

Sukhdeo Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-19-2013

Appellant : Sukhdeo

Respondent : The State of M.P.

Judgement :

1 Cr.A. No.844 /2003 HIGH COURT OF MADHYA PRADESH AT JABALPUR
DIVISION BENCH: HONBLE SHRI JUSTICE RAKESH SAKSENA HONBLE SHRI
JUSTICE SUBHASH KAKADE CRIMINAL APPEAL NO.844/2003 APPELLANT:
Sukhdeo S/o Anjulal Katiya, Aged about 35 years, R/o Dodasemar Koltidhana,
P.S. Nawegaon, District Chhindwara Versus RESPONDENT: The State of
Madhya Pradesh

----- For the
Appellant : Ku. Savita Chaudhary, Learned Counsel For the Respondent/State :
Shri Amit Pandey Learned Panel Lawyer
----- Date of
hearing :

25. 04.2013 Date of judgment:

19. 06.2013 Per: Subhash Kakade, J.(

JUDGMENT

) The convicted appellant being aggrieved by the judgment dated 10.03.2003 passed by First Additional Sessions Judge, Chhindwara in Sessions Trial No.176/2001 has filed this appeal under Section 374(2) of the Code of Criminal Procedure 1973, convicting and sentencing him as below:- **CONVICTION SENTENCE** i. Under Section 302 of IPC: Imprisonment for life and Rs. 2000/- fine. In default of payment of fine the defaulter to 2 Cr.A. No.844 /2003 suffer 6 months rigorous imprisonment. ii. Under Section 326 of IPC: Imprisonment of 5 years and Rs. 500/- fine. In default of payment of fine the defaulter to suffer 2 months rigorous imprisonment.

2. The facts and circumstances of the case giving rise to this appeal are as under:-
(i) Mathurabai (PW-8) is mother of the deceased Noumi, appellant Sukhdeo, eyewitness Nirmalabai (PW-4) and other witness Samlatibai (PW-11). (ii) About 5 years ago, from the date of incident, Nirmalabai (PW-4) went to Indore in search of livelihood. There she developed affairs with Nazir and she gave birth to a daughter also. After 3 years, Nazir abandoned Nirmalabai, since then she starting living with injured eyewitness Rajesh @ Baliram (PW-7) as his wife without marriage. Since last six months she was living in house of Noumi at village Dodasemar Koltidhana. (iii) Appellant was having reservations against Nirmalabai (PW4) because of her character, particularly relations with Nazir, a member of other caste. Therefore, many times appellant and his wife objected living of Nirmalabai (PW-4) and Rajesh (PW-7) in their village in the house of Noumi. (iii) Prior to date of incident on 21.04.2001 at about 4:00 p.m. hot talks occurred between Nirmalabai (PW-4) on one side and appellant and his wife Agarwatibai on other side, during which 3 Cr.A. No.844 /2003 appellant threw out all the domestic bag and baggage of Nirmalabai (PW-4). The matter was reported to the police also. (iv) On that day, deceased Noumi and Rajesh (PW-7) were out of the village in search of livelihood.

3. Informant Haridas (PW-2), who happened to be relative as well as neighbour of appellant Sukhdeo and Noumi, lodged First Information Report (Ex.P/5) at Navegoan Police Station on 24.04.2001 at 09.30. a.m. to the effect that :- On 23.04.2009 at about 6:00 - 7:00 p.m. appellant Sukhdeo invited Noumi to settle his marriage at his residence. Haridas (PW-2), his brother Phoolrao (PW-3) and father Bihari were sitting in the courtyard of their house which was situated in front of the

house of appellant. At about 9:00- 9:30 p.m. appellant Sukhdeo closed the door of his house, Noumi shouted Jija bachao Sukhdeo churi maar raha hai.(Brother-in law save, Sukhdeo stabbing by knife). On hearing, Rajesh (PW-7) and Haridas (PW-2) rushed to the residence of appellant, who opened the door, light was there in the room and Noumi was lying dead in the room, blood was oozing out from abdomen. Appellant rushed towards Rajesh and inflicted injuries also on his chest and right arm by churi. Haridas intervened.

4. Informant Haridas on the next day 24.04.2009 went to the police station Navegaon which is situated 25 kms. away and lodged a Marg Intimation at 9:30 a.m because Rajesh became unconscious due to injuries.

5. On the basis of Marg Intimation, First Information Report registered by ASI Shri B.S. Sirodiya (PW-14), who went to the place of the incident, prepared spot map and collected blood stained soil. He also held inquest 4 Cr.A. No.844 /2003 of the dead body of Noumi in the presence of Panch witnesses and made arrangements for sending the dead body of Noumi to Primary Health Centre Hirdagarh for postmortem examination. Injured witness Rajesh. Appellant Sukhdeo and his wife Agarwatibai were also referred to hospital for medical examination and treatment. The Investigation Officer recorded the statements of witnesses. Appellant Sukhdeo was arrested and on his statement churi (knife), his blood stained shirt and pant were also seized. After due investigation charge-sheet was submitted and the case was committed to the Court of Sessions for trial.

6. Appellant Sukhdeo was tried before the learned trial Judge for offences punishable under Section 302 and 307 of the Indian Penal Code and his wife co-accused Agarwatibai was tried for offences punishable under Section 302 read with Section 34 and Section 307 read with Section 34 of the Indian Penal Code. Accused abjured their guilt.

7. Prosecution examined 16 witnesses and 27 documents were exhibited to prove their case.

8. During the statements under Section 313 of Criminal Procedure Code, the appellant abjured his guilt and pleaded false implication. In defence Buddhulal

(DW-1) and Dr. Mangal (DW-2) were examined and related document also exhibited.

9. Learned trial Court acquitted the appellant from the charges of Section 307 of Indian Penal Code and acquitted co-accused Agarwatibai from all the charges by the impugned judgment. No State appeal has been filed against the acquittals. But, learned trial Court held appellant guilty and convicted and sentenced him as mentioned above, hence this appeal.

10. We have heard the learned counsel for the parties and perused the impugned judgment and the evidence on record carefully. 5 Cr.A. No.844 /2003 11. It has not been disputed that death of Noumi was homicidal death. From the evidence of Rajesh (PW-7) Nirmala Bai (PW-4), Haridas (PW-2), Phoolrao (PW-3), Saddu (PW-9), Mathurabai (PW-8), Samlati Bai (PW-11), Dilip Sahu (PW-12) and Pooran (PW-13), it has been proved that deceased suffered injuries on his person and as a result of which, he died.

12. Dr. Sanjay Bhatkar (PW-16)) conducted postmortem examination of the deceased Noumi and found following ante mortem injuries:- Chest (1) Incised wound i.e. I.W. just below the left nipple. 1 x 1 x lung deep. (2) Incised wound on the lower aspect of sternum. (3) Incised wound parallel to left hypochondria. (4),(5),(7) & (8) Situated in the Para umbilical region, depth upto abdominal viscera i.e. intestine and mesenteries,damaged and cut. (6) Across the umbilical about 5 x 2 inch causing bulging of loops of small intestine. (9) Incised wound 2 x inch x muscle deep one the lower third of left fore arm, ant. aspect. (10) Incised wound 2 x inch x cutting across the whole causing exit incised wound of lesser diagram. (11) Lacerated wound 2 x inch x skull deep causing fracture of underlying occipital bone, intra cranial hemorrhage.

13. Dr. Sanjay Bhatkar (PW-16) also stated that he examined knife sent to him by the police and on the basis of query report (Ex.P/21), he was of the opinion that incised wound can be inflicted by this knife. It is pertinent to mention here that injuries No.1 to 3 are incised wounds.

14. Dr. Sanjay Bhatkar (PW-16) vide his postmortem report (Ex.P/22) opined that the cause of death of Nomi is acute cardio respiratory arrest 6 Cr.A. No.844 /2003 due to sustained injuries causing hypovolumic, neurological shock, irreversible.

15. From the aforesaid evidence, it stood imply established that deceased died due to injury No.1 on chest and, therefore, death of Nomi was homicidal in nature.

16. Now, it has to be seen whether appellant Sukhdeo caused injuries to Nomi, which resulted into his death?.

17. Relationship as well as identification of parties are not disputed as Mathurabai (PW-8) is mother of deceased Nomi, appellant Sukhdeo, Nirmalabai (PW-4) and Samalwatibai (PW-11). Haridas (PW-2) and his brother Phoolrao (PW-3) are also relatives of Mathurabais family.

18. The prosecution witnesses also admitted without-marriage relationship of Nirmalabai (PW-4) firstly with Nazir and thereafter with injured eyewitness Rajesh (PW-7), which was the reason of annoyance of appellant and his co-accused wife Agarwatibai.

19. In this regard statement of Nirmalabai (PW-4) is suffice to establish strong motivate of incident for appellant that due to her relationship with Nazir, Dodasemers villagers taunted her and also abandoned them from the community because she gave bad name to community. This was the reason due to which the appellant was annoyed. As per the statement of Phoolrao (PW-3) thats why appellant did not want to live Nirmalabai and Rajesh to live in his parental house, which was in possession of Nomi. It is pertinent to mention here that the Nomi had soft corner for her sister Nirmalabai, therefore, he was favouring Nirmalabai and Rajesh to stay with him at parental house. 7 Cr.A. No.844 /2003 20. Head Constable Shri B.L. Dohariya (PW-6) is the scribe of FIR (Ex.P/15-A), which was lodged by Nirmalabai (PW-4) regarding previous incident dated 24/04/2001 against the appellant.

21. On the date of incident, dispute started when appellant came to the house of unmarried Nomi to invite him for discussion about his marriage. Accepting the

offer, Noumi went to the house of the appellant which was witnessed by Haridas (PW-2), Phoolrao (PW-3), Nirmalabai (PW-4), Rajesh (PW-7), Mathurabai (PW-8) and other witnesses.

22. At this juncture, cries for help of Noumi were heard by the prosecution witnesses who narrated that in their own words. Haridas (PW-2) did not explain the actual words spoken by Noumi. Phoolrao (PW-3) stated that Noumis call was for Rajesh which is supported by Rajesh (PW-7) in these words that he heard uproar as Jija.. Nirmalabai (PW-4) settled all the controversy by saying that uproar of Noumi was that Jija bachao..

23. This fact is also proved that hearing the cry of Noumi Haridas (PW-2), Phoolrao (PW-3), Nirmalabai (PW-4) and Rajesh (PW-7) rushed to the spot i.e. house of the appellant.

24. How Rajesh (PW-7) suffered injuries will be discussed afterward but, looking to the totality of the evidence of this injured witness, the facts which were proved by his evidence need not to be repeated.

25. Haridas (PW-2) stated that in the house of appellant he saw injuries on the abdomen, neck and back of Noumi and that he died. During cross examination, Haridas (PW-2) clarified these facts that first of all Noumi went to the house of appellant after hearing noise of Noumi, Rajesh went and he followed him to reach to the spot. Haridas (PW-2), at this stage, 8 Cr.A. No.844 /2003 very specifically stated that Noumi died inside the house of the appellant due to injuries inflicted by the appellant.

26. Phoolrao (PW-3) also stated when he reached the house of appellant, he saw Noumi stumble down on the floor, having injuries on the abdomen, chest and hand, he was not talking and blood was oozing out. Phoolrao (PW-3) categorically stated that Noumi was dead in appellants house.

27. Nirmalabai (PW-4) stated mainly about the incident happened with Rajesh along with facts that Noumi was lying down in the house of appellant and was having knife. She also stated that Noumi was not talking when she reached. He

was dead.

28. not coming to the second question whether appellant Sukhdeo inflicted injuries to Rajesh?.

29. Dr. Sanjay Bhatkar (PW-16) also examined Rajesh and found following injuries on his person vide medical report, Ex.P/2:- (1) Incised wound over right lat aspect of sternum, direction inwards and laterally. Vertical 1cm x 1/2cm x lung deep, because air entry coming out of wound. Advice X-ray, surgical examination, hospitalization and needful urgently. Air entry on right side. (2) Incised wound, 1. linear over right side of epigetric region of abdomen skin deep, obliquely placed. (3) Incised wound 1. x 1/2. x muscle deep over anterior medial aspect of middle third of left forearm. (4) Incised wound 3/4. x 1/2. over medial and anterior aspect of upper third of left forearm.

30. Dr. Sanjay Bhatkar (PW-16) stated that all above injuries were caused by sharp and cutting object within 24 hours and nature of injuries no.2, 3 & 4 was simple. He also stated that opinion regarding injury No.1 can be given only after surgical examination, so he referred patient Rajesh 9 Cr.A. No.844 /2003 to District Hospital, Chhindwara where Dr. D. Moitra (PW-13), after X-ray, gave report (Ex.P/25) that traumatic effusion with pleural thickening right side of chest seen.

31. From the aforesaid evidence, it is established that witness Rajesh (PW-7) also suffered injuries on his person.

32. Regarding his injuries, Rajesh (PW-7) stated when he objected appellant Sukhdeo, he hit him by knife on his left hand then gave second blow on his chest due to which he fell down, he called his wife so Haridas and Phoolrao came.

33. Haridas (PW-2) is the witness of this second incident which happened with Rajesh, because he accompanied Rajesh when he heard the cry for help of Noumi. Haridas (PW-2) fully supported the above stated version of Rajesh in these words that appellant inflicted injuries to Rajesh by knife on chest and right hand and blood was oozing out.

34. Phoolrao (PW-3) also verbatim supported the evidence of Rajesh as narrated by his brother Haridas (PW-2) in above Para.
35. Nirmalabai (PW-4) stated that appellant Sukhdeo inflicted injuries to Rajesh by knife on left hand and on chest so her husband cried and fell down in the door of the house of appellant.
36. Rajesh (PW7) stated that due to injuries he became unconscious and on next day morning when he regained consciousness then he came to knot that Noumi was dead and then Haridas (PW-2) went to Navegaon Police Station to lodge the report.
37. It is specifically stated by Haridas (PW-2), Phoolrao (PW-3) and Nirmalabai (PW-4) that they brought unconscious Rajesh to house of Noumi, on second day morning when Rajesh regained consciousness and then Haridas (PW-2) went to Navegaon Police Station which was 25 kms 10 Cr.A. No.844 /2003 away from village Dodasemar to lodge Marg Intimation Ex.P/6. This evidence fully justified 14 hours delay in lodging of Marg Intimation (Ex.P/6).
38. Mathurabai (PW-8) and her second daughter Samalatibai (PW-11) also supported the aforesaid evidence of prosecution witness in the same or other forms therefore, it need not to be discussed at length. Importance is of quality of the evidence not of quantity. Hostility of Pooran (PW-3) does not have any importance.
39. Investigating Officer Shri B.S. Sisodiya (PW-14) categorically stated that on basis of Marg Intimation (Ex.P/6), he registered FIR (Ex.P/5) and rushed to the place of incident, prepared spot map (Ex.P/7) and seized blood stained soil as per Seizure Memo (Ex.P/19). Patwari Hariram (PW-10) also prepared spot map report (Ex.P/16). After issuing notice (Ex.P/18) to attend Panch witness, Shri B.S. Sisodiya (PW-14) prepared Panchnama (Ex.P/18-B) in presence of Dilip Sahu (PW-12) and others and sent the dead body for postmortem through Constable Himmat Singh (PW-5) and also managed for medical check up of Rajesh, appellant Sukhdeo and his wife Agarwatibai as per medical inquests forms (Ex.P/8 to Ex.P/10) respectively.

40. Shri Sisodiya (PW-14) the Investigation Officers further stated that he arrested appellant Sukhdeo and on his information Memo (Ex.P/1) under Section 27 of the Evidence Act, seized Churi (knife), alleged to have been used in commission of the crime, as per Seizure Memo (Ex.P/4) in presence of witnesses. Hostile witness Godilal (PW-1) only admitted his signatures on Memo (Ex.P/1), Seizure Memos (Ex.P/2 & 3), but did not support statement of Shri Sisodiya (PW-14). Other witness Nasari was not examined. 11 Cr.A. No.844 /2003 41. At this stage, defences available to the appellant will be discussed.

42. Suggestions were put forth before Rajesh (PW-7), Haridas (PW-2), Phoolrao (PW-3) and Nirmalabai (PW-4) during cross-examination that they accompanied with Noumi having knife and sticks, went to the residence of appellant to beat him and his wife. Rajesh attacked Sukhdeo by knife and for self defence Sukhdeo held hand of Rajesh, therefore, he got injuries in his fingers with blood oozing out and knife which Noumi was having caused injuries to Rajesh.

43. The prosecution witnesses denied the above suggestions, but Nirmalabai (PW/3) admitted the fact that during scuffle between Noumi and appellant at the residence of latter, the appellant got injury in his figures because he held the knife.

44. It is pertinent to repeat here that Shri B.S. Sisodiya (PW-14) also sent appellant Sukhdeo and his wife co-accused Agarwatibai for medical examination. Dr. Subhash Bhagat (DW-2) examined appellant Sukhdeo at district Hospital Chhindwara and vide report (Ex.D/6) found following injuries on his person:- (1) Healing abrasion linear 2 cm long. (2) Healing abrasion linear 1 cm & 1 cm long. (3) Linear abrasion healing 1 cm long.

45. Vide MLC report Ex.P/27, Dr. Sanjay Bhatkar (PW-16) found following injuries on person of Agarwatibai also:- (1) Incised wound less than 1/2. linear between index finger and middle finger. (2) Contusion found diffuse over medial aspect of left upper arm middle third.

46. It is not incumbent on the prosecution to explain and satisfy the Court for each and every injury suffered by accused persons. Looking to 12 Cr.A. No.844 /2003 the trivial nature of injuries found on the body of the appellant, prosecution need

not to explain how these simple injuries caused to the appellant.

47. Haridas (PW-2) and his brother Phoolrao (PW-3) admitted that about 7 years ago their unmarried sister Jankibai aged about 20 years committed suicide and at that time she was pregnant and due to this incident, society condemned them. Both these witnesses also admitted that in this matter report was lodged by the appellant Sukhdeo, therefore, they had inimical relations with the appellant. This fact does not affect the reliability of Haridas (PW-2) as well as his brother Phoolrao (PW-3).

48. In all criminal cases, normal discrepancies are bound to occur in the deposition of witnesses due to normal errors of observation, namely errors of memory due to lapse of time or due to mental disposition such as shock and horrors at the time of occurrence i.e. in case of Rajesh (PW-7), who suffered injuries during this incident and fell unconscious. Where omissions amount to contradiction, creating a serious doubt about the truthfulness of the witness, and other witnesses also make material improvements while deposing in the court, such evidence cannot be safe to be relied upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution, should not be made ground on which the evidence can be rejected in its entirety. Exaggerations per se do not render the evidence brittle. Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. Now, when the case in hand is examined in the 13 Cr.A. No.844 /2003 light of the aforesaid legal proposition, the prosecution witnesses fully established the prosecution story.

49. Rajesh (PW-7) improved his statement saying that he saw appellant stabbing Noumi by knife and Agarwatibai also beating Noumi by Hasia. Rajesh (PW-7) though stated that this fact was stated by him in his police statement (Ex.D/4) but, why it was not there, he could not say.

50. Phoolrao (PW-3) admitted that he did not see Noumi and Rajesh going towards the house of appellant but, he clarified that on hearing noise of Rajesh, he

rushed to the spot.

51. The contradictions, omissions, improvements etc. in the statements of Rajesh (PW-7), Haridas (PW-2), Phoolrao (PW-3) and Nirmalabai (PW-4) in the Court as compared with their statements before the police under Section 161 of Cr.P.C. do not demolish the prosecution story or create any serious doubt about truthfulness of prosecution story.

52. The case in hand when examined in the light of the aforesaid legal preposition, we find that the injured prosecution witnesses Rajesh (PW-7), Haridas (PW-2), Phoolrao ((PW-3) and Nirmalabai (PW-4) fully established the prosecution case. In our opinion, the appreciation of evidence done by the learned Sessions Judge, is sound, correct and proper. Evidence of all these four witnesses regarding injuries caused to Noumi and the manner of assault on Rajesh is congruent, consistent and seems to us trustworthy. Their evidence remained unshaken in cross examination and nothing appeared therein to discredit their testimony. Evidence of these witnesses coupled with the recovery of knife from appellant and the medical evidence given by Dr. Sanjay Bhatkar (PW-16) unmistakably indicates that the appellant committed the crime i.e. assaulted Noumi with 14 Cr.A. No.844 /2003 knife, which resulted in his death and also inflicted injuries on the person of Rajesh (PW-7).

53. For the aforesaid reasons, the conviction of appellant Sukhdeo under Section 302 of IPC causing death of Noumi and the sentence of imprisonment for life awarded by the learned trial Court is affirmed. The conviction of appellant under Section 326 of IPC causing grievous hurt by sharp edged weapon to Rajesh and sentence of five years imprisonment and fine of Rs.500/- awarded by the learned trial Court is also affirmed.

54. Appeal being devoid of merit, is dismissed. (Rakesh Saksena) (Subhash Kakade) Judge Judge SJ/-

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