

HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRA No. 758/1997

Sangram & Ors

Vs.

State of Madhya Pradesh

[Single Bench : Hon'ble Smt. Anjuli Palo, Judge]

Shri Vijay Nayak, learned counsel for the appellants.

Shri Ramesh Kushwah, learned Panel Lawyer for the respondent/State.

Whether approved for reporting ? Yes

Law laid down :- (1) Testimony of interested witnesses can be relied upon for conviction.
(2) Some discrepancies in the testimony of witnesses which does not affect the case cannot be the basis for rejection of the evidence.

Significant Paragraphs – 9, 11, 12 and 17

**JUDGMENT
(03/08/2017)**

1. This appeal has been preferred by the accused persons under Section 374 of the Code of Criminal Procedure being aggrieved by the judgment and conviction dated 31.03.1997, passed by the first Additional Sessions Judge, Chhindwara in Session Trial No. 310/1995 whereby the appellants were convicted under Section 307/34 of IPC and sentenced for 7 years rigorous imprisonment for each with fine of Rs. 500/- and in default thereof, additional three months rigorous imprisonment.

2. The appellants were acquitted earlier by this Court vide judgment dated 25.07.2003 in Criminal Appeal No. 758/1997. However, the State of MP (respondent herein) preferred an appeal [SLP (Crl.) No. 2899/2004] against the said order before the Hon'ble Supreme Court. The SLP was decided on 20.10.2005. The Hon'ble Supreme Court, without going into the merits of the case, set aside the order passed by this Court with the direction to consider the matter afresh.

3. The facts of the case in brief goes to show that on 10.05.1995 at village Gumgaon, bull of the appellant Sangram damaged the crops of complainant-Jeewanlal Sahu. Mahawati (wife of the complainant Jeewanlal) raised objection and called Panchayat at about 9:30 pm on the same day. After that while Jeewanlal and his wife Mahawati were returning home, the appellant No.1 Sangram along with other co-accused persons assaulted Jeewanlal with rod and sticks. Complainant Jeewanlal (PW-2) received 14 injuries including some fatal injuries over his head which were dangerous to his life. FIR was lodged at Police Station Chand, District Chhindwara. After due investigation police filed charge-sheet against the appellants under Section 307/34 of Indian Penal Code.

4. After considering the overall prosecution evidence, learned Trial Court found that the accused-appellants had shared common intention and in furtherance of common intention committed attempt to murder of the complainant-Jeewanlal. Therefore, the appellants were convicted as mentioned above.

5. Appellants challenged the aforesaid findings and sentence on the ground that the learned Trial Court failed to see that there is no evidence on record to prove that in furtherance of common intention, the appellants committed offence. The prosecution also failed to prove seizure of the weapon from the appellants. The findings of learned Trial Court are based on the presumption and suspicion. There is no evidence of pre-meditation of mind. All of a sudden, quarrel started and the injuries which have been found on Jeewanlal are not at all sufficient to cause his death. The doctor stated that it can be caused by falling down on the ground. So many material contradictions and omissions have been found in testimony of the complainant and his wife. No independent witness has supported the prosecution case. Therefore, the appellant prays that impugned judgment of conviction and sentence has to be set aside and appellants be acquitted from the charges.

6. Having heard learned counsel for the parties at length and on perusal of the record, this Court is of the opinion that firstly, it is not in dispute that on 10.05.1995 the complainant-Jeewanlal (PW-2) was found injured. This fact is also narrated by Bhagchand (DW-1) and Chhidarani (DW-2). They saw complainant Jeewanlal in injured condition with fresh head injury. The appellants took the defence that Jeewanlal was drunk due to which he may have fallen down and sustained head injuries. But Dr. R.K.Nema (PW-1) who examined Jeewanlal on the same day just after the incident at about 11:45 pm, found the following injury on his body:

- (1) Swelling size, about 4"x4" over the left shoulder region with tenderness. Movement is restricted.
- (2) Swelling over the left wrist joint about 1"x1".
- (3) Contusion over left shoulder region about 3"x3/4".
- (4) Lacerated wound, size 1/2"x1/4" skin-deep over left elbow joint and bleeding.
- (5) Contusion, size about 3"x1" over right back at the level of third spine, reddish in colour.
- (6) Contusion over right side of chest, size 5"x2 1/2" reddish in colour on mid axillary line about.
- (7) Abrasion over left scapular region size 3"x1".
- (8) Abrasion over left knee size 1"x1".
- (9) Lacerated wound, size 1/2" x 1/2" bone-deep over right temporal region.
- (10) Lacerated bleeding wound, size 3"x1/2" bone-deep over right parietal.
- (11) Lacerated wound, size 2"x1/4" bone-deep over right parietal region.
- (12) Lacerated wound, size 1"x1/2" skin-deep over left frontal region.
- (13) Lacerated wound, about 1"x1/4" skin-deep over left side of the forehead.
- (14) Swelling over left temporal region about 1"x1".

7. In the opinion of Dr. R.K.Nema (PW-1), all the above injuries could have been caused by hard and blunt object, just 5-6 hours before the examination and were sufficient to cause death. After the X-ray examination, Dr. D.Moitre (PW-10) found fracture in 7th and 8th ribs at the right side of the chest. The nature and number of injuries itself indicate that Jeewanlal (PW-2) was assaulted by more than one person as the injuries were caused on different parts of his body, Thus, the defence version that Jeewanlal sustained injuries due falling down, is not found reasonable and probable. None of the defence witness deposed as to how the head injuries were caused to Jeewanlal.

8. Mahawati (PW-3) (wife of the complainant Jeewanlal) deposed that earlier during the day time on the date of incident, the bull of appellant No. 1 Sangram Singh entered in the fields of complainant and damaged the crops. Mahawati had complained and raised objection before Sangram Singh. At that time also appellant No. 1 Sangram Singh was angry over her and was about to hit her. She came back home and told her husband Jeewanlal about the incident. This testimony was corroborated by Jeewanlal (PW-2)/complainant. After some time, they went to the house of Bissu Patel where they called panchayat but appellant No. 1 Sangram did not attend the panchayat. When the complainant-Jeewanlal and his wife were returning home at night, the appellants assaulted Jeewanlal by rod and sticks due to which Jeewanlal was injured. He also sustained head injuries. As per Jeewanlal (PW-2), his wife lodged report at the police station. Thereafter, he was referred to District Hospital, Chhindwara for further treatment. He was admitted there for about 21 days for treatment. All the above facts are indicative of common intention of the appellants to commit offence with him.

9. Although, complainant-Jeewanlal (PW-2) and Mahawati (PW-3) are husband-wife and are related witnesses. They come in the category of interested witness, but it is settled law that only on that ground their evidence cannot be rejected.

10. In case of **Mst. Dalbir Kaur Vs. State of Punjab [1976 Cri.L.J. 418(SC)]** the Hon'ble Supreme Court has made following observations :-

“Interested witnesses- Relatives witnesses are natural witnesses – are not interested witnesses and their

testimony can be relied upon.”

The Hon'ble Supreme Court in case of **Dalip Singh & Ors. Vs. State of Punjab [AIR 1953 SC 364]**, has held as under: -

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule.”

11. Thus, the evidence of Jeewanlal (PW-2) and Mahawati (PW-3) is properly corroborated by the doctors and the circumstances also, hence, inspires confidence to believe in their evidence. Some other witnesses turned hostile but it is not proper to reject the whole prosecution case on that ground. Section 134 of the Evidence Act requires no particular number of witnesses to prove the case. Conviction can be based on the sole testimony of reliable witness.

12. K.K.Tripathi, Assistant Sub-Inspector (PW-8) deposed that FIR (Ex. P/9) was registered on the complaint of Jeewanlal just after the incident. The incident took place at about 9:30 pm. Medical examination was conducted within one hour after the registration of FIR. All these

facts substantiate the testimony of complainant-Jeewanlal (PW-2) and his wife Mahawati (PW-3). There is nothing on record to prove that the FIR was lodged as an after thought on false grounds to implicate the appellants. It is true that some contradictions and omissions have appeared in the testimony of these witnesses but it cannot be said to affect the original prosecution case wholly. Such type of contradictions and omissions, are found in the testimony of villagers which indicate that they were not making up any false story but were narrating the incident by memory. Hence, no reasonable doubt occurs on the testimony of Jeewanlal (PW-2) and Mahawati (PW-3).

13. In case of **Vijayee Singh Vs. State of UP [(1990) 3 SCC 190]** the Hon'ble Supreme Court discussed about the 'reasonable doubt' as follows:

“The 'reasonable doubt' is one which occurs to a prudent and reasonable man. Section 3 of the Evidence Act refers to two conditions - (i) when a person feels absolutely certain of a fact – believe it to exist” and (ii) when he is not absolutely certain and think it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence.

The doubt which the law contemplates is certainly not that of a weak or unduly vacillating, capricious, indolent, drowsy or confused mind. It must be the doubt of the prudent man who assumed to possess the capacity to "separate the chaff from the grain".

The degree need not reach certainty but it must reach a high degree of probability.”

14. While appreciating the evidence of a witness, the Court has to assess whether read as a whole, it is truthful. In doing so, the Court has to bear in mind the deficiencies, drawbacks and infirmities to find out

whether such discrepancies sake the truthfulness.

15. In case of **Hari Narayan Vs. State of M.P., 2017 Cri.L.J. (NOC) 126 (MP)**”, it was held that:-

“Minor discrepancies in statements occurring due to illiteracy of witness and long gap between recording of testimony and offences – Not a ground to discard evidence”.

“Some discrepancies, not touching the core of the case are not enough to reject the evidence as a whole.”

16. In the case of **Leelaram Vs. State of Haryana [(1999) 9 SCC 529]**, the Hon'ble Supreme Court has held that the Court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted. Mechanical rejection of such type of evidence may lead to failure of justice. It is well known that principle of *“Falsus in uno-falsus in omnibus”* has no general acceptability.

17. Learned counsel for the appellants submitted that no independent witness has supported the prosecution case. Hence, prosecution story is not reliable. This Court is unable to agree with the submission that the testimony of two eye-witnesses namely Jeewanlal (PW-2) and Mahawati (PW-3) requires corroboration from the other independent witness.

18. Investigation Officer Akhil Verma (PW-11) seized an iron rod from appellant No. 1 Sangram as per seizure memo (Ex. P/5), lathi from the appellant No. 2 Guddu @ Vishram as per seizure memo (Ex. P/6) and babool stick from appellant No. 3 Kamlesh as per seizure memo (Ex. P/7) before the punch witnesses Neelam Singh and Motiram.

19. Neelam Singh (PW-5) knew about the incident. He also deposed

that the incident took place at night thereafter, the police came to the village to enquire about the matter. He has also signed Exh. P/4 to Exh. P/7. This witness partly corroborated the testimony of Investigation Officer Akhil Verma (PW-11).

20. The importance of discovery of weapons from the appellants lies in the fact that the weapons used in the crime were found in the possession of the appellants. It is a corroborative element in the case of Jeewanlal (PW-2) and his wife Mahawati (PW-2) who do not require corroboration and that makes it all the more safe to accept their testimony.

21. In case **Roop Narayan Mishra Vs. State of U.P. [2017 Cri.L.J. 1487]** it was held that:

“Direct evidence- Testimony of the witnesses is clear, cogent and trustworthy as to time, place, manner of committing crime and identification of accused. Prosecution is able to prove its case beyond all reasonable doubts against accused. Accused held guilty of offence.”

22. After taking into consideration all the above facts, I agree with the findings of learned Trial Court. On that finding, the conviction of the appellant under Section 307/34 of Indian Penal Code can be sustained. Accordingly, the conviction of the appellants is upheld. Keeping in view the number of injuries and the manner of incident, on the question of sentence, this Court finds that it is not proper to interfere with the judicial discretion of the learned Trial Court.

23. Accordingly, the appeal is hereby dismissed.

24. The appellants are on bail. Their bail bonds are canceled and they

are directed to surrender immediately before the concerned trial Court to undergo the remaining sentence, failing which the trial Court shall take appropriate action under intimation to the registry. The period of sentence already undergone by the appellants in the custody be adjusted.

25. Copy of this order be sent to the Court below alongwith the record for information and compliance.

(Smt. Anjali Palo)
Judge

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