

**Deepak Vs. State of M.P.**

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**Court :** Madhya Pradesh

**Decided On :** Jul-20-1987

**Reported in :** 1989CriLJ143

**Judge :** V.D. Gyani and ;A.C. Qureshi, JJ.

**Appellant :** Deepak

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

**Judgement :**

**V.D. Gyani, J.**

1. The appellant has been found guilty of the charge of murder and sentenced to undergo life imprisonment, by the Addl. Judge, Barwani, vide judgment dt. 20-3-1986, passed in Sessions Trial No. 170 of 1984.

2. It was on the weekly market day in a crowded market street, in the Sub-Divisional Head Quarter of Barwani that the appellant is said to have stabbed the deceased Rajendra in his neck with a knife, having 8' blade, resulting in cutting of carotid artery. Rajendra succumbed to his injury within minutes of his admission to the hospital. Condition of Rajendra, as noted by Dr. C. S. Gangrade (PW. 7) as per his report, Ex. P/7 was as follows:

G.C. - Poor

Afebrile,

P-100/Mt-feeble.

B.P. - Not recordable,

Gasping.

Pupils-dilated & sluggishly reacting - unconscious.

INJURIES : - 1 - An incised wound 2 cm x 1/2 cm x 3 cm obliquely placed, 2 cm below the angle of mandible (R) neck & oozing of blood.

Nature of injury - Grievous & dangerous to life.

Duration - within 6 Hrs.

May be caused by - Hard & sharp object.

3. At 17.15 hrs. a telegraphic information was received at police station that stabbing had taken place in the street joining water-tank with Ranjeet-Chowk. Station House Officer with the police party immediately rushed to the spot.- (See Ex.P/15 - entry in General Diary of Police Station, proved by S.P. Pande( PW. 15)). The injured was lying in a precarious condition. Mohammad Hussain (PW. 10), with a view to prevent flow of blood, had pressed the wound with a piece of cloth. He accompanied the injured on a Thela (hand-cart) in the same position. Having arranged for the injured being sent to the hospital, the Station Officer went in search of the accused. He also instructed Mohammad Hussain (PW. 10) to come to the police station after getting the injured admitted to the hospital, for lodging a report. Accordingly, the first-information report, Ex.P/9, was lodged. Mohammad Hussain (PW. 10) has turned hostile, denying having lodged any such report although he admitted his signature on the F.I.R., Ex.P/9.

4. Majhalibai (PW. 9), the sole eye-witness and Mohammad Hussain (P.W. 10), who lodged the F.I.R., have turned hostile. It was, therefore, contended by the appellant's counsel that there is no legal evidence to sustain the charge against the appellant. The trial Court, however, placing reliance on certain statement of

these witnesses and other pieces of circumstantial evidence has found the accused-appellant guilty of the charge under Section 302, IPC.

5. Apart from being hostile, the first reason assigned by the appellant's learned Counsel for disbelieving Majhalibai (PW. 9) is that her statement was recorded by the police four days after the incident. Ordinarily, it is expected of an eye-witness to any such occurrence to disclose the facts at the earliest opportunity. True it is that belated examination is a circumstance which affects credibility of a witness, but there are certain peculiar features of this case, which can and should not be overlooked.

6. First of all Majhalibai (PW. 9) is not a resident of the city. She is a resident of 'Amlya-Pani', situated on the outskirts of the town. She is a labourer. She had come to the town on the market day, Le. Sunday, when the incident occurred. The place of incident is just near the statue of ex-Maharaja of Barwani, in Ranjeet Chowk, on its southern side, there is a water-tank, meant for cattle, where this witness Majhalibai (PW 9) was washing her hands and feet. According to her both the accused were talking to the deceased. Continuing her statement, she added that the appellant Phantush alias Deepak suddenly hit the deceased on his neck with a knife. The other accused Hira (since acquitted) had caught hold of Rajendra(Raju), the deceased After stabbing both took to their heels. Raju (Rajendra), though injured, in an attempt to chase the accused, ran after them but she could not say as to where they had gone. As it was a market day, after finishing her marketing she went home. She has not stated, nor has it been suggested to her in her cross-examination that she was still present at the spot when police came there. This is what she had seen in the crowded market

7. The situation and surroundings of the place have been further got clarified in cross-examination of the Investigating Officer, S.P. Pande (PW. 15). In Ranjeet Chowk, there is Adil Hardware Stores and facing this Stores there is a road. On the market day, about 10 paces away from the stores, many jaggery sellers hold their shops on the road-side. Facing Adil Hardware Stores, there are two shops of jewellers and a cloth stores. Adjoining Adil Hardware Stores, there is hotel, a panshop, thereafter a house and a hair-cutting saloon, a typing Institute, followed

by a shop selling specs and goggles and yet another shop by name 'Sangit-Sarita'. Facing the Barber's shop is the water-tank. It has come in the cross-examination of this witness that on the market day, the road facing Adil Hardware Stores and the specs shop, the road is extremely crowded.

8. Ignoring these market surroundings and the vast multitudes gathered on the market day would it be proper and natural to expect of a rustic woman like Majhalibai (PW. 9), to have rushed to the police to narrate the incident and disclose the name of the assailant- The criticism, therefore, levelled against this witness, does not seem to be justifiable.

9. It was also submitted that non-examination of Bachchu, who persuaded her to be a witness, adversely affects the prosecution case. Bachchu has been referred to by Majhalibai in her evidence. The Investigating Officer when questioned on this aspect of the matter has stated that Majhalibai did not refer to Bachchu in her statement recorded Under Section 162, Cr. P.C. Therefore, no question of examining Bachchu arose. Investigating Officer has further deposed that Majhalibai being a labourer, she was searched and her statement was recorded on 17-8-1984, when found. During investigation one Rameshchandra Bhatia, in front of whose house Rajendra had fallen was also contacted but as he was not at his house at the time of the incident, and was at his shop, his statement was not recorded. It was also urged that Majhalibai having turned hostile in her cross-examination, the trial Court has erred in placing reliance on her testimony. While admitting that she was witnessing the scuffle that was going on between the accused and the deceased, it was pointed out that Majhalibai in para 11 of her statement admitted in her cross-examination that she had not seen the appellant stabbing Rajendra. In the same breathe she stated that those who had gathered around were saying that it was Phantus (the appellant), who had stabbed and ran away.

10. A volume of case-law has developed on this point. Merely affords a justifiable ground to discard his/her evidence as a whole. It may also be noted that the trial Court has also sought support from other corroborative circumstances before acting on her testimony. In reply to a specific question put to the witness in re-

examination, she Stated that she had seen the accused scuffling with the deceased. When a witness is cross-examined and contradicted with the leave of the Court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider, in each case, whether as a result of such cross-examination and contradiction, the witness stands throughly discredited or can still be believed in regard to part of his testimony. - See Sat Paul v. Delhi Admn : 1976 CriLJ295 .

11. The trial Court, after copiously quoting from the statement of both these witnesses, Majhalibai (PW. 9) and Mohammad Hussain (PW. 10), has scanned their evidence and on ultimate analysis believed Majhalibai (PW. 9). Although Mohammad Hussain (PW. 10) has supported the prosecution case to the extent that the accused, who was fleeing from the scene was being chased by the injured Rajendra, who was also shouting 'PAKDO PAKDO'. He also admitted that the boy (accused), who was being chased, while running dashed him, as a result of which he fell down, but he could not say about the colour of clothes that he was wearing. Mohammad Hussain (PW. 10) was confronted with his report, Ex.P/9 and the statement, Ex.P/11, wherein he had stated that the boy, who was being chased by the injured Rajendra, was wearing black trousers and black T-shirt. He disowned having made such a statement marked A to A in Ex.P/9 and A to A and B to B in Ex.P/11. He has further admitted that he had been to the Tahsildar for identification of the accused and also admitted that there were about 10 to 12 boys, whose faces were covered. On being cross-examined by the defence counsel this witness Mohammad Hussain (PW. 10) stated that the test identification parade was held in the Tahsil, where except for the Tahsildar and the boy, who had to be identified, no police men were present. He also admitted his signature on the identification-memo, Ex.P/10, showing that he had correctly, identified the appellant. All that he stated about his signature on Ex.P/10 is that he was asked to sign on it, which he did, although it was not read-over to him. Surprisingly enough the Tahsildar, Amarchand, who was examined as P. W. 12, has not been put a single question in his cross-examination about not reading over the identification-memo, Ex.P/10, to the witness Mohammad Hussain, (PW. 10), who had identified the accused.

12. The trial Court had the opportunity of seeing the demeanour of these witnesses and notwithstanding their being declared hostile, has found them to be reliable to the extent indicated above. Except for the fact that these witnesses were declared-hostile, no other ground has been made out by the learned Counsel for the appellant so as to justify interference with the appreciation of evidence, as has been done by the trial Court. No infirmity has been pointed out. The trial Court has further referred to the recovery of a knife, which was found lying in a gutter. It was seen and found by a police constable. The police rushed to the scene of occurrence on receiving a telephonic message and a knife was recovered from the gutter. It was but natural that it was not found to be blood stained on Chemical and Serological Examination. But there is yet another circumstance - while denying blood-stains, on the black T-shirt, the appellant has admitted its recovery at his instance. His explanation is that as he was sitting on Pan-shop, it might be stained with catechu, but on Chemical examination, it has been found to be stained with blood, as per Chemical Examiner's report, Ex.P/18. However, on Serological examination, its origin could not be determined as disintegrated (See.Ex.P/17).

13. No doubt, human blood has not been found, but the explanation offered by the appellant, as regards stains on his T-shirt, in any case, stands, falsified - a circumstance going against him. Decisions propounding determination of origin of blood and going a step further, its grouping as well, are there. But this is not the only piece of evidence, being relied upon. It is one of the circumstances, which goes to falsify the stand taken by the accused. One sound principle of appreciation of evidence is to view it in its totality and not in isolation, and if so viewed, it points to the guilt of the accused.

14. There is material enough on record confirming and showing not only commission of the offence, but also its commission by the accused-appellant. Evidence Act does not insist on absolute proof for the simple reason that perfect proof in this imperfect world is seldom to be found. That is why under Section 3 of the Evidence Act, a fact is said to be 'proved' when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This definition of 'proof' does not draw any

distinction between circumstantial and other evidence. (See State 'of Maharashtra v. Mohd. Yakub AIR 1980 SC 1114 : 1980 Cri LJ 793.

15. For the foregoing reasons, this appeal fails and is accordingly dismissed. The conviction and sentence, as recorded against the appellant by the trial Court is maintained.

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