

THE HIGH COURT OF MADHYA PRADESH:JABALPUR**CrA.No.727/2009***(Madhav vs. State of M.P.)*

and

CrA.No.1323/2009*(Raju & another vs. State of M.P.)*-----
Ms.Durgesh Gupta, Advocate as amicus curiae in CrA.No.727/2009.

Ms.Geeta Yadav, Advocate amicus curiae in CrA.No.1323/2009.

Shri N.S.Chouhan, learned Govt. Advocate for respondent-State.

Division Bench:

*Hon'ble Shri Justice C.V.Sirpurkar.**Hon'ble Shri Justice Akhil Kumar Srivastava.*

Whether approved for reporting:	Yes
Law laid down:	<p>1. <i>Deposition of Investigating Officer</i>-A public servant must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded.</p> <p>2. <i>Plea of Private Defence</i>- Even if an accused does not plead self defence, it is open to the court to consider such a plea if the same arises from the material on record.</p> <p>3. <i>Common intention under Section 34 of IPC</i>- "Common Intention" implies a pre-arranged plan and acting in concert pursuant to the plan. When a criminal act is done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.</p>
Significant paragraphs:	20, 22, 24 and 28.

J U D G M E N T**19.09.2018**

Per Akhil Kumar Srivastava, J.

These two appeals arising out of S.T.No.297/2008 are being disposed of by this common judgment.

2. Criminal Appeal No.727/2009 has been filed at the instance of accused-Madhav, whereas, Criminal Appeal No.1323/2009 has been filed at the instance of accused persons namely Raju Yadav and Sahodra Bai against judgment dated 28.03.2009 passed in Sessions Trial No.297/2008 by First Additional Sessions Judge, Sagar convicting the appellants under Section 302 read with Section 34 of IPC and sentenced them to undergo imprisonment for life and fine of Rs.2500/- each and in default, further imprisonment for six months.

3. The prosecution story, in brief, is that a report was lodged at Police Station Moti Nagar against the present appellants to the effect that on 13.05.2008 in the night at about 22:30, owing to some previous enmity with the deceased Pappu @ Nandkishore, the appellants, with intention to kill the deceased at Subedar Ward, near Puliya of Dubey Tal , Sagar, have assaulted the deceased with knife and lathi, as a result of which the deceased died. Co-accused Sahodra Bai took the deceased to Government Hospital. On being informed vide Ex.P-24, police reached at the spot. Police prepared Naksha Panchayatnama. Dehati Merg Intimation Ex.P-19 and Dehati Nalishi Ex.p-21 was prepared at the instance of co-accused Sahodra Bai. The dead body was sent for post-mortem whereon it was found that the cause of death was shock on account of excessive hemorrhage. On the basis of Merg Intimation Ex.P-19 and Dehati Nalishi Ex.P.-21 written at the instance of Sahodra Bai, Merg Intimation Ex.P-20 and FIR Ex.P-22 was registered against the

witnesses namely Rooiya and Kailash. During investigation it was found that the incident was caused actually by present appellant on 15.05.2008. All the accused persons were arrested. Knife and Lathi used in the crime were seized at the instance of accused persons and accused Raju was sent for medical examination. Seized articles were sent to FSL, Sagar for examination. In the FSL report, it was found that human blood was present on the seized articles. Charge-sheet was filed against the accused persons.

4. All the accused persons abjured their guilt and pleaded that due to political influence, they have been falsely implicated in the case by making Rooiya and Kailash as witnesses. Accused-Raju and Sahodrabai are brother and Bhabhi of the deceased, whereas, accused-Madhav is also near relative, therefore, they had no interest to kill the deceased.

5. The appellant has assailed the findings and conviction on the ground that the trial Court has committed error of fact and law by giving finding of conviction and sentence. It is submitted that there are contradiction and omissions in the prosecution witness statement. It is also submitted that due to political influence real culprits were left off and the appellants made accused in this case. It has been also argued that the prosecution story and the medical report do not support each other. All the witnesses are related to the deceased and naturally interested in this case, therefore, their testimony should not have been relied upon by the trial Court. Hence, the appellants should be acquitted.

6. Learned counsel for the State has argued that after murder of Pappu @ Nandkishore appellant Sahodra Bai has given false information to the police implicating prosecution witnesses which is an additional evidence regarding culpability of appellant. Learned

counsel for the State has supported the impugned judgment and prayed for dismissal of the appeals since the trial Court on proper appreciation of evidence has rightly convicted and sentenced the appellants.

7. This case is based on the eye witness account. In this case main eye-witness is Sapna Yadav PW9. Besides Sapna Yadav, some other witnesses are also the eye-witnesses such as Rahul Yadav PW4 and Rajesh Yadav PW5 who have also seen the occurrence. Now the first and foremost question is whether Pappu @ Nandkishore has died and his death was homicidal in nature. In this regard post mortem report is important.

8. PW3-Dr.Jinesh Diwakar (MO) who conducted the post mortem of the dead body of the deceased Pappu has stated that on 14.05.2008 he was posted as Medical Officer in District Hospital, Sagar, on that date, body of Pappu @ Nandkishore was brought by Sainik Pratap for post mortem. He conducted post mortem and after examination he found as under :

External Examination:

The dead body of male person was lying supine on the post mortem table. Rigor Mortis was present all over the Body. Eyes and mouth were closed.

(1)- Ten small linear abrasions of different size present on both sides of neck and at level of manubrium of sternum on front chest.

(2)- One bruise obliquely placed on lateral side of left chest bluish in colour of 4"x1" size.

(3)- One another bruise of bluish colour obliquely placed below injury No.2 on left lateral side of chest 5" x 1" size.

(4)- One incised wound on posterior lateral side of left thigh lower side with blood stained margins of size 1" x 3/4" x 2".

(5)- One incised wound on lower side of left thigh on anterior lateral aspect 1" x ½" x 1" size.

(6)- Two incised wounds on middle side of left lower thigh parallel to each other and obliquely placed about ½"x½"x1" size with blood stained margins.

Internal Examination:

Skull and spinal cord normal. Blood present below the injury on the left side of chest. Left lung congested and both the lungs were stretch. Blood was not present in any of the chamber of the heart. Yellow undigested food present in the stomach. Yellow undigested food also present in the small intestine. Kidney, Liver and Spleen were pale.

9. PW-3 Dr.Jinesh Diwakar has further He has deposed that in his opinion the cause of death was shock due to hemorrhage. Injuries found on the body were ante mortem and homicidal in nature. Death has occurred within 24 hours from the time of post mortem. It is established by the statement of PW3-Dr. Jinesh Diwakar (MO) that Pappu @ Nandkishore died due to ante mortem injuries and his death was homicidal in nature.

10. PW9-Sapna Yadav is the eye-witness. She is the niece of deceased Pappu. She has deposed that on 13.05.2008 at 8:00 PM she was at the house of Pappu. Madhav and Raju came there and told Pappu that they have to discuss something about Kailash and Ruiya and took Pappu to Dubey Tal. At about 10:00 in the night, Sahodra Bai alongwith her daughter came at the house of Pappu @ Nandkishore and they all were watching television. After sometime, Raju came there and told that Pappu has assaulted him. Raju with a knife and Sahodra with a lathi ran towards Dubey Tal. Afterward Sapna also went, when Sapna reached Dubey Tal, she saw that

Madhav and Sahodra Bai were assaulting Pappu with lathi and Raju was assaulting with knife.

11. PW2-Dr.R.K.Khare has deposed that on 15.05.2008 he was posted as medical officer in the District Hospital, Sagar. On that date, Raju son of Ramma Yadav, aged 46 years was brought by constable Bharat. On examination he found multiple abrasions each measuring 2 cms x 1/4 cms on the upper half back caused by hard and blunt object. He has opined that the injuries were caused within three days and were simple in nature. Report is Ex.P-10.

12. Injury on the body of the appellant-Raju is corroborated by the testimony of Sapna Yadav PW9 that initially there was some quarrel between the deceased Pappu @ Nandkishore and Raju (appellant) in which deceased has beaten Raju, as told by Raju, in front of witness Sapna Yadav PW9.

13. PW-4 Rahul Yadav has deposed that he has dairy near Dubey Tal. At about 10:00 to 10:30 PM he saw that Raju Yadav and his wife are assaulting Pappu. Due to marpeet, Pappu fell down. Thereafter, the accused persons fled away from the spot. Later on after 10-15 minutes the appellants took Pappu in an Auto Rikshaw.

14. PW-5 Rajesh Yadav has deposed that at about 10:00 PM he heard some hue and cry near Dubey Tal. He alongwith his brother went there. They saw that quarrel was going on between Pappu, Raju Yadav and his wife. Raju and his wife were assaulting Pappu. Pappu fell down. Thereafter, the accused persons fled away from the spot. Later on after 10 to 15 minutes they took Pappu in an Auto Rikshaw.

15. PW-6 Kailash Yadav has deposed that at about 11:00 PM Raju was standing at his home with Ruiya and his wife. Raju told Ruiya

and his wife that he has assaulted his brother-Pappu and wife of Pappu has taken him to the hospital. Raju's shirt was torn and there was blood on his pant.

16. PW-12 G.P.Dwivedi, (SI) has deposed that on 13.05.2008 Smt. Sahodra Bai gave information of death of Pappu @ Nandkishore Yadav which is Ex.P-12 on the basis of which merg intimation was prepared which is Ex.P-20. Dehati Nalishi Ex.P-21 was prepared by him. Thereafter, FIR Ex.P-21 for crime No.331/08 was registered. Dehati Nalishi and Merg Intimation was signed by Sahodra Bai who is accused in Crime No.331/08.

17. During investigation on the basis of memorandum given by appellant Raju Ex.P-1, on his disclosure, one blood stained knife was recovered from the house of Raju Yadav vide seizure memo P-5 and on the basis of the memorandum Ex.P-2 of Sahodra Bai recorded by investigating officer on her disclosure, one Lathi was seized from the house of Sahodra Bai vide Ex.P-6 and in the similar way on the basis of memorandum of Madhav recorded by Investigating Officer Ex.P-3 on his disclosure, one Lathi was seized vide seizure memo Ex.P-4.

18. Witness of memorandum statement and seizure memo Dalchand PW1 in his statement has denied that before him memorandum of accused were recorded and also has deposed that no seizure was made before him. But, he has admitted his signatures on the memorandum statement Ex.P-1, Ex.P-3 and Ex.P-3 and also on seizure memo Ex.P-4, Ex.P-5 and Ex.P-6.

19. PW14 R.K.Sen (ASI) is the officer who conducted memorandum and seizure proceedings. He has deposed that he interrogated accused Raju, Sahodra and Madhav. After interrogation they had stated regarding keeping of Knife and Lathis. On their

memorandum statement Ex.P-1, Ex.P-2 and Ex.P-3, a knife from the house of Raju, a lathi from the house of Sahodra Bai and one lathi from the house of Madhav was seized vide seizure memo Ex.P-4, Ex.P-5 and Ex.P-6 respectively and thereafter he arrested all the three accused persons.

20. Hon'ble Supreme Court in the case of *State of Kerala vs. M.M.Mathew* reported in *AIR 1978 SC 1571* has held as under :

“The courts of law have to judge the evidence before them by applying the well recognized test of basic human probabilities. The evidence of the investigating officers cannot be branded as highly interested on ground that they want that the accused are convicted. Such a presumption runs counter to the well recognised principle that prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case.”

21. Further, Hon'ble Supreme Court in the case of *Rakesh and another vs. State of M.P. (2011) 9 SCC 698* has held as under :

“26. The other circumstances particularly, the statements of B.M. Dubey, Investigating Officer (PW.21) and Balram (PW.9), the arrest of accused, recovery of weapons on their disclosure statements proved the prosecution case. The depositions of B.M. Dubey (PW.21) had been natural. There was no proof that the I.O. (PW.21) had any animosity or any kind of interest and closeness to the deceased. Therefore, the question of not believing the statement of B.M. Dubey, I.O. (PW.21) does not arise. The High Court in spite of the fact of disbelieving Khemchand (PW.10), found the prosecution case wholly proved on the sole testimony of Anil (PW.11).”

22. The weapon of offence viz. knife seized on the basis of disclosure of appellant-Raju, *Lathis* seized on the disclosure of appellants-Madhav and Sahodra Bai were sent for examination to State Forensic Science Laboratory, Sagar. Report received from FSL,

Sagar Ex.P-25 reveals that Knife Article “C” seized from the appellant-Raju, Lathi Article “E” seized from appellant-Madhav were having stains of human blood, so these two arms were used by the appellants has been established on the basis of scientific evidence also.

23. Injuries on the person of accused-appellant Raju has been found by PW-2 Dr.R.K.Khare on this basis learned Amicus curiae appearing on behalf of the appellants has argued that this may be a mitigating circumstance and also this be treated that the injury caused to the deceased was in private defence.

24. Hon’ble Supreme Court in the case of *Munshi Ram vs Delhi Administration AIR 1968 SC 702* has held as under:

“It is true that appellants in their statement under s. 342 Cr.P.C. had not taken the plea of private defence, but necessary basis for that plea had been laid in the cross-examination of the prosecution witnesses as well as by adducing defence evidence. It is well-settled that even if an accused does not plead self defence, it is open to the court to consider such a plea if the same arises from the material on record. See *In re Jogali Bhaigo Naiks and another, AIR 1927 Mad. 97*. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record.”

25. Hon’ble Supreme Court in the case *State of Gujrat vs Bai Fatima AIR 1975 SC 1478* has held as under:

“17. In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow :

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.”

26. Further, Hon'ble Supreme Court in the case of ***Gajendra Singh vs. State of U.P. AIR 1975 SC 1703*** has held that :

“On the facts and circumstances of the case, it falls within the third category of the principles laid down in the above quoted judgment (State of Gujarat vs. Bai Fatima, so it did not affect the prosecution case at all.”

27. In this case the injuries caused to the appellant Raju is simple in nature which was actually caused in the process of incidence when the quarrel occurred prior to fateful incident in which the deceased Pappu @ Nandkishore has beaten appellant-Raju. At that time no injury was caused to the deceased by the appellant-Raju. After first incident of quarrel in between the deceased and appellant-Raju, Raju came back and after taking knife alongwith his wife appellant-Sahodra Bai with Lathi went to the spot and then there appellants caused injuries to the deceased Pappu @ Nandkishore which resulted in death of Pappu @ Nandkishore, so this is neither a case of private defence in which the injuries to the deceased was caused by appellant in private defence nor it is a mitigating circumstance in which it can be said that due to grave and sudden provocation appellant caused the death of Pappu @ Nandkishore. Injury was not caused at that time when quarrel between the deceased and appellant-Raju took place but after this incident the appellant went with his wife with knife and lathi. This means that after due preparation and intention to cause fatal injuires to the

deceased they went at the spot with knife and that in furtherance to that common intention injuries were caused to the deceased Pappu @ Nandkishore.

28. Learned *amicus curiae* has advanced argument that the fatal injury caused to the deceased was caused by the appellant Raju while the other appellants-Sahodra Bai and Madhav were armed with lathis only, as alleged. Hon'ble Supreme Court in the case of ***State of U.P. vs. Atul Singh (2009) CrLR SC 614*** relying upon the case of *Ch.Pulla Reddy & ors. Vs. State of Andhra Pradesh, AIR 1993 SC 1899* has held that Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused.

29. Learned Amicus curiae appearing on behalf of the appellant has vehemently argued that Sapna Yadav PW-9 is the relative of the deceased Pappu @ Nandkishore who is an interested witness also, so on her testimony should not be relied upon without corroboration of material on record.

30. It is well established that mere relation is not a basis for discarding the testimony of any witness. So far as interested witness is concerned, of course, a witness will be interested in seeing the actual culprit being convicted and not the other who are not concerned with the incident. Rahul PW-4 Rajesh PW-5 both the witnesses are not related to the deceased Pappu @ Nandkishore. They are independent witnesses and their testimony is corroborated by the testimony of Sapna Yadav PW-9, so there is no ground to disbelieve the testimony of Sapna.

31. During argument, learned *amicus curiae* has argued that most of the witnesses are related witnesses and interested in conviction of accused, hence, they cannot be relied upon. Hon'ble Supreme Court in the case of *Onkar and anr. vs. State of Uttar Pradesh* reported in *(2012) 2 SCC 273* in paragraph 18 relying upon the judgment of the Apex Court in the case of *Ranjit Singh vs. State of M.P.* reported in *(2011) 4 SCC 336* held as under:

“It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinized and appreciated before resting of conclusion (sic regarding) the convict the accused in a given case. In case, the evidence has a ring of truth, is cogent, credible and trustworthy it can be relied upon. [Vide: *Himanshu v. State (NCT of Delhi)* *(2011) 2 SCC 36*, and *Ranjit Singh & ors. vs State of M.P. (2011) 4 SCC 336*].”

32. In the present case, star witness Sapna (PW-9) is niece of deceased Pappu @ Nandkishore, appellant Raju is real brother and appellant Sahodra Bai is real *Bhabhi* of appellant Raju, hence, appellant, witness and deceased are closely related with each other. So witness will be interested that real culprit should be punished and will not be interested in punishing other than the real culprit. Sapna (PW-9) has supported the prosecution case and her testimony has been corroborated by the medical evidence of Dr. Jinesh Diwakar (PW-3) and Dr. R.K.Khare (PW-2) considering the aforesaid judgment passed by the Hon'ble Apex Court in the case of *Onkar* (supra) and *Ranjit Singh* (supra), we do not find any ground to discard the testimony of prosecution witnesses on the basis of close relations.

33. Having considered the totality of the facts of the present case and the principles of law as above, we are of the considered opinion,

that the prosecution has established beyond all reasonable doubt that it is the accused persons who have committed the offence. Hence, the conviction of the accused persons and the sentence imposed upon them by the learned trial Court is justified and needs no interference.

34. We therefore, in view of the above, do not find any merit in the instant appeal, hence, we dismiss the appeal and confirm the conviction of the appellants and the sentence alongwith fine imposed upon them by the trial Court.

35. This Court vide order dated 07.05.2010 passed in Criminal Appeal No.727/2009, has enlarged accused-Madhav on bail and vide order dated 15.09.2010, accused-Sahodra Bai has been enlarged on bail. As a consequence of dismissal of their appeals, they are directed to surrender themselves before the trial Court on **9th October, 2018** for being taken into custody and sent to jail to serve their remaining part of jail sentence.

Appeals dismissed.

**(C.V.Sirpurkar)
Judge**

**(Akhil Kumar Srivastava)
Judge**

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