

Hetram and ors. Vs. State of M.P.

Hetram and ors. Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/507583

Court : Madhya Pradesh

Decided On : May-08-2002

Reported in : 2002CriLJ4528; 2002(4)MPHT75

Judge : Rajeev Gupta and ;Ajit Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304 and 341; [Evidence Act, 1872](#) - Sections 32, 45 and 60

Appeal No. : Criminal Appeal No. 171/90

Appellant : Hetram and ors.

Respondent : State of M.P.

Advocate for Def. : S.K. Gangrade, Panel Lawyer

Advocate for Pet/Ap. : Anil Dwivedi, Adv.

Disposition : Criminal appeal partly allowed

Judgement :

Ajit Singh, J.

1. Appellants Hetram, Hemraj and Narvad, the accused persons in this case, have been convicted under Sections 302/34 and 341 of the Indian Penal Code and sentenced to undergo imprisonment for life and one month simple imprisonment

respectively (both sentences to run concurrently) by Illrd Additional Sessions Judge to the Court of Sessions Judge, Chhatarpur, vide judgment dated 21-12-89 in Sessions Trial No. 261/87 for causing the death of Dayaram, aged 35 years, the deceased in the case. The appellants have been found guilty of wrongfully restraining and causing injuries on the deceased with the blunt side of axe between 12.00 and 13.00 hrs. on 27-10-87 at his field commonly known as 'Tallaiya Khet' situated at Village Paudi, District Chhatarpur. The fourth accused namely; Mst. Bharat Rani, wife of appellant Hetram, has, however, been acquitted by the learned Trial Judge from the said charges on the ground of no evidence against her.

Briefly stated the facts giving rise to this appeal are as under :

2. All the appellants, the deceased Dayaram and the material witnesses belong to Village Paudi, within the limit of Bakshwaha Police Station in Chhatarpur District. Dayaram purchased an agricultural land commonly known as 'Tallaiya Khet' about three years prior to the date of incident. Appellant, Hetram, was himself interested in purchasing the said land and hence he developed ill-feelings against Dayaram. On 27-10-87 sometime between 12.00 - 13.00 hrs. when Dayaram was harvesting the crop from 'Tallaiya Khet' alongwith his mother Gulab Rani (P.W. 1), sister-in-law Prag (P.W. 2) and wife Mathura (P.W. 3), the appellants suddenly reached there and surrounded him. Appellants, Hetram and Hemraj, each had an axe with them whereas appellant, Narvad was unarmed. Hetram exhorted other appellants to beat Dayaram. Consequently, Narvad caught hold of Dayaram and Hetram dealt a blow with the blunt side of the axe on the right side of his head. Hemraj also dealt two blows on the back of Dayaram with the blunt side of the axe. Thereafter, Hetram dealt another blow on the head of Dayaram but again with the blunt side of the axe. Accused Mst. Bharat Rani, who had also reached the place of incident, is said to have thrown mud pebbles on Dayaram. One Kharagram (D.W. 2) allegedly saved Dayaram. The incident was witnessed by Gulab Rani (P.W. 1), Prag (P.W. 2), Mathura (P.W. 3) and one Gillan Chadar (D.W. 3). Dayaram was taken to the Police Station, Bakshwaha, by his relations. R.K Dubey (P.W. 12), Station Officer of the said Police Station, recorded First Information Report (Ex. P-14), lodged by Dayaram and thereafter registered a Crime No.

84/97 against the appellants and Mst. Bharat Ranifor offences punishable under Sections 341, 323 and 324/34 of the Indian Penal Code.

3. Dayaram was immediately sent to Primary Health Centre, Bakshwaha, for medical treatment where he was examined by Dr. S.K. Jain (P.W. 13) who was posted there as Assistant Surgeon, he found the following injuries on the person of Dayaram :

(i) Lacerated wound in right parietal region 3 cm. lateral to mid line obliquely placed 2.4 cm x 2 mm x 2 mm. No active bleeding. Blood crust present but no pus seen.

(ii) One Haemaloma over left temporal bone region 6 cm lateral to mid line 7 cm x 9 cm fluctuating entire. Antroposteriorly from left frontal lemiena to 7 cm posterior to it. Vertically from xygomatic arch and above upto 6 cm to left of mid line.

(iii) Abrasion over lower end of right fore arm on radial side 2 cm x 4 mm. Skin deminated.

(iv) Another abrasion 2 cm above injury No. 3. One abrasion in 2 cm x 0.4 cm in size skin deminated.

(v) One abrasion 5 mm x 5 mm triangular 1 cm. laternal to mid line on left side of back. Blood crust present. No pus seen.

(vi) One abrasion 1 cm x 5 mm in left fore arm in lower 1/3 on posterior medial side. No other injuries seen.

Dr. S.K. Jain (P.W. 13) in his injury report (Ex. P- 21), opined that injury Nos. 3, 4, 5 and 6 were caused by hard and blunt object and were simple in nature while injury Nos. 1 and 2 were caused by hard and blunt object. To ascertain the nature of these injuries, he referred the patient Dayaram to District Hospital, Chhatarpur, for X-ray of Skull. In the meanwhile, R.K. Dubey (P.W. 12) recorded statement (Ex. P-15) of Dayaram under Section 161 of the Code of Criminal Procedure. Dr. K.L. Badil (P.W. 10), after examining the X-ray plates of the skull of Dayaram, in his report (Ex. P-12) opined that there was a fracture of left parietal bone and no

callus was formed. Dayaram succumbed to injuries in the District Hospital, Chhatarpur, on 28-10-87 at about 5.40 p.m. Dr. Sudhir Khare (P.W. 9) conducted the post-mortem on the body of deceased Dayaram. He, in his report (Ex. P-11/A), gave an opinion that the cause of his death was coma due to head injury. He had found the following injuries on the body of deceased Dayaram :

- (i) Abrasion 2 cm x 1 cm on left side of back with hard and blunt object.
- (ii) Lacerated wound cleaned with powder. Partially healed 3-5 days on right parietal region by hard, blunt object 3 cm x 1 cm.
- (iii) Bruise left temporal region 10 cm x 6 cm hard, blunt object,
- (iv) Bruise by hard blunt object. No bleeding from orifices.

On internal examination following injuries were found :--

- (i) Sub epineurosis haematoma present more on left side.
- (ii) Sub temporal haematoma on left side. Fracture of parietal bone on left side.
- (iii) Extreme extra dural haematoma present on left side.

4. R.K. Dubcy (P.W. 12) recorded the discovery statements, Ex. P-2 and Ex. P-4, of appellants Hetram and Hcmraj respectively and seized an axe from the possession of each of them vide Ex. P-3 and Ex. P-5 respectively from a hidden place. He ultimately arrested the appellants on 27-10-87 alongwith Mst. Bharat Rani vide arrest memo, Ex. P-1 for offences under Sections 341, 323, 324 and 302/34 of the Indian Penal Code.

5. The appellants in their defence pleaded that they are innocent and have been falsely implicated. They examined witnesses Bhan Singh (D.W. 1), Kharagram (D.W. 2) and Gillan (D.W. 3) in their defence.

6. The Trial Court relying upon the evidence of eye-witnesses, Smt. Gulab Rani (P.W. 1), Smt. Prag (P.W. 2) and Smt. Mathura (P.W. 3), and also further relying upon the First Information Report (Ex. P-14), an statement of Dayaram, (Ex. P-15),

convicted the appellants under Sections 341 and 302/34 of the Indian Penal Code for committing the murder of deceased Dayaram. The Trial Court also believed the recovery of axe from the possession of each of the appellants Hetram and Hemraj. The Trial Court, however, acquitted Mst. Bharat Rani, on the ground of no offence against her.

7. The conviction of appellants was challenged by their learned Counsel on the ground that the Trial Court ought to have disbelieved the evidence of eye-witnesses as they were closely related to deceased and hence were interested witnesses. It was further argued that the Trial Court ought to have disbelieved the dying declarations, Ex. P-14 and Ex. P-15 as Dayaram, after the injuries sustained by him, would not have possibly been able to make such statements. The learned Counsel further asserted that recovery of weapons of offence from the possession of appellants Hetram and Hemraj was of no consequence as there is no report to suggest that any human blood was found on them. The learned Counsel in the alternative also argued that even if the prosecution story is accepted, the appellants cannot be convicted for an offence under Section 302 of the Indian Penal Code as only an offence under Section 304 (Part II) of the Indian Penal Code at the most is made out against them.

8. First Information Report (Ex. P-14), which has been admitted as dying declaration, was immediately recorded by the deceased Dayaram on the date of incident at 15.15 hrs. i.e., almost within two and a half hours despite the fact that the distance of Police Station from the place of incident is 5 kms. Deceased Dayaram in his report has categorically described as to how he was assaulted by each of the appellants merely because appellant Hetram did not approve his purchasing of particular agricultural land about three years prior to the date of incident. He honestly alleged that appellants Hetram and Hemraj had caused injuries to him with the blunt side of axe which they had with them while the appellant Narvad had only caught hold of him. He made similar allegations in his second statement, Ex. P-15, which was recorded later on the same day under Section 161 of the Code of Criminal Procedure. Dr. Sudhir Khare (P.W. 9) has very specifically stated in his evidence that he cannot say by what period deceased Dayaram would have gone into coma and under such circumstances a

person can go into coma immediately and after sometime also. Similar is the evidence of Dr. S.K. Jain (P.W. 13). He has stated that he cannot say that Dayaram had become unconscious within 15/20 minutes after the assault on him, Shri R.K. Dubey (P.W. 12) has deposed in his evidence that deceased Dayaram himself had lodged a report in the Police Station which bears his thumb impression. He has also stated about the recording of statement of Dayaram, Ex. P-15, under Section 161 of the Code of Criminal Procedure. Moreover, nothing has been suggested by the appellants as to why Dayaram made them responsible for the injuries caused on him. On the contrary, his evidence against the appellants stands fully corroborated by the medical evidence. Thus, we hold that the Trial Court did not commit any illegality in relying upon the dying declarations, Ex. P-14 and Ex. P-15, of the deceased Dayaram against the appellants.

9. We have also carefully perused the evidence of eye-witnesses, Gulab Rani (P.W. 1), Prag (P.W. 2) and Mathura (P.W. 3). All of them have stated in one voice that the deceased Dayaram was assaulted by the appellants Hetram and Hemraj with the blunt side of their axes on his head and back while the appellant Narvad had caught hold of him. The presence of these witnesses have been duly admitted at the place of incident by the defence witnesses, Kharagram (D.W. 2) and Gillan (D.W. 3). Their evidence have further been corroborated by the medical evidence. Moreover, they seem to be very truthful and honest in deposing that appellants Hetram and Hemraj caused injuries on the deceased Dayaram with the blunt side of their respective axe. Apart from this, nothing has come on record to disbelieved any of the three eye-witnesses. Needless to say that it is a well settled principle of law that merely because the witnesses are relations of the victim, they cannot be disbelieved. Thus, the Trial Court rightly believed the evidence of eye-witnesses, Gulab Rani (P.W. 1), Prag (P.W. 2) and Mathura (P.W. 3) in coming to the conclusion that appellants alone were responsible for the death of Dayaram.

10. The next and rather the main submission of the learned Counsel for the appellants is that even if the prosecution story is accepted as it is, the offence committed by the appellants would be only punishable under Section 304 (Part II) and not under Section 302 of the Indian Penal Code. In support of his submission he relied upon the judgment of the Supreme Court in *Chuttan v. State of Madhya*

Pradesh (AIR 1994 SC 1398). In the said case the doctor (P.W. 6), who conducted the autopsy of deceased Hariram, found the following injuries:--

- (i) A lacerated wound on the right fore arm 2' x 2'.
- (ii) A swelling on the right upper arm.
- (iii) Swelling on the left arm with fracture of Humerus.
- (iv) A compound fracture of left Tibia and Fibula near the knee joint.
- (v) A wound near the left knee joint.
- (vi) Lacerated wound on the right leg.
- (vii) A lacerated wound on the scalp.
- (viii) A lacerated wound 3' x 1' on the occipital region.

The eye-witnesses stated although two of the accused at least were armed with sharp-edged weapons but the medical evidence shows that the injuries were not caused by sharp-edged weapons. The evidence of the eye-witnesses is also to the effect that stick portion of those weapons were used in dealing the blows. The Supreme Court set aside the conviction of appellants under Section 302 of the Indian Penal Code and instead convicted them under Section 304 (Part II).

11. We have examined the facts in the present case which are almost identical to that of Chuttan v. State of Madhya Pradesh (supra), Dr. Sudhir Khare (P.W. 9), who conducted the autopsy, in his deposition, stated that the death of deceased Dayaram was due to head injury that is to say injury No. 3 which was caused by blunt object. According to him, injury No. 2 was above injury No. 3 and both the said injuries were possibly due to one blow. Likewise, Dr. S.K. Jain (P.W. 13) has also deposed that he cannot say as to whether injury No. 1 or 2 reported by him in his injury report, Ex. P-21, was dangerous to life. According to the eye-witnesses, appellants Hetram and Hemraj were armed with sharp-edged weapons but the medical evidence shows that none of the injuries were caused by sharp-edged weapons. The evidence of Gulab Rani (P.W. 1) and Prag (P.W. 2) are to the effect

that stick portion of weapons of offence (axe) were used in dealing the blows. Almost all the injuries were on non-vital parts namely on the back or on the arms. Out of these injuries, only two injuries were on head which according to Dr. Sudhir Khare (P.W. 9) could have been possibly on account of one blow. Even the deceased Dayaram in his dying declarations, Ex. P-14 and Ex. P-15, stated that appellants Helram and Hemraj did not use the sharp edge of the axe while causing injuries on him. Unfortunately, one injury resulted in the fracture of skull bone which Dr. Sudhir Khare (P.W. 9) found to be sufficient in the ordinary course of nature to cause death. Having given our earnest consideration to the manner in which the blows were dealt and the part of the body on which they were dealt and the manner in which the weapons were used, we find it difficult to hold that the intention of appellants was to cause death or to cause such injuries which were sufficient in the ordinary course of nature to cause death. The appellants can, however, be attributed with the knowledge that by causing such injuries they were likely to cause death of Dayaram.

12. We, accordingly, set aside the conviction of appellants under Section 302 of the Indian Penal Code and sentence of imprisonment for life awarded thereunder. Instead, they are convicted under Section 304 (Part II) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years. Their conviction under Section 341 of the Indian Penal Code and the sentence of one month simple imprisonment are, however, confirmed. The appellants are presently in jail and have already undergone whole of the sentence of rigorous imprisonment for ten years now awarded on their conviction under Section 304 (Part II) of the Indian Penal Code. We, therefore, direct that the appellants be set at liberty forthwith unless wanted in connection with some other case. In the result, the appeal is partly allowed to the extent indicated above.