

HIGH COURT OF MADHYA PRADESH JABALPUR

Cr. A. No.442/2007

Babu Singh and others

Vs.

State of Madhya Pradesh

Cr. A. No.931/2007

Mangal Singh Thakur and others

Vs.

State of Madhya Pradesh

Present : Hon'ble Mr. Justice S.K. Gangele, Judge
Hon'ble Smt. Justice Anjuli Palo, Judge

Whether approved for reporting: Yes/No

Name of counsel for the parties:

Shri Sharad Verma, counsel for the appellants.

Shri Pradeep Singh, Govt. Advocate for the respondent/State.

Law laid down:-

Significant Paragraphs:-

J U D G M E N T
(22.02.2018)

Per : Smt. Anjuli Palo, J.

Both the appeals have been filed by the accused persons being aggrieved by the common judgment dated 24.01.2007 passed by 2nd Additional Sessions Judge, Sagar in S.T. No.26/2003, therefore, are being decided by this common judgment.

2. By the impugned judgment, the appellants have been convicted and

sentenced as under:-

Sr. No.	Section	Imprisonment	Fine	Default of fine
1	302 of the IPC or in alternate charge of Section 302 r/w Section 149 of the IPC.	R.I. for Life	Rs.25,000/- each	R.I. for three years
2	148 of the IPC	R.I. for two years	Rs.2,000/-	Six months Additional
3	341 of the IPC	S.I. for one month	Rs.500/-	S.I. for five days

3. It is important to note that accused Amol Singh is still absconding.

4. Brief facts of the prosecution case is that, Chhatar Singh was the village Sarpanch of village Guraiya. On 12th October 2002 at about 8:00 a.m., he went to Satnam Singh's house. While returning home, the appellants obstructed and abused him. They threatened to kill him. They were armed with Lathi and Katarna. They assaulted Chhatar Singh. He received injuries on his head and hands. Dropadi mother of appellant Mangal brought a bottle of acid, which was poured by the appellant Mangal on the head of Chhatar Singh. Surendra Dubey, Harisingh Thakur, Mahendra Thakur, Kunwar Singh etc. reached the spot to rescue Chhatar Singh. They brought him to the District Hospital, Sagar. Dehatinalishi was lodged by Chhatar Singh (since deceased). Thereafter, he was referred to Hamidiya Hospital, Bhopal for further treatment. He died on 18th October, 2002 at about 2:15 p.m. On the intimation from Hamidiya Hospital Bhopal, merg has been registered. After completion of investigation, charge sheet has been filed against the appellants for offences punishable under Sections 302, 307, 341, 294, 147, 148 and 149 of the Indian Penal Code.

- 5.** After committal of the case, charges under Sections 148, 341, 302 in alternate Sections 302/149 of the IPC have been framed against the appellants. They abjured guilt and pleaded innocence.
- 6.** Learned trial Court convicted the appellants for committing the murder of Chhatar Singh by deadly weapons in furtherance of their common object. The appellants were sentenced as mentioned above.
- 7.** The appellants have challenged the impugned judgment on the grounds that only interested witnesses have supported the prosecution case. Their testimony are contradictory with the medical evidence. There was no eye-witness of the incident. The appellants were falsely implicated by the complainant party because of their enmity. Therefore, the appellants have prayed to set aside the impugned judgment and they be acquitted from the charges levelled against them.
- 8.** Having heard learned counsel for the parties at length and perused the record.
- 9.** Learned Govt. Advocate has submitted that the trial Court has not committed any error in convicting and sentencing the appellants. Therefore, it is prayed that the appellants may not be acquitted from the charges levelled against them.
- 10.** It is important in the instance case that Dehatinalishi Ex.P/7 was lodged by Chhatar Singh (deceased) himself on the date of incident. In which, he has narrated all the relevant facts and names of appellants. He died on 18.10.2002. His statement under Section 161 of the Cr.P.C. has been recorded by the police. Dehati Nalishi Ex.P/7 and statement of deceased recorded under Section 161 of the Cr.P.C. come under the purview of dying

declaration under Section 32-A of the Indian Evidence Act.

11. In case of **State of M.P. Vs. Dal Singh, 2013 (1) 14 SCC**

159 the Apex Court has reiterated the law of dying declaration as under:-

“The law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a Doctor in respect of such state of the deceased, is not essential in every case.”

12. In case of **Shama Vs. State of Haryana, (2017) 11**

SCC 535, wherein the Apex Court has held that:-

“One of the principles, which is always to be kept in mind, while examining dying declaration of deceased, is that “a man will not meet his Maker with a lie in his mouth”. In absence of any kind of infirmity or/and suspicious circumstances surrounding execution of dying declaration, once it is proved in evidence in accordance with law, it can be relied on for convicting accused even in absence of corroborative evidence, but with a rule of prudence, that it should be so done with extreme care and caution. Murder trial herein, dying declaration was credible and corroborated by other evidence. Hence, conviction of appellant-accused stands confirmed.”

Hence, contention of learned counsel for the appellants regarding non-admissibility of the dying declaration recorded by the police is not acceptable.

13. Prosecution examined Mahendra (PW-1), Delan (PW-6), Lakhan Singh (PW-8), Geeta Bai (PW-10), Lane Singh (PW-11) and

Hari Singh (PW-21) as eye-witnesses of the incident. Geeta Bai (PW-10) was widow of the deceased. However, she was not an eye-witness of the whole incident. She only deposed that she heard hue and cry from Ram Singh's house then she reached on the spot. She found that her husband was lying in injured condition and the appellants 14 in number were running away from the spot, which establish that she saw some appellants on the spot after the incident. Her husband was injured. Chhatar Singh told her the whole incident.

14. Geeta Bai (PW-10) also stated that Hari Singh, Mahendra, Lane Singh, Surendra and some other persons reached the spot. They brought her husband to the hospital. Mahendra (PW-1) corroborate the whole incident in same manner as narrated in Dehati Nalishi Ex.P/7. He also supported the presence of Hari Singh, Surendra Kumar, Lakhan on the scene of crime.

15. It is the settled law that dying declaration can form sole basis of conviction without corroboration, when it is voluntary, true, and reliable free from suspicious circumstances recorded in accordance with the practice and principle as stated by the Supreme Court in cases of **Pawan Kumar Vs. State of Himachal Pradesh, (2017) 7 SCC 780, Sukanti Moharan Vs. State of Orissa (2009) 9 SCC 163, Raju Devade Vs. State of Maharashtra, (2016) 11 SCC 673** and **Krishan Vs. State of Haryana, (2013) 3 SCC 280.**

16. It is important to note that the accused persons namely Munna @ Bhagwan Singh, Gokal Singh, Jahar Singh, Bharat Singh, Kailash Singh and Halke were acquitted by the trial Court. Hence,

learned counsel for the appellants has contended that on the same set of evidence, the appellants are also entitled to get benefit of doubt. We are not inclined to accept the contention of learned counsel for the appellants. In criminal trial, the maxim "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything) would not be applicable.

17. Mahendra Singh (PW-1) in para 6 of his cross-examination deposed that he brought Chhatar Singh to Surkhi Hospital and thereafter, Police reached there. He specifically denied that at that time, Chhatar Singh was not in a condition to speak properly or to give dying declaration. The version of Mahendra Singh (PW-1) is also corroborated by Lakhan Singh (PW-8) and Lane Singh (PW-11). However, some witnesses turned hostile but they partly supported the prosecution story. Hence, their testimony can be used for the corroboration of prosecution case. As held by the Supreme Court in cases of **Charandas Swami Vs. State of Gujrat and others, (2017) 7 SCC 177, Rajendra Vs. State (2009), 13 SCC 480** and **Govindappa and Ors. Vs. State of Karnatka, (2010) 6 SCC 533.**

18. Hari Singh (PW-21) saw the deceased in injured condition just after the incident. He also saw Mahendra and Surendra were present there. Their evidence cannot be totally ignored or discarded. We find that the aforesaid witnesses have established that the deceased was assaulted by the appellants.

19. Inspector R.P. Tiwari (PW23) corroborated the testimony of Geeta Bai (PW-10), Mahendra (PW-1) and Surendra (PW-7). He stated that he received an information from the villagers that Chhatar

Singh was assaulted by some persons therefore, he proceeded to village Guraiya. Meanwhile deceased Chhatar Singh was brought to CHC Surkhi, thereafter, referred to the District Hospital, Sagar then, R.P. Tiwari (PW-23) reached there. On his request, Dr. R.K. Jain (PW-2) examined Chhatar Singh and found the following injuries on his body:-

- (i) Incised wound of 2 cm. x 1 cm x 1 cm. with irregular margins over right forearm
- (ii) Incised wound of 4 cm x 1 cm. x 1 cm. on right forearm
- (iii) A contusion about 4 cm. x 4 cm. over left feet.

According to Dr. R.K. Jain, Chhatar Singh was complaining about low vision in his eyes. He was in critical condition but conscious. Dr. Jain also narrated that Chhatar Singh was able to speak and fit in mental condition for making his dying declaration in Dehati Nalishi Ex.P/7.

20. Dr. R.K. Jain found that his left side of face, left side of forearm about 20 cm. x 6 cm. with blackening in burned condition. Further, he found that blackening was present due to burns on right side of the neck, right shoulder, back portion of neck and upper portion of back. All the injuries were caused to the deceased due to acid. During postmortem, his physical condition is also corroborated by Dr. B.K. Athwal (PW-12). He opined that the deceased died due to

failure of cardio respiratory system because of complication from burn injuries caused to him. Nature of injuries are homicidal in nature and sufficient to cause his death in ordinary course. Except the burn injuries, other injuries may be caused by hard and blunt object. In his cross-examination, he also deposed that the deceased was able to speak to record his dying declaration.

21. In case of **Ramesh and others vs. State of Haryana (2017) 1 SCC 529**, the Supreme Court has held that :-

“Law on the admissibility of the dying declarations is well settled. In *Jai Karan v. State of N.C.T., Delhi* (1999) 8 SCC 161, the Supreme Court explained that a dying declaration is admissible in evidence on the principle of necessity and can form the basis of conviction if it is found to be reliable. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence, neither extra strong or weak, and can be acted upon without corroboration if it is found to be otherwise true and reliable.

22. In such circumstances, we are of the considered view that

the trial Court has rightly relied on the dying declaration of the deceased. There is no material contradiction or omission in the testimony of eye-witnesses. Their testimony is also supported by the medical evidence. All the evidence corroborated the facts of dying declaration of deceased.

23. In case of **Paulmeli and Anr. Vs. State of Tamil Nadu, AIR 2014 SC (Supp) 1249** and **Bijender Singh Vs. State of Haryana, AIR 2014 SC (Suppl) 489** in which it was held that:-

“Even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim *falsus in uno falsus in omnibus* (false in one thing, false in everything) has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, truth is the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. **See also. Suchcha Singh Vs. State of Punjab, AIR 2003 SC 3617** and **Raja @ Rajinder Vs. State of Haryayan.**”

24. Learned counsel for the appellants has contended that role of every appellant is different. Therefore, the provision of Section 34 of the IPC is not attributed in this case. Particularly, all the eye-

witnesses deposed against Mangal only, therefore, the appellants are entitled to be acquitted from the charges levelled against them. In this regard, we have considered the testimony of eye-witnesses Mahendra (PW-1). He has clearly deposed that all the appellants came altogether on the spot. They were armed with deadly weapons. The appellant Mangal assaulted with Sang (a sharp weapon). Appellant Kallu assaulted with Lathi and appellant Amol (now absconded) assaulted with Katarna (a sharp cutting object). The appellant Mangal inflicted blow of Sang on the hands of deceased and appellant Kallu inflicted Lathi blow on the deceased. Accused Dropadi (mother of appellant Mangal) provoked them to pour acid on the deceased. A bottle of acid was in her hand and she shouted to pour on the deceased, then appellant Mangal poured acid on the body of deceased. Thereafter, all the accused persons ran away together from the spot. In earlier paragraphs, the injuries of the deceased were mentioned by us. At the scene of occurrence, the appellants Mangal, Kallu and Dropadi came together, after committing the offence, they ran away from the spot altogether, which proves that they committed crime in furtherance of their common intention. With the aid of Section 34 of the IPC, they are liable to be convicted with the main offence.

25. In case of **Kara Bhai Vs. State of Gujrat, AIR 2017 SC 5413** it was held that:-

“Prosecution not required to establish that any particular accused caused fatal injuries.

In the case of Kara Bhai (supra), eye-witnesses go to show that accused No.1 and accused No.2, who had jointly gone to the house of deceased and had called him out and had taken him away immediately. Thereafter, the incident had taken place in course of which both the accused persons had attacked the deceased with knives. In view of the said evidence on record, above principle is laid down by the Supreme Court and also held that as ingredients of Section 34 of the IPC would be squarely attracted in the present case. Therefore, it was held that all the accused persons are liable to be convicted and sentenced with the aid of Section 34 of the IPC.

26. In case of **Parichhat Vs. State of M.P., AIR 1972 SC 535**, it was held that:

“The common intention within the meaning of Section 34 of the IPC implies prearrange plan where no criminal act was done in concert pursuant to such a plan which will be liable for his individual act. The common intention however, may develop on the spot after the offenders gathered there. A previous plan is not necessary. The common intention can be proved from the conduct of accused and circumstances of the case although both the common intention can develop suddenly on the spot but for that its origin has to be proved by the prosecution.”

27. In the light of above discussion and principles laid by the Supreme Court, we come to the conclusion that learned trial Court has rightly convicted the appellants Mangal Singh, Kallu and Dropadi for offence under Section 302 of the IPC. But after considering the entire direct evidence on record, we find that with regard to the appellants Babu, Jagdish Singh, Firtu @ Imrat Singh and Bhagat Singh, the testimony of all eye-witnesses are

in great inconsistency. The eye-witnesses have not stated about active participation of appellants Babu, Jagdish Singh, Firtu @ Imrat Singh and Bhagat Singh. The prosecution has succeeded in burdening the conviction against the said appellants for commission of offence under Section 34 of the IPC. But learned trial Court has convicted the appellants with the aid of Section 149 of the IPC and further for Section 148 of the IPC. There are three accused persons, liable to be convicted in this case.

Section 141 of the IPC defines unlawful assembly "An assembly of five or more persons.

28. There is nothing on record to show that the appellants Babu, Jagdish Singh, Firtu @ Imrat Singh and Bhagat Singh had played any role in the alleged incident. Even a prior meeting of minds that they came with Mangal and others and simultaneously attacked Chhatar Singh and they had same intention to kill him and all the injuries were caused by accused/appellant Mangal, Kallu and Dropadi. They would be liable for the injuries caused to the deceased. But the appellants Babu, Jagdish Singh, Firtu @ Imrat Singh and Bhagat Singh could not be vicariously liable for the act of other appellants namely Mangal, Kallu and Dropadi. Therefore, we find that the appellants Babu, Jagdish Singh, Firtu @ Imrat Singh and Bhagat Singh are not liable to be convicted for committing the murder of Chhatar Singh.

29. On the basis of aforesaid discussion, Criminal Appeal No.442/2007 filed by the appellants Babu, Jagdish Singh, Firtu @ Imrat Singh and Bhagat Singh is hereby allowed. The impugned judgment against the said appellants is set aside. They are acquitted from the charges under

Sections 302, 302/149, 148 and 341 of the IPC.

30. The appellants Babu, Jagdish Singh, Firtu @ Imrat Singh and Bhagat Singh are on bail. Their bail bonds stand discharged. If fine amount is deposited by the said appellants, the same will be refunded to them.

31. So far as Criminal Appeal No.931/2007 filed by the appellants Mangal Singh Thakur, Kallu @ Prem Singh and Dropadi Bai @ Brajrani is concerned, the conviction of said appellants for offence under Section 302/149 of the IPC is hereby converted into the offence under Section 302/34 of the IPC as discussed at paragraphs No.23 and 24. The said appellants are acquitted from the charges under Sections 148, 149 of the IPC. If fine is deposited for offence under Section 148 of the IPC, the same be refunded to them. With this alteration Criminal Appeal No.931/2007 is hereby dismissed. The appellants who are on bail, are hereby directed to surrender before the concerned trial Court immediately to undergo the remaining jail sentence, failing which the trial Court shall take appropriate action.

32. Copy of the judgment be sent to the trial Court alongwith the record for information and necessary compliance.

(S.K. Gangele)
Judge

(Smt. Anjuli Palo)
Judge