

Hardeo Vs. State of M.P.

Hardeo Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/507447

Court : Madhya Pradesh

Decided On : May-20-2002

Reported in : 2002(4)MPHT42; 2002(4)MPLJ603

Judge : Rajeev Gupta and ;Uma Nath Singh, JJ.

Acts : [Evidence Act, 1872](#) - Sections 45 and 60; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 939/90

Appellant : Hardeo

Respondent : State of M.P.

Advocate for Def. : Raj Kumar Verma, Adv.

Advocate for Pet/Ap. : Jagat Sher Singh, Adv.

Disposition : Criminal appeal dismissed

Judgement :

Uma Nath Singh, J.

1. This is an appeal from the judgment and findings recorded by the learned Second Additional Sessions Judge, Chhatarpur in Sessions Trial No. 225/87, whereby accused Hardeo was convicted of offence under Section 302 and

sentenced to life imprisonment and a fine of Rs. 2,000.00, and he was acquitted of alternative charge under Section 302 read with Section 149, IPC and also the charge under Section 148, IPC. However, other accused namely Tulsi, Imrat and Sarju were acquitted of all the charges and accused Dhandu and Janki died during the trial.

2. Succinctly narrated the facts of the case are that Lallabai (D.W. 3), a cousin of appellant Hardeo was though a legally wedded wife of accused Imrat, was living as a mistress of deceased Bhagwan Das, s/o Dashrath (P.W. 1). It is said that Lallabai had made some statement before a Court at Chhatarpur that on her own volition she wanted to live with the deceased. But for fear of accused Imrat, the deceased had left his native Village Budera and stayed away for few years with Lallabai at some other place. He had returned home only in the year of incident. It is also said that the matter had been settled for some payment in a Panchayat and in compliance thereof, a part payment had already been made by the deceased and the balance was to be paid in due course. The covenant had been reduced to writing. On the fateful day of 4-8-87, when deceased Bhagwandas with his parents (P.Ws. 1 & 13) and younger brother Karan (P.W. 2) was coming home from the cattle-shed after milking cow, he was waylaid while passing through, in front of the house of accused Sarju. He was assaulted by all the accused and as a result, he died on the spot. Report of the incident was lodged by Dashrath (P.W. 1), father of the deceased, on the same day at 21.30 hours vide Ex. P-1 at Police Chouki, Ramtouriya, which was subsequently registered as a crime vide Ex. P-13 on 5-8-87 at Police Station, Bamnora. During investigation of the case, Sub-Inspector Krishna Mishra (P.W. 10) reached the spot, prepared the spot-map Ex. P-14, collected the plain and blood-stained earth and also seized other incriminating articles. Further, the body was sent for post-mortem and the report thereof vide Ex. P-8 was received. The seized articles were sent to F.S.L., Sagar and the report thereof is Ex. P-24. After due investigation a challan was laid under Sections 147, 148, 149 and 302 of IPC but charges were drawn up only under Sections 148 and 302/149, IPC and not under Section 147, IPC. All the accused denied charges and pleaded false implication. On appreciation of evidence on records, the learned Second Additional Sessions Judge, Chhatarpur recorded acquittal of all other accused except accused-appellant Hardeo, who was

convicted and sentenced as aforesaid.

3. Heard Shri Jagat Sher Singh, learned Counsel for the appellant and Shri Raj Kumar Verma, learned Panel Lawyer for the respondent-State and, perused the appeal records.

4. On a thorough scanning of the appeal records and a careful reappraisal of the rival contentions, we are of the considered view that the testimonies of Dashrath (P.W. 1) and Harnarayan @ Compoter (P.W. 5) echo to be absolutely credible which obviously find corroboration from the medical evidence. The FIR was promptly lodged by eye-witnesses (P.W. 1), father of the deceased after covering a distance of five kilometers. It contained a graphic description unraveling necessary details of the occurrence including specific injuries caused by each of the accused with their respective weapons. It also contained names of two witnesses Uchchhamlal (P.W. 3) and Harnarayan (P.W. 5), who immediately rushed to the spot after hearing the alarm of Dashrath (P.W. 1) who, in para 4 of his examination-in-chief emphatically stated that the appellant dealt an axe blow on the neck of the deceased. Though he stated that accused Tulsi also struck an axe blow but failed to specify the place where it landed. He deposed that at the time of occurrence, Harnarayan @ Compoter (P.W. 5) who was standing at his door had also seen the occurrence. His wife Nanhibai (P.W. 13) and his son Karan (P.W. 2) were also present on the scene of occurrence and had seen the deceased under assaults. Nanhibai (P.W. 13), in order to protect the deceased, her son, had laid herself over his body. Thereafter, all the accused had left the spot. It is unnecessary to say that P.W. 1 has owned to have lodged the FIR (Ex. P-1). In his cross-examination also, he appears to be clear in reiterating the presence of Harnarayan @ Compoter (P.W. 5) on the spot. He demonstrated that his wife Nanhibai (P.W. 13) and his son Karan (P.W. 2) were ahead of the deceased who was assaulted in their presence. The witness appears to be notably clear in saying that the appellant had dealt a single axe blow to the deceased. The witness noticed that the fatal axe blow had landed on the neck of the deceased. We need to say that the witness appears to be truthful in saying that when the first axe blow was caused on the deceased he did not fall on the ground but when the second one was struck by Tulsi, he collapsed. As already noted, he could not point

out the exact position of the second axe blow, although he added that accused Tulsi struck the axe blow on the left side of the head, but, he appeared to be imprecise in answer as whether the axe blow ascribed to accused Tulsi had been struck from the blunt side or otherwise. The witness has not succumbed to his lengthy cross-examination.

5. Another material witness Harnarayan @ Compoter (P.W. 5) in his examination-in-chief has reinforced the testimony of P.W. 1 in all material particulars. In the cross-examination he precisely described the exact position of the deceased at the time of assault. According to him, the deceased tilted a little when struck the first axe blow by the appellant on the neck. Though he did mention that the deceased did not fall on the ground on receiving the first axe blow but that apart, he clarified that after receiving the first blow, the deceased was not in a position to stand straight. He noticed that accused Tulsi had dealt an axe blow from the back side, but he could not locate the part of the body where the blow had landed. The witness has ascribed the injuries only to the appellant and accused Tulsi and none else. He has also not succumbed to his lengthy cross-examination.

6. Vide post-mortem report (Ex. P-8), one incised wound 16 cm x 5 cm x 8 cm (bone deep) was noticed over the right side of the neck and face, which corresponded to the evidence of the eye-witnesses. In the opinion of Dr. B. Chourasia (P.W. 6), cutting of large blood vessel caused excessive haemorrhage to be followed by syncope which resulted in death. Dr. B. Chourasia (P.W. 6) also reiterated this opinion in his substantive evidence. To borrow the exact words from Ex. P-8, it reads :--

'There was an incised wound over the right side of neck, 16 cm x 5 cm x 8 cm (bone deep) starting from zygomatic part of right cheek and extending upto right nape of the neck cutting skin, muscles of right face, right mandible, muscles of neck, right carotid artery, jugular vein, vertebral artery, III Cervical vertebrae and then spinal cord.'

Further, vide Ex. P-9, the Doctor noticed blood on the blade of the axe seized from the appellant and opined that the injury on the neck could be caused therewith. However, in the cross-examination looking at the size of the blade of the axe, he

clarified that injury in question was possible if the weapon was used in straight manner and not in slanting position.

7. Other witnesses namely, Karan (P.W. 2), brother of the deceased, was a boy of only 12 years who has supported the prosecution case. Uchchham-lal (P.W. 3), who was declared hostile also deposed attributing one axe blow each to the appellant and acquitted accused Tulsi. Nanhibai (P.W. 13) stated that the axe blows imputed to both the accused had landed on the neck. In the cross-examination also, she has reiterated it. An argument was advanced that though, appellant as also accused Tulsi, wielded axe and Karan (P.W. 2) and Nanhibai (P.W. 13) noticed the location of both the injury on the neck, accused Tulsi was acquitted by the Trial Court whereas the appellant has been held guilty under Section 302, IPC.

8. From the testimony of Dashrath (P.W. 1), it is evident that the first axe blow caused by the appellant had landed on the neck, and he could not point out the exact location of the second one, imputed to accused Tulsi. Similarly, Karan (P.W. 2) also appeared to be shaky to answer as whether accused Tulsi had struck the said axe blow from the sharp edged side or from the blunt. That apart, the handle of the axe used by the appellant was found to be broken and further, at his instance, the broken piece was recovered. Added to that, blade of the axe in question was found to be stained with blood. Therefore, the case of the appellant is distinguishable from that of acquitted accused Tulsi.

9. Thus, on minute analysis of the evidence on record, the prosecution case has been rightly held to be established only in respect of the appellant which is founded on firm testimonies of Dashrath (P.W. 1), Karan (P.W. 2), Harnarayan (P.W. 5), an independent witness and Nanhibai (P.W. 13). Though Uchchhamlal (P.W. 3) was declared hostile but he has also supported the evidence to the effect that appellant Hardeo and acquitted accused Tulsi had caused axe blows. Further, the substantive evidence of the prosecution witnesses also received necessary corroboration from the FIR, the medical evidence and the substantive evidence of the Doctor. Further more, the injury located on the neck, which has been attributed to the appellant, was found to be sufficient in the ordinary course of nature to

cause death of the deceased,

10. In the premises discussed hereinabove, we do not find any infirmity in the impugned judgment. Consequently, the criminal appeal being devoid of merits on facts as well as in law, is hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com