

Ram Singh Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-28-2012

Appellant : Ram Singh

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. Nema

Judgement :

1 Cr.A.No.522/1994 HIGH COURT OF MADHYA PRADESH : JABALPUR DIVISION BENCH:HON'BLE SHRI JUSTICE RAKESH SAKSENA HON'BLE SHRI JUSTICE T.K.KAUSHAL CRIMINAL APPEAL NO.522/1994 Appellant: Ram Singh S/o Mohan Singh Lodhi, aged about 24 years, R/o Manguwa P.S. Kumhari, Tahsil Hatta, District Damoh (M.P.) Vs. Respondent: The State of Madhya Pradesh For Appellant : Shri S.K. Nema, Advocate For Respondent : Shri Umesh Pandey, Government Advocate

JUDGMENT

.07.2012 This appeal has been preferred against judgment dated 29.03.1994 passed by III Additional Sessions Judge, Damoh delivered in S.T. No.122/1993 convicting the appellant under Section 302 of IPC for committing murder of Churaman (since deceased) and sentencing him to imprisonment for life.

2. Facts of the case, in short, are that on 09.06.1993 in the evening while deceased was taking meals, Ramkishan (PW9) along with Kallu (PW5) reached

his house and asked him to lift the wood log from forest for Rs. 20/ labour charges. Deceased left the meals and accompanied the appellant. Due to physical incapacity, Kallu (PW5) was left behind for a while. Across the railway line, the appellant took out a knife from his pocket of the pant and stabbed the deceased and ran away from the place.

3. Deceased, some how reached in village in the house of Sita (PW1) and asked to call his parents saying that appellant had stabbed him in abdomen. Ameen (PW2), Vidya Bai, wife of deceased (PW3), Khajjo, father of deceased (PW5), Natthu (PW6), Ramkishan (PW9), Madho (PW10) and Motilal, brother of deceased (PW17) reached there and saw the deceased, who had covered the 2 Cr.A.No.522/1994 bleeding wound with a towel. Deceased narrated the incident and the name of the appellant to them. Deceased was taken to Banwar Chouki and then FIR Ex.P20 was lodged. Police registered a case at Cr. No.0/93 under Section 307 of IPC against the appellant and Kallu (PW5). Thereafter, deceased was taken to the hospital, Dr. N.K. Malhotra (PW7) examined his injury and prepared MLC report Ex.P8 and referred him for further treatment. Dr. N.K. Malhotra (PW7) found one stab injury on the abdomen. According to evidence of Dr. N.K. Malhotra (PW7) and MLC report Ex.P8 there had been one stabbed injury on the abdomen of the deceased from which Omentum was coming out.

4. On 10.06.1993 Dr. B.S. Yadu (PW22) performed surgery on the deceased. Next day i.e. 11.06.1993 deceased died in the hospital. Dr. J.P. Pansari (PW8) performed post mortem of the deceased and prepared post mortem report Ex. P10. According to evidence of Dr. Pansari (PW8) and post mortem report Ex.P10, death was caused due to hemorrhage and shock and injury of the abdomen was found sufficient to cause death in ordinary course.

5. Vide Ex.P11, on 13.06.1993, appellant was arrested and knife was recovered at his instance. Knife, etc. were sent to Forensic Science Laboratory, Sagar for chemical examination. 6. On 03.08.1993 statements under Section 164 of the Code of Criminal Procedure, 1973 of Kallu (PW5) was recorded by JMFC Damoh (PW23). Citing him as prosecution witness, police submitted a charge sheet under Section 302 of IPC against appellant in the Court concerned Judicial Magistrate.

Case was committed to the trial Court. Trial Court framed charge under Section 302 of IPC. Appellant abjured guilt. 7. To substantiate the case of prosecution, statements of Sita Bai (PW1), Ameen (PW2), Vidya Bai, wife of deceased (PW3), Khajjo, father of deceased (PW4), Kallu @ Dansingh (PW5), Natthu Singh (PW6), Dr. N.K. Malhotra (PW7), Dr. J.P. Pansari (PW8), Ramkishan (PW9), Madho (PW10), Shankar Lal (PW11), Heera Lal, ASI (PW12), Kallu Singh, Constable (PW13), Jagdish Singh, Constable (PW14), Jalam (PW15), Nazir Khan, ASI (PW16), Motilal, brother of deceased (PW17), Take Singh (PW18), Jugraj (PW19), Satya 3 Cr.A.No.522/1994 Prasash, Patwari (PW20), Ramlal (PW21), Dr. B.S. Yadu (PW22), Jogendra Kumar Verma, JMFC (PW23), Ramkrishan Pathak, ASI (PW24) were recorded. Evidence of the appellant was that of false implication. According to defence, deceased was suspecting undue intimacy of the appellant with his (deceased's) wife Vidya Bai (PW3) and deceased himself attempted to kill appellant and by mistake himself sustained injury with his own knife.

8. After appreciating aforesaid evidence trial Court held the appellant guilty under Section 302 of IPC and sentenced him as above. This appeal has been preferred on the grounds that appreciation of evidence is not proper. FIR Ex.P20, in fact, is a concocted and fake document. Cause of death of the deceased was not the injury but was the medical negligence. The deceased had sustained only one injury and he died after two days of the incident and at the most he could be held liable for lesser offence and punishment. On the other hand, learned Government Advocate has supported the finding of conviction and sentence. 9. In view of the medical evidence available on record including statements of Dr. N.K. Malhotra (PW7), Dr. J.P. Pansar (PW8), Dr. B.S. Yadu (PW22) and further in view of the evidence of Ex.P8 MLC report and Ex.P10 post mortem report it remains no longer disputed that death of the deceased was homicidal, it has been clearly stated by Dr. N.K. Malhotra (PW7), who prepared the MLC report Ex.P8 and by Dr. J.P. Pansar (PW8) who performed post mortem report Ex. P10 that stab injury in abdomen was sufficient to cause death in ordinary course of nature.

10. Ramkrishan Pathak, ASI (PW24) stated that he recorded the FIR Ex.P20 himself as per the version of the deceased. He immediately forwarded the deceased to Damoh hospital for treatment, while he reached hospital for taking

steps to record dying declaration, the patient had been sent in operation theater for surgery, and thereafter deceased died. It is vehemently argued by Shri Nema, learned counsel for the appellant that Ex.P20 FIR, is suffering from many omissions and discrepancies. But on careful perusal of whole statement of PW24 it becomes clear that FIR Ex.P20 has been recorded by him in the same wordings narrated by the deceased. It has been recorded at the earliest opportunity. Nothing is suggestive for him to make variations in the contents of the report. In 4 Cr.A.No.522/1994 our considered opinion PW24 is a reliable witness in respect of Ex.P20 FIR which has been rightly treated as dying declaration in the event of death of the deceased and is inspiring the confidence. 11. Learned counsel for the appellant has further submitted that deceased has in fact lodged a false report implicating him because he had a doubt that his wife Vidya Bai (PW3) is having undue intimacy with him (the appellant). From the evidence of Sita Bai (PW1), Ameen (PW2), Vidya Bai, wife of deceased (PW3), Khajjo, father of deceased (PW4), Natthu Singh (PW6), Ramkishan (PW9), Madho (PW10), and Motilal, brother of deceased (PW17) it is clearly established that deceased narrated the incident to them also prior to the time he was taken to the police station for lodging FIR. The deceased had named the appellant as one who caused injury to him by knife. We have no reason to doubt aforesaid evidence of oral dying declaration given by the deceased to the aforesaid witnesses. This evidence further corroborates the dying declaration Ex.P20 in the matter. 12. Trial Court after considering the evidences of prosecution in correct perspective rightly reached to the conclusion of guilt of the appellant. Appreciation of evidence is proper. After considering the medical evidence and the evidence of dying declaration, though deceased sustained only one injury and died after two days of the incident, in our opinion no case of reduction of conviction and sentence is made out. Accordingly, the finding of conviction of appellant under Section 307 of IPC, recorded by the trial Court is affirmed. Appeal being devoid of merit deserves to be and is hereby dismissed. (RAKESH SAKSENA) (T.K. KAUSHAL) Judge Judge ak