory. He did not escape. If he would have assaulted the deceased Prem Singh then, he would have been captured by other workers or he would have tried to leave factory premises. At least it was not possible for him to take that blood sustained rubber cutter to his house. His presence in the factory and conduct shows that he did not feel guilty conscious. His conduct indicates his innocence. On the basis of aforesaid circumstances, testimony of sole eye witness Bihari Shah cannot be believed. In this connection judgment passed by the Apex Court in case of “State of U.P. Vs. Jaggo @ Jagdish”, [AIR 1971 SC 1586] may be referred, in which the Apex Court has observed that normally it is expected that name of eye witness be mentioned

in the FIR. The Apex Court found that on assessment of evidence given by two eye witnesses in that case was not believable, those were introduced to shape the prosecution case. Similarly, in the present case the testimony of eye witness Bihari Shah inspires no confidence.

16. If ocular evidence is discarded then, it is for the Court to assess the remaining circumstantial evidence. In the present case, on the basis of the aforesaid discussion, if entire evidence of the prosecution and its draw backs are considered simultaneously then, it would be apparent that there was no motive with the appellant to assault the deceased Prem Singh. All the named eye witnesses in the FIR did not support the prosecution story. Statement given by one eye witness Bihari Shah was not believable. The appellant could not take any rubber cutter in the factory or separate it from the machine, nor he could take that blood stained rubber cutter to his house . There is no allegation that he lifted the rubber cutter from the premises of the factory itself and caused that incident. Alleged rubber cutter shown to be seized from the appellant having sharp edges in 'U' shape, whereas that seized weapon was not sent to Dr.Jain to give his opinion as to whether such injuries could be caused by that rubber cutter or not. Eye witnesses gave

the description of causing one injury by the appellant on the neck of the deceased, whereas no reason has been shown by the eye witness as to how the deceased Prem Singh sustained the incised wound on his right knee as found by Dr.Jain. When two workers were sent by Ramdhani alongwith the deceased Prem Singh, they intimated about the death of the deceased with an intimation that the deceased died due to an accident. He sustained severe injuries due to rubber cutter affixed in the machine and he was caught in that machine. FIR was not lodged within time. It was highly delayed. Ramdhani and Bihari Shah were under pressure of the management of the factory. Hence chain of circumstantial evidence is not only broken but, it gives opposite indication against the prosecution's case. The prosecution has failed to prove that the appellant assaulted the victim Prem Singh by any weapon or he caused his death. Under these circumstances, possibility cannot be ruled out that the deceased Prem Singh sustained injuries due to an accident. He was caught by an automatic machine and sustained injuries on his neck as well as on knee and the appellant was falsely implicated in the matter, so that the management could be saved from giving any compensation to the Legal Representatives of the deceased Prem Singh. The prosecution

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could not prove its case beyond doubt that the appellant assaulted the deceased on his neck, causing his death. Under these circumstances, the appellant could not be convicted of offence under Sections 302 or 304 of IPC or any inferior offence of the same nature including offence under Section 304 (Part-2) of IPC. The trial Court has committed an error in convicting the appellant of offence under Section 304 (Part-2) of IPC.

17. On the basis of the aforesaid discussion, the appeal filed by the appellant is acceptable and hence, it is accepted. Conviction as well as sentence recorded by the trial Court of offence under Section 304 (Part-2) of IPC against the appellant Sikandar Singh is hereby set aside. The appellant is acquitted from all the charges appended against him.

18. The appellant is on bail. His presence is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged.

19. Copy of the judgment be sent to the trial Court alongwith its record for information.

(N.K.GUPTA)
JUDGE
30/7/2015

Pushpendra