

**Lalu Vs. State of M.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/500342](http://sooperkanoon.com/500342)

**Court :** Madhya Pradesh

**Decided On :** Feb-03-2003

**Reported in :** 2003CriLJ1992; 2003(2)MPHT345; 2003(1)MPLJ606

**Judge :** Deepak Verma and ;S.L. Kochar, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 132, 137, 138, 146, 147, 148 and 165; [Constitution of India](#) - Article 21

**Appeal No. :** Criminal Appeal No. 217/95

**Appellant :** Lalu

**Respondent :** State of M.P.

**Advocate for Def. :** G. Desai, Dy. Adv. General

**Advocate for Pet/Ap. :** Chandiramani, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**S.L. Kochar, J.**

1. The unsuccessful appellant Lalu, dissatisfied with the judgment dated 16-1-1995 rendered by the Additional Sessions Judge, Barwaha in Sessions Trial No. 300/94, thereby convicting the appellant for the offence punishable under Section

302 of the Indian Penal Code and sentencing him to imprisonment for life and fine of Rs. 1,000/-. In default of payment of fine, he was directed to suffer additional R.I. for six months, has preferred this appeal.

2. The case of the prosecution in nut-shell before the Trial Court was that on 7-8-1994 at about 7.15 PM, deceased Ditya alongwith his wife Dashribai (P.W. 1), Bholu (P.W. 2), Gangaram (P.W. 4) and Dhannalal were sitting at his house. At that juncture, accused/appellant Lalu came over there and asked Ditya as to why he was calling his wife a witch (Dakan), Ditya told that it was a matter between women-folk. Thereafter, accused/appellant Lalu took out a knife and inflicted knife blows on the deceased. Dhannalal and Bholu tried to intervene. Accused fled away from the scene of occurrence. The deceased was taken to the Hospital at Barwaha. Dhannalal (P.W. 3) lodged the First Information Report (Ex. P-2). Ditya died in the hospital the same day. After usual investigation, accused was charge-sheeted. The appellant abjured his guilt. On trial, finding the appellant guilty of the offence with which he has been charged, the Trial Court convicted and sentenced him as indicated hereinabove.

3. We have heard Shri Chandiramani, learned Counsel for the appellant and Shri G. Desai, learned Dy. Advocate General appearing for the State and gone through the entire record carefully.

4. From perusal of the post-mortem report (Ex. P-8/A) and the statement of Dr. S.C. Joly (P.W. 7), it is crystal clear that the deceased Ditya met a homicidal death. The appellant has also not questioned the homicidal death of deceased Ditya.

5. Learned Judge of the Trial Court has based the conviction on the solitary testimony of Dashribai (P.W. 1), wife of the deceased and sought corroboration to her testimony by relying on some part of the statement of hostile witness Bholu (P.W. 2), Dhannalal (P.W. 3) and Mansharam (P.W. 4) who was a witness of altercation between the deceased and the appellant.

6. In our opinion, learned Addl. Sessions Judge overlooking the legal interdict relied upon the testimony of Dashribai (P.W. 1), wife of the deceased who has

refused to answer almost all the questions put to her by the defence Counsel in cross-examination by saying 'I don't know'. The interdict contained in Section 146 of the Indian Evidence Act regarding questions lawfully can be put in cross-examination, when witness can be compelled to answer under Section 147, Section 148 - Court has to decide what question shall be asked and when witness can be compelled to answer. These provisions are to be invoked by the Court alongwith the provisions contained under Section 132 of the Evidence Act regarding witness not excused from answering on ground that answer will criminate. Cross-examination of the prosecution witnesses by the defence Counsel is a valuable right of the accused to impeach the testimony of the witnesses deposing against him. Of course, this right has to be exercised well within the four corners of law, Right of cross-examination is enshrined under Sections 137 and 138 of the Evidence Act.

7. In the case in hand, the witness Dashribai (P. W. 1) has right from Paras 5 to 10 refused to answer the questions put to her by saying 'I don't know', thereby she has refused to give answers to the questions put by the defence Counsel although she has supported the prosecution case in her examination-in-chief. In Para 5 of her deposition, on being asked, what was the season at the time of occurrence and whether on the date of incident, she was in the house or not, she replied 'I don't know'. After this answer, the witness was explained and was asked, whether at the time of incident, she was in the house, she replied that she was in the house. In Para 6, she replied all the questions by saying that she did not know. Thereafter, her deposition was recorded in question and answer form and in answer to question Nos. 1 and 2, which were very important, i.e., whether Bholu, Mansharam, Dhannalal and Ambaram came to her house or not and whether she was in the house at the time of incident, she evaded and said that 'Mujhko Nahin Malum'. Again, the Court had explained and tried to make her understand, about giving answers to the questions put by the defence Counsel, but even thereafter in Paras 7 and 8 she answered 'Nahin Malum'. In these paragraphs the questions were put e.g., out of four persons, who came first at her house, why did they come to her house; between whom quarrel had taken place; whether her statement was recorded by the police and whether her thumb impression or the signatures were obtained by the police, and whether she was knowing about the incident. In

answer to the questions, she against replied 'Nahin Malum'.

8. On intervention by the Court in Para 8 she said that she has deposed whatever she had seen and that she will not answer to any question which may be asked by the defence Counsel. In Para 10, she repeated the same answer. A very important question, i.e., question No. 5 was put to the witness :

'Tum Dhannalal ke kahane se Lalu ne tumhare aadmi ko maaraa aisa jhutha bayan de rahi ho'

To this question, she answered:

'Mujhko nahin malum'.

At this juncture also, the Court intervened and made the witness to understand. She again repeated the same reply.

9. In Para 8, after intervention by the Court repeated questions were put to Dashribai (P.W. 1) by the Court to which she answered that:--

'Maine jo dekha wohi kaha baki tumhari kisi baat ka jawab main nahin dungii. Mujhe nahin malum'

After visualising the complete statement of Dashribai (P.W. 1), who is the wife of the deceased, we have no hesitation in coming to the conclusion that she did not put herself to the defence Counsel for proper, reasonable, legal and effective cross-examination. She has avoided and evaded to answer the questions put in the cross-examination even though she was given several opportunities to understand the questions and situation. The Trial Court had also explained and also put the same question invoking powers under Section 165 as well as the provisions under Sections 132, 147 and 148 of the Indian Evidence Act, but at every stage, the witness refused to answer the question put to her. Her patent answer was 'mujhe nahin malum'. But, after lot of insistence to answer the question, she has replied that whatever she had seen, she has stated. This shows that a valuable right of cross-examination of the appellant/accused within the four corners of law, was frustrated by the witness by giving evasive reply and avoiding

the question. The appellant was facing the trial wherein a capital punishment has been prescribed and was having fundamental right as enshrined under Article 21 of the [Constitution of India](#) regarding protection of right of personal liberty.

10. In the judgment by the Oudh High Court rendered in the case of Ram Kumar v. Emperor (AIR 1937 Oudh 168), similar situation had arisen and the Court held as under :--

'The testimony of a witness is not legal evidence unless it is subjected to cross-examination; and where no opportunity has been given to the accused's Counsel to test the veracity of the principal prosecution witnesses, or where owing to the refractory attitude of the witness the Court is constrained to terminate all of a sudden and prematurely the cross-examination of the witness, the evidence of such a witness is not legal testimony and cannot be the basis of a judicial pronouncement.'

11. Supreme Court in the case of Baldeosingh v. State of Punjab (AIR 1991 SC 31) ruled that when the witness supported the prosecution case in examination-in-chief and thereafter given divergent statement as the statement contrary to examination-in-chief, cannot be relied upon for the purpose of conviction. The testimony of such type of witness would not get strength from his statement under Section 161 of the Code of Criminal Procedure as well as the First Information Report. The Trial Court has also failed to draw adverse inference against this witness as per proviso under Section 114(h) of the Evidence Act.

12. Considering the factual and legal position as involved in the instant case, on an anvil of law laid down in the aforesaid two authorities, we are of the opinion that the statement of the prosecution witness Dashribai (P.W. 1) cannot be considered as legal evidence and her testimony is liable to be discarded completely because, she did not put herself to be tested in accordance with law in the cross-examination, and gave same answers to the questions, which are contrary to her statement in examination-in-chief.

13. If the testimony of Dashribai (P.W. 1) goes away from consideration against the appellant, there is no substantive piece of evidence which may remain to be

considered in favour of the prosecution and against the appellant. The other witnesses Bholu (P.W. 2), Dhannalal (P.W. 3) and Mansharam (P.W. 4) turned hostile to the prosecution. They have deposed only about some altercations between the deceased and the appellant. Their statements cannot be used for the purpose of corroboration to other substantive piece of evidence, but after discarding the testimony of Dashribai (P.W. 1), now there is no other evidence available on record to consider against the appellant. Therefore, the testimony of all these three hostile witnesses is also of no consequence.

14. For all the reasons indicated hereinabove, we are of the considered view that the evidence as adduced by the prosecution is not worthy of credence and the prosecution has failed to satisfactorily establish the guilt of the appellant/accused.

15. Consequently, we allow this appeal by setting aside the conviction and sentence recorded by the Trial Court and direct the appellant to be acquitted from the offence with which he has been charged. The appellant is on bail. His bail and surety bonds shall stand discharged.