

Kallu @ Devendra Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-25-2013

Appellant : Kallu @ Devendra

Respondent : The State of M.P.

Advocate for Def. : Shri. Ghanshyam Pandey

Advocate for Pet/Ap. : Shri. Ghanshyam Pandey

Judgement :

1 Cr.A. No.828 of 2000 Cr.A. No.956 of 2000 HIGH COURT OF MADHYA PRADESH AT JABALPUR DIVISION BENCH: HONBLE SHRI JUSTICE RAKESH SAKSENA HONBLE SHRI JUSTICE SUBHASH KAKADE CRIMINAL APPEAL NO.828 of 2000 APPELLANT: Kallu @ Devendra S/o Ramraj, Aged- about 19 years, Caste Kori, R/o- H.No.27, Near the house of Hukumchand Prajapati, Chandwar, Thana Station Bajaria, Bhopal Versus RESPONDENT: The State of Madhya Pradesh and CRIMINAL APPEAL NO.956 of 2000 APPELLANT: Durga Singh S/o Devi Singh, Aged- about 20 years, Caste Chouhan, R/o- H.No.7, Near Cloth Mill Gate, Near the house of Hukumchand Prajapati, Thana Station Bajaria, Bhopal Versus RESPONDENT: The State of Madhya Pradesh Through Police Station Govindpura, Bhopal

----- For the
Appellants : Shri Ghanshyam Pandey, Learned Counsel For the
Respondent/State: Shri Amit Pandey, Learned Penal Lawyer

----- Date of
hearing :

04. 04.2013 Date of judgment :

25. 04.2013 Per: Subhash Kakade, J.2 Cr.A. No.828 of 2000 Cr.A. No.956 of 2000
(

JUDGMENT

) The convicted appellants have assailed the judgment dated 10th. February, 2000 of the learned Sessions Judge, Bhopal passed in Sessions Trial No.141/99 (State of M.P. through P.S. Govindpura Bhopal v/s Durga Singh and 2 others) whereby while acquitting co- accused Suraj Pal, the appellants have been convicted under Section 302 of the IPC and sentenced to imprisonment for life and fine of Rs.500/-. In default of payment of fine further 1 month Rigorous Imprisonment.

2. Since the aforesaid two appeals have been preferred against the same impugned judgment of the learned trial Court, the same are being decided by this common judgment.

3. According to the prosecution, on 22.01.1999 there was marriage ceremony of complainant Kundanlals daughter Umabai. On this occasion, Barat party of Bridegroom Nandkishor came to bride's village Barkheda Pathni. Wedding ceremony was being performed in a Tent in nearby school campus. The appellants and Suraj Pal (acquitted accused) with others were present as members of Marriage party.

4. When Kundan Lals nephew Himmat Singh was serving tea to the members of marriage party there occurred some altercation between the parties. At about 11:00 p.m. appellants Durga, Kallu and two-three other boys with Suraj Pal came into tent and carried Himmat Singh back side of the tent. Appellants Kallu and Durga stabbed Himmat Singh on his abdomen and chest by chhuri. Hearing alarm many persons rushed to the spot. Sunil Raikwar and others witnessed the occurrence. 3 Cr.A. No.828 of 2000 Cr.A. No.956 o

5. At Police Station Govindpura, Bhopal Head Constable Veer Singh received message regarding this incident telephonically as well as from Police Control Room so he made entries in Rojnamcha. Investigation officer ASI Shri Gupta went to the place of incident where Kundan Lal lodged the Dehati Nalishi. Himmat Singh was already shifted to the hospital. Shri Gupta recorded statements of Kundan Lal and Sunil Kumar, prepared spot map and incriminating articles were seized from the place of incident.

6. Further investigation was completed by ASI Shri D.L. Prem who arrested appellant Kallu alias Durga during the course of investigation and on his statement an iron chhuri, alleged to have been used in commission of the crime, was recovered in presence of witnesses. The investigation officer arrested appellant Durga Singh and also recovered a pointed iron chhuri from him. The condition of Himmat Singh was very serious therefore, before receiving medical aid he succumbed to injuries. Dr. B.P. Dubey conducted the post mortem examination and found five injuries on the person of the deceased. After usual investigation, the charge-sheet were submitted and the appellants were committed to the Court of Session to face trial for commission of the above said crime.

7. The learned trial Judge framed charges against the appellants punishable under Section 302 of IPC. Appellants pleaded not guilty. During trial prosecution examined 13 witnesses and exhibited 19 documents. 4 Cr.A. No.828 of 2000 Cr.A. No.956 o

8. During the statements under Section 313 of Criminal Procedure Code, the appellants abjured their guilt and pleaded false implication contending that the assault was made by some other boys and when they intervened they also received injuries. In this regard Constable Brijkishor has also been examined as a defense witness.

9. Learned Sessions Judge after appreciating the evidence on record held appellants guilty, convicted and sentenced them as mentioned above. Aggrieved by their conviction and sentence, the appellants have filed the present appeals.

10. We have heard the learned counsel for the parties and perused the impugned judgment and the evidence on record carefully.

11. It has not been disputed that Himmat Singh died of homicidal death.

12. At Mahatma Gandhi Medical College, Bhopal, Professor and Head of the Department of Forensic Medicine Dr. B.P. Dubey (P.W.3) examined dead body and found following injuries:- (1) Incised wound on left fore arm, below the tip of olecranon process 3x0.5 cm transverse subcutaneous deep. (2) Stab wound on postero lateral aspect of left thigh 3x1.5 cm, verticle upper end broad, lower end pointed, directing anteriorly downwards 3.5 cm deep ecchymosis present. (3) Stab wound left upper arm 20 cm below the shoulder tip antero-laterally 2.5 x 0.5 cm, verticle, upper end broad lower end pointed directing medially, anteriorly and downwards 4 cm deep ecchymosis present. 5 Cr.A. No.828 of 2000 Cr.A. No.956 of 2000 (4) Stab wound on left side of chest 8.5 cm below the ant- axillary fold 4x1 cm, verticle, upper end broad, lower end pointed, directed upward posteriorly in the muscle outside the ribs 5 cm deep, ecchymosis present. (5) Stab wound on left side of chest just medial and below the nipple 6 x 0.5 cm., upper end is broad lower end is pointed, at the distance of 2.5 cm. from upper and the notch is present on medial margin then the wound is curving medially for a distance of 3.5 cm in tapering fashion by cutting the muscle it had cut the 4 th rib just medial to costochondral junction it entered in the thoracic cavity then it has cut the pericardium and entered into the left ventricle of the heart and gone up to the inter ventricular septum and given a nick pericardial and thoracic cavity are full of blood some of which is clotted, direction posteriorly slightly upwards and medially depth 7 cm temporo ecchymosis present.

13. Dr. B.P. Dubey (PW-3) vide his post mortem report Ex.P/5 opined that the death of deceased occurred due to shock and hemorrhage result of stab injuries to the chest injuries has been caused by hard, sharp and penetrating object and homicidal in nature.

14. From the aforesaid evidence, we find it establish that the Himmat Singh died a homicidal death on account of shock and hemorrhage, as a result of stab injury on his chest which was caused by hard, sharp and penetrating object.

15. Now, it has to be seen whether appellants caused injuries to deceased which resulted into his death?. 6 Cr.A. No.828 of 2000 Cr.A. No.956 o

16. Learned Session Judge rightly held that the case of prosecution mainly rested on the evidence of eye-witness Sunil Raikwar (PW-10).

17. Professional Videographer Sunil Raikwar (PW-10) deposed that in connection of his profession he was at Barkhera Pathani for coverage of wedding ceremony and at about 11:00 p.m. he went behind the tent where fight was going on. He further stated that appellants Durga and Kallu were present and talking that they will take revenge for their beating and Himmat Singh was pacifying them. Sunil Raikwar (PW-10) categorically stated at that time appellants Durga and Kallu were having knife and gupti and they inflicted injuries to the Himmat Singh so he fell down in front of him, injuries on abdomen and chest of Himmat Singh were visible.

18. Sunil Raikwar (PW-10) was subjected to a lengthy cross examination but, nothing material could be brought out to discredit his testimony. During cross examination Sunil Raikwar (PW-10) stood firm on his above statements. He stated that appellants Durga and Kallu were previously known to him, therefore, requirement of identification by Kundan Lal (PW-11) or Mohan (PW-12) made no difference.

19. It is pertinent to mention here that ample light was available because occasion was of the wedding ceremony.

20. Informant Kundan Lal (PW-11) frankly admitted during his cross examination that he was not eye-witness of the occurrence. But, it was proved on the strength of statement of Kundan Lal (PW-11) that after altercation ensued between the parties, appellants Durga, Kallu and two-three other boys with Suraj Pal at about 11:00 p.m. came into tent 7 Cr.A. No.828 of 2000 Cr.A. No.956 of 2000 and that after altercation they carried his nephew Himmat Singh behind the tent. He also stated Himmat Singh was injured due to stabbing by chhuri and hearing the alarm many persons had reached to the spot, Sunil Raikwar was also among them.

21. Mohan (PW-11) also supported the version of the Kundan Lal that two-three boys caught Himmat Singh and took him behind the tent.
22. Witnesses belonging to the Barat party including bridegroom Nandkishor (P.W.4), Mukesh (P.W.5), Santosh (P.W.6) and Dharmendra @ Kallu (P.W.9) all residents of Bride Grooms village Chandwad were declared hostile because, they did not narrate a single word about the occurrence, except that they were members of the marriage party.
23. Witnesses Balaram (P.W.1) and Thakur Prasad (P.W.2) were also declared hostile because, they also did not support the case of prosecution. But, Balaram (P.W.1) and Thakur Prasad (P.W.2) proved that they were present in the marriage ceremony and a quarrel took place and Himmat Singh died.
24. Head Constable Veer Singh (P.W.7) categorically stated that on 22.01.1999 at Police Station Govindpura he received telephonic message as well as a message from Control Room on that basis he wrote down Rojnamcha Ex. P/8. On this information ASI Police Station Govindpura Bhopal Shri J.D. Gupta (P.W.8) reached school campus at village Barkhera Pathani where informant Kundan Lal (P.W.11) lodged the first information report Ex. P/9. 8 Cr.A. No.828 of 2000 Cr.A. No.956 o
25. The Investigation Officer Shri J.D. Gupta (PW-8) categorically stated that on receiving the information he went to the place of incident where Kundan Lal lodged the Dehati Nalishi Ex. P/9 because Himmat Singh was already sent to the hospital, Shri Gupta (PW-8) recorded the statements of Kundan Lal and Sunil Raikwar and prepared spot map Ex.P/10 and incriminating articles were seized as per memo Ex.P/11 from the place of incident. Further investigation was completed by ASI Shri D.L. Prem (PW-13), who arrested appellant Kallu alias Devendra during the course of investigation and on his information memo Ex.P/16 under Section 27 of Evidence Act, an iron chhuri, alleged to have been used in commission of the crime, was recovered as per seizure memo Ex.P/17 in presence of witnesses. Adopting same procedure Shri D.L. Prem (PW-13) arrested the appellant Durga Singh and vide his information memo Ex.P/3 recovered the pointed iron chhuri as per seizure memo Ex.P/4 from him.

26. In our opinion the appreciation of evidence done by the learned Sessions Judge is sound, correct and proper. Evidence of Sunil Raikwar (PW-10) regarding occurrence and the manner of assault is cogent, consistent and seems to us trustworthy. Evidence of these witnesses coupled with the medical evidence given by Dr. B.P. Dubey (PW-3) and the recovery of chhuri from appellants Durga and Kallu unmistakably indicates that appellants committed the crime i.e. assaulted Himmat Singh with chhuri which resulted in his death.

27. On the basis of statement of Constable Brij Kishore (DW-1), it is indicated that in the same incident appellant Durga also sustained 9 Cr.A. No.828 of 2000 Cr.A. No.956 of 2000 injuries, though medical report in this regard was not exhibited. On perusal of the evidence on record, it is also revealed that some persons caught appellant Durga and his companion and assaulted them. Thus an explanation is also available for the injuries noted on the person of appellant Durga.

28. Shri Ghanshyam Pandey, learned counsel for the appellants also submitted that there was no enmity between the deceased and the appellants, the incident had occurred in a sudden quarrel and without premeditation, therefore, the conviction of appellants under Section 302 of Indian Penal Code was not justified. Reliance was placed on the law laid down by the apex court in the case of:- (i) Masumsha Hasanasha vs. State of Maharashtra - AIR 200.SC 187.(ii) Ram Prakash Singh vs. State of Bihar - AIR 199.SC 119.(iii) Mahesh vs. State of Madhya Pradesh - AIR 199.SC 3513.

29. The ratio of above decisions is that when the incident occurred in a sudden quarrel without premeditation and accused did not act in cruel or unusual manner, the case of accused would attract exception 4 to Section 300 of the Indian Penal Code. On examining the fact situation of the instant case, we find that the incident occurred suddenly when deceased was trying to pacify appellants after some dispute. In these circumstances, in view of the proposition of law enunciated by the Apex Court, we find that exception 4 to Section of the Indian Penal Code was attracted. Since the appellants used deadly weapons and caused injuries on the vital parts of the body of deceased, i.e. abdomen and 10 Cr.A. No.828 of 2000 Cr.A. No.956 of 2000 chest which resulted into his death, in our opinion,

appellants thereby clearly made themselves liable to be punished under Section 304 (1) of the Indian Penal Code and not under Section 302 of the Indian Penal Code.

30. For the aforesaid reasons, the conviction of appellants Kallu @ Devendra and Durga Singh under Section 302 of the Indian Penal Code is modified to one under Section 304-I of the Indian Penal Code and each of them is sentenced to rigorous imprisonment for 10 (ten) years. Appellant Kallu @ Devendra and Durga Singh are reported to be in jail since 21.02.1999 and 24.01.1999 respectively. If they have served out whole of their sentence, they be released forthwith if not required in any other case.

31. Appeal partly allowed. (RAKESH SAKSENA) (SUBHASH KAKADE) JUDGE
JUDGE AK

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