

Poor Singh and ors. Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Feb-01-2004

Reported in : 2004CriLJ3180; 2004(2)MPLJ561

Judge : S.L. Kochar and ;Ashok Kumar Tiwari, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 300; Code of Criminal Procedure (CrPC) , 1974 - Sections 157

Appeal No. : Criminal Appeal No. 612 of 1997

Appellant : Poor Singh and ors.

Respondent : State of Madhya Pradesh

Advocate for Def. : Girish Desai, Dy. A.G.

Advocate for Pet/Ap. : G.S. Chouhan, L.C.

Disposition : Appeal dismissed

Judgement :

Ashok Kumar Tiwari, J.

1. Appellant-Poor Singh has been convicted under Sections 324 and 302/34 of the Indian Penal Code and all other appellants have been convicted under Sections 324/34 and 302/34 of the Indian Penal Code by learned Sessions Judge, Ujjain,

vide judgment and order passed in S.I. No. 225/96.

2(a)* Prosecution's story as unfolded by the evidence is that on the date of incident Nirbhay Singh (P.W. 7) had been to Zarda for purchasing roofing tiles. Roofing tiles purchased by him were sent by him to his village by the bullock cart of Poora Balai. At about 5 O'clock in the evening Bhagwan Singh of village Varsi (deceased) met him in village Zarda. On being told by Nirbhay Singh (P.W. 7) that he would be going to meet his brother at Naharkheda, he expressed his willingness to accompany him and thereafter both of them started towards Naharkheda riding in the bus. Appellant-Poor Singh and some other persons of the village were also travelling in the bus. in which Nirbhay Singh (P.W. 7) and deceased Bhagwan Singh were travelling. All the above persons got down from the bus on the way leading to village Naharkheda and appellant-Poor Singh left for Naharkheda while Bhagwan Singh and Nirbhay Singh stayed for a while there for attending the call of nature and after washing up, both of them started to Naharkheda.

2(b). When Nirbhay Singh (P.W. 7) and the deceased reached near the house of appellant-Poor Singh in village Naharkheda, appellant-Poor Singh asked soutedly that who was there When Nirbhay Singh (P.W. 7) replied that it was Nirbhay Singh of village Belakhedi, appellant-Poor Singh and other appellants gathered there and they started inflicting lathi blows on Bhagwan. Singh (deceased), who was being accompanied by him. Appellant-Poor Singh struck lathi blow on Nirbhay Singh (P.W. 7) also and appellant-Sultan Singh also struck him with lathi. Deceased-Bhagwan Singh fell on the ground and Nirbhay Singh (P.W. 7) also fell on the ground. Bhagwan Singh of village Varsi (deceased) was done away to death by the time Nirbhay Singh (P.W. 7) ran away .from the scene of occurrence and reached Borkheda where he told Bhagwan Singh of village Borkheda about the incident. Bhagwan Singh of village Borkheda advised Nirbhai Singh (P.W. 7) to run away from there also. Thereafter, Nirbhay Singh (P.W. 7) wandered here and there beside the river and he made First Information Report Ex. P/20 at Police Station Zarda next day.

2(c). Police sent Nirbhay Singh (P.W. 7) to hospital for treatment and medical examination. Police reached on the spot and prepared spot map (Ex. P/21) and panchnama of the dead body of Bhagwan Singh (Ex. P/23) was also prepared. Dead body of Bhagwan Singh was sent for postmortem, Dr. S.K. Tanwar (P.W. 4) performed autopsy on the dead body and prepared post-mortem report Ex. P/17, Police recorded the statements of witnesses during the investigation and appellants were arrested and necessary investigation was conducted by the police and after completing the investigation, challan was filed against the appellants.

3. Appellants abjured the guilt thereby they were tried by the trial Court and after trial, appellant-Poor Singh was held guilty for the commission of offences punishable under Sections 324 and 302/34, I.P.C. while all other appellants were held guilty for the commission of offences punishable under Sections 324/34 and 302/34 of I.P.C. and each of them were sentenced to undergo rigorous imprisonment for one year and life imprisonment respectively. Hence, appellants have filed this appeal.

4. The appellants have not challenged the fact that the deceased Bhagwan Singh has died and his death was homicidal. Even otherwise, there is ample evidence to the effect that deceased-Bhagwan Singh had met homicidal death. Dr. S.K. Tanwar (P.W. 4) has deposed that he examined the dead body of Bhagwan Singh s/o Dule Singh r/o Village Varsi, which was brought by Constable Munna Singh No. 991 of Police Station, Jhada on 22-6-1996. He has described the injuries present on the dead body and he has deposed in paragraph 7 of his statement that in his opinion, death of deceased-Bhagwan Singh was caused due to excessive bleeding and death was homicidal. In the facts and circumstances of the case, this fact is established beyond any reasonable doubt that deceased-Bhagwan Singh met homicidal death.

5. The next question which arises for consideration is that whether the death of deceased-Bhagwan Singh was caused by the appellants? Learned trial Court has found appellants guilty of causing death of deceased-Bhagwan Singh. Appellants have challenged the findings of the learned trial Court. It has been submitted by

the learned counsel for appellants that learned trial Court has erred in relying upon the sole testimony of Nirbhay Singh (P.W. 7). Learned counsel for appellants has submitted that Nirbhay Singh (P.W. 7) is an interested witness as he was familiar and related to deceased-Bhagwan Singh. The contention of the learned counsel for appellants cannot be accepted. Firstly, there is no evidence to the effect that deceased-Bhagwan Singh was . closely related to Nirbhay Singh (P.W. 7). He appears to be a distant relative of the deceased. A witness cannot be branded as an interested witness only because he happens to be a relative or friend of the deceased. Even if, it is assumed that Nirbhay Singh (P.W. 7) is an interested witness, his testimony cannot be ignored only on this count. It is the settled position of law that the testimony of a witness cannot be thrown out only on the ground that witness is a close relative or a friend of the deceased. If a witness is relative or a friend of the deceased, his testimony has to be scrutinised cautiously before acting upon it and if his testimony is duly corroborated and it does not suffer from any infirmity, it could be safely acted upon.

6. Nirbhay Singh (P.W. 7) has deposed that at the time of incident, he also sustained injuries when appellants-Sultan Singh and Poor Singh dealt lathi blows to him. Dr. S.K. Tanwar (P.W. 4) has examined the injuries sustained by Nirbhay Singh (P.W.7). Testimony of Dr. S.K. Tanwar (P.W. 4) supports the testimony of Nirbhay Singh (P.W. 7) regarding his receiving injuries. There is nothing on record which may suggest that Nirbhay Singh (P.W.7) did not receive the injuries in the incident, but somewhere else. According to the statement of Dr. S.K. Tanwar (P.W. 4) and injury report (Ex. P/ 16), it is evident that Nirbhay Singh (P.W.7) was having five injuries on his person, which were simple in nature and caused by any hard and blunt object. Out of the injuries found on the person of Nirbhay Singh (P.W. 7). Injury No. 5 was the lacerated wound situated on the right parietal bone. The size of this wound was 5 cm. x 1.4 cm. 1.4 cm. Though the injuries are simple in nature but these, injuries could not be self-inflicted. Appellants have not even suggested that the injuries found on the person of Nirbhay Singh (P.W. 7) were self-inflicted.

7. It is thus clear that Nirbhay Singh (P.W.7) received the injuries during the course of incident. Therefore, his presence at the time and place of occurrence

cannot be doubted. Since his presence could not be disputed and he himself has sustained injuries in the course of the very transaction, it stands to reason to hold that he had witnessed the incident. He has described in his deposition as to how the incident took place and he has specifically deposed that the appellants struck deceased-Bhagwan Singh with lathies. His statement could not be rejected only because he has not stated with precision that whose blow fell on which part of the body of deceased-Bhagwan Singh. When numerous persons beat a man, it is difficult for a person witnessing the incident to watch and remember which of the accused hit which particular part of the body of the victim. The testimony of such a witness could not be doubted due to lack of such particulars in his statement. Barring some minor discrepancies, there is nothing to make his testimony doubtful. Minor discrepancies may always occur in the testimony of a witness and he cannot be declared unreliable on the basis of such minor discrepancies. We are of the considered view that the testimony of Nirbhay Singh (P.W. 7) does not suffer from any serious infirmities and learned trial Court has properly appreciated the statement of Nirbhay Singh (P.W. 7) and rightly placed reliance on it.

8. Learned counsel for the appellants has raised the contention that no proof has been adduced by the prosecution about compliance of provisions of Section 157 of Criminal Procedure Code regarding sending of copy of the First information Report to the Magistrate concerned, therefore, the appellants could have not been convicted. Learned counsel for appellants has placed reliance on *Gabbu v. State of M. P.*, 2003 (3) MPLJ 349 : (2004 Cri LJ 2001); *Munnial v. State of M. P.*, 1994 Cri LR (MP) 274; *Davaram v. State of M. P.*, 1997 Jab LJ 38; *Ishwar Singh v. State of U. P.*, AIR 1976 SC 2423 : (1976 Cri LJ 1883); *Dheer Singh v. State of M. P.*, 1988 MPLJ 241 and *Rajeevan v. State of Kerala*, AIR 2003 SC 1813 : (2003 Cri LJ 1572) in this regard. It is pertinent to note here that not a single question has been put to Investigating Officer S.S. Darar (P.W. 8), who is the scribe of FIR regarding the despatch of the copy of First Information Report to the Magistrate concerned. Had any suggestion to the witness to the effect that copy of the FIR was not sent or it was despatched late, been given to the witness he could have afforded some explanation or could have shown as to when the report of occurrence, was sent to and received by the Magistrate. Therefore, it cannot be said that copy of the FIR was not sent to the Magistrate promptly. In the cases

relied upon by the appellant's counsel it was established that there was delay in despatch of the report to the Magistrate, therefore, appellants cannot get any benefit. Even otherwise, the non-compliance of Section 157 of Criminal Procedure Code, is an infirmity which when coupled with other infirmities might extend benefit of doubt to the accused. The case of the prosecution may not be thrown out merely for the non-compliance of Section 157 of the Criminal Procedure Code. In these circumstances, necessity to discuss any further does not arise and cases relied by the appellant's are of no use to the appellants.

9. Learned counsel for the appellants has submitted that the FIR has been lodged on 22-6-1996 while the incident is said to have taken place on 21-6-1996, therefore, the FIR is delayed. His submission is that the delay has not been explained satisfactorily, therefore, prosecution's case is doubtful. The incident took place on 21-6-1996 at 7.30 p.m. while the FIR has been made by the injured eye-witness Nirbhay Singh (P.W. 7) at 9.00 a.m. on 22-6-1996. From the perusal of the FIR (Ex. P/20), it appears that the distance between the Police Station Jharda and the place of occurrence is 12 kms. Looking to the time of occurrence and Police Station, the making of FIR could not be said delayed and prosecution's case cannot be disbelieved on the ground of delay in making FIR.

10. Learned counsel for appellants has argued that Nirbhay Singh (P.W. 7). who is said to be eye-witness, did not disclose the incident to any one even though he might have met with other persons. This makes his version doubtful. Learned counsel for appellants has relied on Vanaravan Anandji v. Koli Vashram Punja, 2001 (1) MPWN 139 in this regard. The facts of the aforesaid case are different. In that case, injured eye-witness was the relative of the deceased and he did give any account of assault on the deceased on first meeting with another witness. Such is not the position in the case in hand. There is nothing on record to suggest that Nirbhay Singh (P.W. 7) met with any witness or any person and he did not disclose to him about the incident. On the other hand, he has deposed in paragraph 3 of his statement that after fleeing from the scene of occurrence, he went to Borkheda and he told Bhagwan Singh of Borkheda there about the incident. Though this fact does not find mention in FIR and the statement of above witness recorded during the investigation, yet in the facts and circumstances of the

case, Vanravan Anandji's case (supra) does not help the appellants.

11. Learned counsel for appellants has lastly submitted that appellants could not be held guilty under Section 302, IPC because it does not appear from the evidence adduced by the prosecution that the intention of the appellants was to cause death of the deceased. On the other hand, it appears that the intention of the appellants was only to give beating of the deceased. In paragraph 35 of the judgment, learned trial Court has concluded that appellant Sultan Singh was having a 'Farsi' with long wooden stick which is a sharp edged weapon and appellant Poor Singh was having wooden stick i.e. lathi bearing iron ring on it and deceased was beaten hardly with these weapons.

12. Though the authorship of any particular injury found on the body of the deceased could not be imputed to any particular appellant, but the number and nature of the injuries suggests that the intention of the appellants was to cause the death of the deceased and appellants were acting in furtherance of that common intention, as all the appellants came together with respective weapons and lathies in their hands and they all gave hard beating to deceased. Thus, in the facts and circumstances of the case, appellants cannot get the benefit of the case of. Bhima alias Bhlmarao Sida Kamble v. State Maharashtra, 2002 Cri. LJ 4293 : (AIR 2002 SC 3086) Dr. S.K. Tanwar (P.W. 4) has deposed that cause of death was the excessive bleeding from the injuries. He has also deposed that the injuries found on the dead body of the deceased were sufficient to cause his death in the ordinary course of nature. In such circumstances, it could be inferred that the intention of the appellants was to cause death of the deceased (Bhagwan Singh) and to cause injuries to Nirbhay Singh. The appellants have been rightly convicted under Section 302, IPC with the help of Section 34, IPC. The reasonings of the learned trial Court in this regard in paragraphs 35, 36 and 37 are proper and findings given by the learned trial Court are also proper and legal.

13. Consequently, the appeal is dismissed as it is devoid of any merits. The conviction and sentence awarded to the appellants are hereby affirmed. Appellant Ramlal has died during the pendency of appeal. His appeal has been abetted. His name has been ordered to be deleted vide order dated 18-11-2002. Appellant

Bhagwan Singh is on bail. He is directed to surrender to his bail bonds. On his being surrendered he be taken in custody to serve out the sentence awarded to him.

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