

Sonu @ Sujit and ors. Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-01-2013

Appellant : Sonu @ Sujit and ors.

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. V.K.Lakhera

Judgement :

(1) Cr.A.No.854/2002 HIGH COURT OF MADHYA PRADESH: JABALPUR Division Bench: Hon'ble Justice Shri Rakesh Saxena Hon'ble Justice Smt. Vimla Jain CRIMINAL APPEAL NO.854/2002 1. Sonu @ Sujit son of Shamthunath Bangali, aged about 22 years, resident of Bodkhi, Amla, District Betul (M.P.) 2. Shailendra son of Arjun Vijaykar, aged about 22 years, resident of Banda Road, Bodkhi, Amla, District Betul (M.P.)Appellants -Versus- State of Madhya Pradesh through Police Station Amla, Tahsil Multai, District Betul (M.P.) .Respondent

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the appellants: Shri V.K.Lakhera, Advocate. For the respondent: Shri Amit
Pandey, Panel Lawyer.

Date of hearing:

29. 01/2013 Date of Judgment:

01. 02/2013 *****

JUDGMENT

Per: Rakesh Saksena,J.Appellants have filed this appeal against the judgment dated 5th April, 2002 passed by III Additional Sessions Judge [Fast Track Court]., Betul in Sessions Trial No.201/99 convicting the appellants as under: CONVICTION SENTENCE (Appellant No.1) 1. U/s 25(1) of Arms Act, 1959 R.I. for 2 years, fine of Rs.200/- in default R.I. for 3 months. (2) Cr.A.No.854/2002 2. U/s 27(1) of the Arms Act,1959 R.I. for 4 years, fine of Rs.500/- in default R.I. for 6 months.

3. U/s 398 of I.P.C. R.I. for 10 years.

4. U/s 302 of I.P.C. Life imprisonment, fine of Rs.5000/- in default 1 year additional imprisonment. (Sentence to run concurrently) (Appellant No.2) 1. U/s 398 of I.P.C. R.I. for 10 years.

2. In short, prosecution case is that Chandan Singh, the deceased was employed in the Railways as a Guard. He was resident of Railway Colony, Amla. On the date of incident i.e. 5.6.99 deceased was returning from village Jawra along with his married daughter Laxmi Bai (PW-4) to Amla by Chhattisgarh Express. Laxmi Bai was accompanied by her sons Nikhilesh, Ayush, Golu @ Yeshwant (PW-2) and daughter Nikita (PW-4). Chhattisgarh Express reached Amla at about 12:25 in the night. Hargovind, the son of deceased had gone to Amla Railway Station to receive them. After getting down from train at Amla when they were walking down to their residence at Railway Colony, they saw three persons. Two persons came forward and asked Hargovind to handover whatever they possessed. One person had a country made pistol and the other had a knife. When Hargovind tried to snatch country made pistol, his father (deceased) reached there and told that they should talk to him and at the same time the person who possessed pistol fired at the chest of Chandan Singh. Getting injured Chandan Singh sat down and the assailants (3) Cr.A.No.854/2002 ran away. Deceased was shifted to Primary Health Centre, Amla where he tendered Dehati Nalishi Ex.P/3-A to police.

3. Dr. Sameer Shukla (PW-8) examined the injuries of deceased and vide his report Ex.P/4 found deep penetrating wound in his epigastrium region. He referred deceased for X-ray examination and surgical treatment to district hospital, Betul. In the night deceased was shifted to district hospital, Betul where Dr.G.P. Choubey examined his injuries. As per bed head ticket Ex.P/19, he found a gunshot injury on the body of deceased. For better treatment, deceased was admitted in Padar hospital, Betul. Despite efforts and treatment on 9.6.99 at about 7:00 p.m. he expired.

4. On 10.6.99 Dr. M.L.Rathore (PW-13) of district hospital, Betul conducted postmortem examination of the body of deceased and found that deceased died because of gunshot injuries.

5. In the course of investigation, on 13.6.99 appellants and co-accused Anil Yadav (acquitted) were arrested. On the information furnished by appellant Sonu @ Sujit a country made pistol and some live cartridges were seized whereas at the instance of appellant Shailendra a knife was recovered.

6. On 28.6.99, a test identification parade was conducted by Tehsildar Abdul Rashid Khan (PW-19) in Sub Jail, Multai. Vide test identification parade Ex.P/1 accused persons were identified by Laxmi Bai (PW-4), Mohan Singh (PW-18) and Hargovind (PW-23). After completion of investigation, charge sheet was filed in the Court of Magistrate and the case was thereafter committed for trial. (4) Cr.A.No.854/2002 During trial, accused persons abjured their guilt and pleaded false implication.

7. Learned trial Judge upon trial and after appreciation of the evidence adduced by the prosecution held appellants guilty as aforementioned, convicted and sentenced them accordingly, however, finding the evidence insufficient against co-accused Anil, acquitted him. Feeling aggrieved by their conviction and sentences, appellants have filed his appeal.

8. Shri V.K.Lakhera, learned counsel for the appellants, challenged the conviction of appellants on the ground that learned trial Judge mis-appreciated the evidence on record. Learned Judge erred in not holding that at the time of occurrence it was

dark and it was not possible for the witnesses to have identified the assailants. The evidence of alleged eyewitnesses Laxmi Bai (PW-4), Hargovind (PW-23) and Nikita (PW-22) was inconsistent and contradictory. According to Hargovind (PW-23), it was appellant Shailendra who fired gunshot at deceased whereas according to Laxmi Bai (PW-4), it was fired by appellant Sonu. Other witnesses could not identify the assailants, therefore, it was doubtful that appellant Sonu fired gunshot at deceased. The conviction of Sonu under section 302 I.P.C. was, therefore, illegal. On the other hand, Shri Amit Pandey, learned Public Prosecutor submitted that the evidence of Laxmi Bai (PW-4) was reliable and was corroborated by the evidence of Nikita (PW-22). He justified the impugned judgment of conviction. (5) Cr.A.No.854/2002 9. We have heard the learned counsel for the parties at length, perused the impugned judgment and the evidence on record carefully.

10. It has not been disputed by the learned counsel for the appellants that deceased died of gunshot injuries. It has been categorically stated by Laxmi Bai (PW-4), Mohan Singh (PW-18) and Hargovind (PW-23) that deceased Chandan Singh suffered gunshot injury in the night intervening between 5th - 6th of June, 1999. He was immediately taken to Primary Health Centre, Amla where Dehati Nalishi Ex.P/3-A was lodged by deceased himself with the police. Dr. Sameer Shukla (PW-8) on examination found numerous penetrating wounds 0.25 x 0.25 cm on epigastrium region of deceased. He recorded the injuries of deceased in his report Ex.P/4 and referred the patient for surgical intervention to district hospital, Betul.

11. Surgical Specialist of district hospital, Betul Dr. G.P. Choubey (PW-17) examined the injuries of deceased in the night of 6.6.99 and found a gunshot injury in his abdomen. According to him, the patient was in the state of shock, his hands and feet were cold. Pulse and blood pressure were not recordable. There were numerous small punctured wounds by gunshot injuries in the upper part of his abdomen. These wounds were spreading in 3 x 3 inch area. Since the condition of patient was deteriorating, relatives of patient shifted him to some other hospital. Bed head ticket recorded by him was Ex.P/19.

12. Deceased was got admitted in Padar hospital, Betul. Surgeon Dr.Dildeep Pillai (PW-9) found a gunshot wound on the left (6) Cr.A.No.854/2002 side of the chest of deceased. According to him, deceased remained admitted in his hospital since 6.6.99. In the evening of 9.6.99, he died due to failure of heart. From MLC form Ex.P/7 recorded by Dr. Pillai (PW-9), it is revealed that in the course of treatment he subjected deceased to emergency Laparotomy also. On receiving intimation of the death of deceased from the hospital, marg intimation Ex.P/6-A was recorded and the dead body was sent for postmortem examination to district hospital, Betul where Dr.M.L. Rathore (PW-13) conducted postmortem examination of the body. Dr. Rathore (PW-13) deposed that on examining the body, he found numerous minute punctured wounds on the upper part of abdomen of deceased. On internal examination, he found many punctured wounds in the area of 10 x 6cm on liver. There was perforation at many places. These injuries were caused by gunshot. The death of deceased was caused due to cardio-respiratory failure. From the aforesaid evidence, it stood amply established that deceased died of gunshot injury and that his death was homicidal in nature.

13. not the question before us is whether the conviction of both appellants under section 398 of I.P.C. and conviction of appellant Sonu @ Sujit under section 302 I.P.C. was proper.

14. Learned trial Judge has held appellants guilty on the basis of evidence of Laxmi Bai (PW-4), Hargovind (PW-23) and Nikita (PW-22). Learned counsel for the appellants submitted that the evidence of aforesaid witnesses was inconsistent and discrepant, therefore, not reliable. (7) Cr.A.No.854/2002 15. Admittedly appellants were not previously known to the eyewitnesses of the occurrence. Prosecution case, therefore, rested mainly on the evidence of identification of appellants. Appellants were arrested on 13.6.99 and were put to test identification parade conducted by Tehsildar Abdul Rashid Khan (PW-19) in Sub Jail, Multai on 28.6.99. Only three witnesses namely Laxmi Bai (PW-4), Mohan Singh (PW-18) and Hargovind (PW-23) participated in the test identification parade. As per identification memorandum Ex.P/1, all the three aforesaid witnesses identified appellant Sonu, however, Mohan Singh (PW-18) did not identify appellant Shailendra though he was identified by Hargovind and Laxmi Bai.

16. Laxmi Bai (PW-4) deposed that when she, her father, Nikita, Golu and other children were going to their house after getting down from Chhattisgarh Express, three accused persons came near and asked to handover whatever they possessed; when her father Chandan Singh asked as to what they needed, one of them fired a shot at him. She pointed at appellant Sonu and stated that he was the person who fired the shot. On her raising hue and cry, accused persons ran away. The shot hit on the chest of father. She stated that she identified all the three accused persons in the test identification parade and signed on memorandum Ex.P/1. Where the incident occurred there was electric light but since third accused had run away, she could not identify him.

17. Learned counsel for the appellants referring to the evidence of Hargovind (PW-23) pointed out that he stated that appellant Shailendra fired the shot at deceased, therefore, it was (8) Cr.A.No.854/2002 doubtful that appellant Sonu, who has been convicted under section 302 I.P.C., caused death of deceased. Hargovind had also accompanied deceased while he was going to his house since he had gone to receive his father and sister. He had also identified the accused persons in the test identification parade in jail. When we analyse the evidence of Hargovind, we find that in his cross- examination he stated that he identified Shailendra on the basis of his voice. He, however, admitted that he did not identify Shailendra in the parade on the basis of his voice since he did not hear him speaking in jail. Apart from it, he stated that he had identified the voice of Shailendra when he abused him at the time of occurrence, and that he had also seen Shailendra carrying knife 2-3 days prior to the occurrence. He further stated that except Shailendra he could not see any other accused. In view of his discrepant and inconsistent testimony, in our opinion, he does not seem to be a reliable witness.

18. Since we find the evidence of Hargovind (PW-23) not reliable as an eyewitness, the question would be whether the evidence of Laxmi Bai could be made basis for holding the appellants guilty. Nikita (PW-22) identified appellant Sonu in the Court pointing at him that he was holding Katta in his hand. She, out of consternation, however, could not say what other accused persons wielded at the time of incident. She stated that accused persons had asked deceased to take out money and when he questioned them, they fired gunshot and ran away. It is true

that the evidence of this witness was not supported by the evidence of test identification since she was not made to participate in the prior test identification (9) Cr.A.No.854/2002 parade, but from the simple and unbiased nature of her testimony, she appears to be a reliable witness. Her evidence lends enough support to the evidence of Laxmi Bai (PW-4) on the point that it was appellant Sonu who fired gunshot at deceased.

19. Though Mohan Singh (PW-18) did not support the prosecution in respect of identification of accused persons, but he stated that when his father, Hargovind and his sister were returning from Railway Station, three unknown persons fired gunshot at his father. He was in his house but on hearing the shouts of Hargovind he came out and opened the door, in the light of electric bulb on the pole of main road, he saw two boys running away. His father told him that those boys attempted to rob him, but on his protest they fired at him.

20. As far as recovery of weapons is concerned, attesting witnesses of the memorandum, Mohammad Khan (PW-14) and Mohanlal (PW-15), did not support the evidence of investigating officer K.M.Vyas (PW-24). They, however, admitted their signatures on memorandum of information as well as seizures. From the evidence of K.M.Vyas (PW-24), it has been proved that from the possession of appellant Sonu, a country made Katta with empty cartridge in barrel and two other live cartridges were seized. These articles along with the deformed lead pellet, which was seized from the body of deceased, were sent to Forensic Science Laboratory, but it could not be established that it was the same firearm which was used in the incident. It, however, stood proved that unlicensed arms were seized from the possession of appellant Sonu. (10) Cr.A.No.854/2002 21. After careful scanning the evidence of Laxmi Bai (PW-4) and Nikita (PW-22), we find that the learned trial Judge rightly appreciated their evidence and held that both the appellants attempted to commit robbery, in the course of which, appellant Sonu @ Sujit caused death of Chandan Singh by firing gunshot at him. Since appellant Sonu @ Sujit used a deadly weapon in attempting to commit robbery and was also found in possession of a firearm without licence, his conviction under sections 302 and 398 of Indian Penal Code and sections 25(1) and 27(1) of Arms Act is justified. His conviction and sentences as awarded by the trial Court are, therefore,

affirmed.

22. As far as conviction of appellant Shailendra under section 398 I.P.C. is concerned, none of the eyewitnesses stated that at the time of commission of offence he was armed with any deadly weapon, therefore, his conviction under section 398 I.P.C. deserves to be and is hereby set aside, instead he is convicted under section 392 I.P.C. and sentenced to rigorous imprisonment for ten years.

23. Subject to the modulation indicated hereinabove, the appeal is dismissed.
(Rakesh Saxena) (Smt. Vimla Jain) b Judge Judge (11) Cr.A.No.854/2002

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