

THE HIGH COURT OF MADHYA PRADESH : JABALPUR

Criminal Appeal No.	684/2009
Parties Name	Brijendra Singh & another vs. State of M.P.
Bench Constituted	Hon'ble Shri Justice S.K.Gangele and Hon'ble Shri Justice Akhil Kumar Srivastava.
Judgment delivered by	Hon'ble Shri Justice S.K.Gangele.
Whether approved for reporting	Yes
Name of Counsel for the parties	Shri Abhishek Tiwari, Advocate as amicus curiae for appellant No.1. Shri R.S.Patel, learned counsel for appellant No.2. Shri Aditya Jain, learned Deputy Govt. Advocate for respondent-State.
Law laid down	Nature of injury caused by Ballam, a piercing weapon. Reliability and extent of ocular evidence in conflict with medical evidence.
Significant paragraphs	20, 21, 22, 23 and 24.

J U D G M E N T
11.07.2018

This appeal has been filed against judgment dated 02.03.2009 passed in Special Case No.196/2007 by Sessions Judge (SC/ST) Chhatarpur convicting the appellants under Section 302/34 of IPC and sentenced them to undergo life imprisonment with fine of Rs.3000/- each and in default, rigorous imprisonment for 6 months each.

2. The prosecution story, in brief, is that the deceased Hariom @ Harprasad who was Secretary of Gram Panchayat, Bamari, on

02.09.2007, had gone to see off his younger brother who was student of Vidisha Engineering College. When he was returning back on his motor cycle, at around 4:30 in the evening, appellants Brijendra Singh and Dippuraja alongwith another co-accused Mangal Singh armed with Farsa and Ballam stopped him and beaten him. On hearing his cry, Ramsahay, his son-Rajkishore and wife-Rambai reached at the spot. They had witnessed the incident. The accused persons ran away from the spot. Ramsahay lodged the report at the police station. Police conducted investigation and filed charge-sheet. Appellants abjured their guilt during trial and pleaded innocence. Accused-Mangal Singh was tried by Juvenile Court. The trial Court held the appellants guilty for offence of murder and convicted them under Section 302/34 of IPC.

3. Learned counsel for the appellant No.1 submitted that the evidence of eye-witnesses is not reliable. The trial Court has committed error in relying upon the evidence of so called witnesses. Learned counsel has further submitted that as per prosecution the appellant was armed with Ballam, however, as per evidence of the Doctor, there was no injury on the person of the deceased caused by Ballam, therefore, appellant-Brijendra Singh is entitled for benefit of doubt. To support his contention, learned counsel relies upon the judgment in the case of *Kartarey vs. State of U.P. : AIR 1976 SC 76*.

4. On the other hand, learned counsel for the State has submitted that both the appellants were present on the spot. They were armed with deadly weapons. They had participated in the crime. They had pre-intention and plan to kill the deceased. Hence, the trial Court has rightly held the appellants guilty for offence punishable under Section 302/34 of IPC.

5. There are three eye-witnesses PW-1, PW-2 and PW-3.

6. PW-1-Ramsahay Prajapati deposed that the deceased was Panchayat Karmi of the Gram Panchayat. He was returning back on his motor cycle who went to see off his younger brother. On the way near the house of Kharga Kushwaha, appellants armed with Farsa and Ballam had beaten the deceased. On hearing his cry, I alongwith my son and wife reached at the spot. We witnessed the incident. The accused persons fled away from the spot on the motor cycle of the deceased. The deceased died on the spot. I went to the police station and lodged the report which is Exhibit P/1. Police seized Farsa and Ballam from the spot.

7. PW-2-Rajkishore Prajapati deposed the same facts that the appellants were armed with Farsa and Ballam and they had beaten the deceased. The deceased died on the spot.

8. PW-3-Rambai is also the eye-witness who deposed the same facts as deposed by PW-1 and PW-2.

9. First Information Report is Exhibit P-7 which was lodged by PW-1 on the same day at around 5:00 O'clock. All the three accused persons are named in the FIR. It is also mentioned that they were armed with Farsa and Ballam. They had beaten the deceased due to which the deceased died on the spot.

10. PW-9-Dr.Pankaj Rastogi deposed that he performed autopsy of the deceased and noticed following injuries on the person of the deceased :

“Average body built wearing light blue shirt, grey coloured pant and white baniyan and blue underwear (shirt and pant blood stained). All clothes sealed and handed over to constable of Police Station Bamitho. Rigor mortis present.

Following injuries present over the body:- (1) on face (a) left side two transverse incised wound size 4 cm x 2 cm x bony deep (b) one longitudinal incised wound size 2 cm x 1 cm x bony deep (c) one oblique incised wound size 2 cm x 1 cm x skin deep over left

forehead.(2) on skull (a) one incised wound size 8 cm x 2 cm x bony deep present over temporal region (b) one incised wound size 6 cm x 2 cm x bony deep present over right temporal region (c) one incised wound size 7 cm x 2 cm x bone deep over the vertex of skull corresponding bone of skull and brain matter comes out(3)on arms (a) one incised wound size 3 cm x 1 cm x skin deep over left wrist (b) one incised wound size 3 cm x 1 cm x skin deep over right palm. All injuries are ante mortem in nature, produced by hard and sharp object. Injury No.2(c) (underlined)is sufficient to cause death.”

11. PW-9 has further deposed that the injuries were caused by hard and sharp edged object. He also made some sketches on the MLC of the injuries. He has opined that from the perusal of the injuries it is found that the injuries are incised wounds. The deceased died due to the injuries suffered by him.

12. From the possession of the appellant No.1-Brijendra Singh, Ballam was seized and from appellant No.2-Dippuraja, Farsa was seized.

13. As per FSL report Exhibit P-20, blood stains were noticed on both the weapons.

14. From the evidence of the eye-witnesses this fact has been proved that the appellant No.2-Dippuraja was armed with Farsa. He had inflicted injuries by Farsa on the person of the deceased. Blood stains were noticed on the Farsa.

15. The evidence of Doctor proves the fact that the deceased had incised injuries. In such circumstances, in our opinion, the conviction of the appellant No.2-Dippuraja by the trial Court is proper.

16. Now, the next question is whether the appellant No.1-Brijendra Singh could be convicted for offence punishable under Section 302/34 of IPC ?

17. As per eye-witnesses, appellant No.1-Brijendra Singh was armed with Ballam which was seized from his possession.

18. As per evidence of Doctor-PW-9 there was no penetrating wound on the person of the deceased. All the injuries were incised wounds.

19. The trial Court in paragraph-38 of the impugned judgment has observed that it is not necessary that in each and every circumstance a penetrating injury be caused by use of Ballam. In the event if a penetrating wound was noticed by the Doctor on the body of the deceased, it could be premised that the appellant used Ballam because the aforesaid weapon-Ballam was seized for the possession of the appellant-Brijendra Singh and blood stains were found on it.

20. The Hon'ble Apex Court in the case of *Mahavir Singh vs State Of Madhya Pradesh (2016) 10 SCC 220* has held that when the medical evidence completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

21. In the present case, Ballam was not placed by the prosecution before the Doctor-PW-9 who performed autopsy of the deceased. Neither the question was asked by the prosecution that the injuries sustained by the deceased could be caused by Ballam.

22. The Hon'ble Supreme Court in the case of *Kartarey v. State of U. P., AIR 1976 SC 76* has observed as under :

“25. We take this opportunity of emphasising the importance of eliciting the opinion of the medical witness, who had examined the injuries of the victim, more specifically on this point, for the proper administration of justice, particularly in a case where injuries found are forensically of the same species, e.g., stab wounds, and the problem before the Court is whether all or any of those injuries could be caused with one or more than one weapon. It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to

whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometimes, cause aberration in the course of justice.”

23. The same principle has been followed by the Supreme Court in a subsequent judgment in the case of *Ishwar Singh vs. The State of Uttar Pradesh : AIR 1976 SC 2423*; wherein it is observed:

“8. Appellant Ishwar Singh was however found guilty under Section 302 simpliciter of the Indian Penal Code for the murder of Chauhal Singh. He died of shock and haemorrhage due to the sharp punctured wound on his chest caused, according to Dr. A. P. Mathur, Additional Civil Surgeon, Meerut. who conducted the post-mortem examination, by "some sharp edged pointed weapon". He added that the wound "might have been caused with a ballam". But whose hand was it that dealt this fatal blow with a "sharp edged pointed weapon"? P.W. 1 Mahabir, P. W 2 Satyapal, P.W. 6 Ram Rikh and P.W. 7 Jait Singh have all repeated that it was Ishwar Singh who struck Chauhal Singh with a ballam. But for the reasons we have already given implicit acceptance of their evidence is not possible and one must look for independent corroboration of the fact. The evidence of Sub-Inspector Karam Chand (P.W. 8) is that a ballam was recovered from Ishwar Singh's house, and a bhalla from Harpal's. Dr. Mathur who said that the fatal injury "might have been" caused by a ballam, admitted on cross-examination that he did not know the difference between a ballam and a bhalla. By ballam he meant "such weapon as is sharp edged on both sides, pointed, and less than 2 cm. in width and he added that "if a bhala is of this very shape this injury is possible." It is not disputed that ballam and bhala are weapons of a similar type. Had the doctor seen the weapons seized from the houses of Ishwar Singh and Harpal, it might have been possible for him' to say which of them caused the injury. But the weapons seized were not shown to the doctor. In *Kartarey v. State of U.P. AIR 1976 SC 76* (at pp. 80-81) this Court emphasized the importance of eliciting the opinion of the medical witness who had examined the injuries of the victim.

“It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if

available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometimes, cause aberration in the course of justice.”

In this case it is impossible to say with certainty whether the injury was caused by the ballam or the bhala that were seized, and, therefore, whether it was Ishwar Singh or Harpal who was responsible for it, even if one believed that on the day of the occurrence the former carried a ballam and the latter a bhala. Ishwar Singh's conviction under Section 302 of the Indian Penal Code cannot also be sustained in these circumstances.”

24. Modi in his medical jurisprudence, 25th Edition, has described Punctured wound as under :

“Punctured or Stab Wounds- These are popularly called stabs and are termed penetrating wounds, when passing through the tissues, they enter a cavity of the body, such as the thorax or abdomen. These wounds are produced by a long piercing or stabbing instrument, such as a pin, needle, knife, scissors, bayonet, spear, dagger, pickaxe, arrow, etc. The point of the instrument may be sharp or blunt.

A stab wound caused by a sharp, pointed and cutting instrument has clean-cut edges, which are almost parallel, but slightly curved to each other, like an ellipse, and have sharp angles at the two extremities. This is commonly the case if the instrument has two cutting edges, an instrument having one cutting and one blunt edge, will show a certain amount of bruising and raggedness at one end of the wound. The wound is generally wedge-shaped, if it is produced by an instrument with a thick, broad back and only one cutting edge, like an axe, hatchet etc.”

25. In the present case, the prosecution did not ask question to the Doctor who performed autopsy of the deceased that the injuries sustained by the deceased could be caused by Ballam. Apart from this, no penetrating wound was sustained by the deceased, as observed by the trial Court and as per evidence of PW-9-Doctor who performed the autopsy of the deceased.

26. Another point is that Ballam was seized from the possession of the appellant No.1 and blood stains were found on Ballam, however, as per FSL report blood group was not certain.

27. Hon'ble Apex Court in the case of *State of M.P. vs. Nisar (2007) 5 SCC 658* has held as regards blood group:

“9. ... The chemical examiner in his report Ext.P-37 had found that the axe was stained with human blood. Curiously, the blood group was not ascertained. It was, therefore, not possible to conclude that the axe was used for killing the two deceased persons.”

28. On the basis of above discussion, in our opinion, evidence of eye-witnesses is not sufficient to hold the appellant guilty beyond reasonable doubt, hence, there is not sufficient evidence to held the appellant No.1-Brijendra Singh guilty for commission of offence punishable under Section 302/34 of IPC.

29. In the result, -

(i) The impugned conviction and consequent sentence, so far it relates to appellant No.1- Brijendra Singh, is set-aside. He is acquitted of the offence. He is on bail. His bail bonds are discharged.

(ii) The impugned conviction and consequent sentence, so far it relates to appellant No.2-Dippuraja @ Dipendra Singh under Section 302 of IPC is affirmed. He is in jail. He shall suffer remaining jail sentence.

We appreciate the assistance rendered by the learned Amicus Curiae.

Appeal partly allowed.

(S.K.Gangele)
Judge

(Akhil Kumar Srivastava)
Judge

anand