

Kunwar Singh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-19-2008

Reported in : 2009(2)MPHT138

Judge : S.L. Kochar and ;Shubhada R. Waghmare, JJ.

Appellant : Kunwar Singh

Respondent : State of Madhya Pradesh

Disposition : Appeal allowed

Judgement :

S.L. Kochar, J.

1. The appellant has preferred this appeal against the impugned judgment dated 31-8-1999 passed in ST. No. 358/90 by learned II Additional Sessions Judge, Alirajpur (M.P.), whereby convicted the appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentenced to RI for life.

2. According to the prosecution case on 23-2-1990 in the evening between 7 and 7.30 p.m., Kan Singh (Father of complainant Rai Singh) was returning back to his house. Complainant Rai Singh overheard his cry, on which rushed towards the place of incident, along with his younger brother Shankariya and wife Thawali, and saw that accused persons, in total, 7 in number was chasing Kan Singh.

Complainant Rai Singh asked Kunwar Singh as to why he was trying to assault his father, on which accused persons replied that deceased Kan Singh assaulted Kunwar Singh by Falia, therefore, they will kill him. The accused persons shot arrow and caused injury to Kan Singh. Kan Singh, while running in injured condition, reached up to his hutment and fell on the ground. Rai Singh (P.W. 2), along with other persons, was taking Kan Singh in bullock cart to the Police Station but accused persons obstructed him to take deceased Kan Singh to Police Station. Accused persons, while shouting, ran away. Complainant Rai Singh lodged the report (Exh. P-3) in the Police Station on 24-2-1990 in the morning at 4.30 a.m. The Investigating Officer, Bhure Singh Parihar (P.W. 7) stepped into investigation and send the injured Kan Singh for treatment to Civil Hospital, Alirajpur. He prepared spot map and also seized blood stained and controlled earth from the spot. Dr. N.S. Dabar (P.W. 6) recorded the dying declaration of deceased (Exh. P-10) on 24-2-1990 at 6.19 a.m. Kan Singh was admitted for treatment in the hospital and was discharged on 5-4-1990. Thereafter, he died in his house on 23-4-1990. Death was reported to the police and police sent the dead body for post-mortem examination, which was performed by Dr. B.L. Khagar (P.W. 1). Post-mortem report is Exh. P-2. The police also added Section 302 of the IPC. The seven accused persons were charge-sheeted for commission of offence under Sections 148,302/149,307/149 and 341/149 of the IPC.

3. Accused persons denied the charges and claimed for trial. The have not examined any witness in defence, whereas prosecution has examined, in all, 7 witnesses and adduced 17 documents to prove its case. During the course of trial, two accused persons named Kendu and Pahadiya died. Learned Trial Court, while acquitting other four accused persons, convicted the appellant as described herein above.

4. Having heard the learned Counsel for the parties and after perusing the entire record, we are of the considered view that conviction of the appellant is based on solitary evidence of dying declaration (Exh. P-10), recorded by Dr. N.S. Dabar (P.W. 6), is not sustainable because prosecution has failed to establish any connection of the injuries sustained by deceased with his death or any circumstances relating with death.

5. Deceased sustained injuries on 23-2-1990 and admitted in the hospital on 24-2-1990. Dying declaration was recorded on the same day in the morning. Thereafter, deceased was discharged, after full treatment and healing of his both the wounds as described by Dr. N.S. Dabar (P.W. 6), on 5-4-1990. After lapse of about 17 days deceased died in his house on 23-4-1990. Autopsy Surgeon Dr. B.L. Khagar (P.W. 1) found one old infected wound on chest of the deceased and on internal examination there was infection in right lung. Deceased died because of shock due to infection septicemia and mode of death was syncope. Prosecution is not able to establish that internal injury found by Dr. Khagar had relation with the penetrating injury caused by appellant, as found by Dr. N.S. Dabar (P.W. 6). Dr. Dabar specifically admitted in Paragraph 10 that he admitted deceased on 24-2-1990 in surgical ward, thereafter did not attend him. Dr. Dabar proved bed head ticket (Exh. P-11) and also his signature at 'A' to 'A' portion on bed head ticket. The bed head ticket is showing that the deceased was completely cured and both the external injuries; one on the chest another on right wrist, were fully healed. There was no pus discharge and area of the injury was clear. In this view of the matter, it cannot be said that deceased died because of injuries caused by the appellant or death has any nexus with the injuries caused by the appellant. There is no evidence to fulfil the ingredients of Section 32, Sub-section (1) of the Evidence Act, which reads as under:

Section 32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.- Statement, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:

Sub-section (1) When it relates to cause of death.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.(2) *** *** *** *** (3) *** *** *** *** (4) *** *** *** *** (5) *** *** *** *** (6) *** *** *** *** (7) *** *** *** *** (8) *** *** *** ***

6. For placing reliance on document (Exh. P-10) as dying declaration regarding death of deceased, prosecution has failed to establish that statement of deceased was related with his death or as to any of the circumstances of the transaction, which resulted in his death. Prosecution has also failed to establish as to what transpired between 17 days, after discharge of the deceased from the hospital and his death. We may profitably refer judgment of Division Bench rendered at Principle Bench of our High Court in case of Imran Khan v. State of M.R. 1994 MPLJ 862, placitum wherein it is held as under:

Held, that the conviction and sentence recorded against the accused was liable to be set aside as the prosecution had failed to establish any case against the accused. Death had not been shown by a chain of causes and effects to be the proximate consequence of the act attributed to the accused. The original injury itself was not of a fatal nature. The casual connection was too remote and the injury on the skull had not been shown to have caused death. Therefore, the statement of the deceased made to her relatives cannot be said to be a statements as to cause of death or as to any of the circumstances which resulted in her death. The evidence of the relatives in that behalf was hearsay and was not relevant under Section 32(1) of the Evidence Act. Since the prosecution had failed to prove causal connection between the injury and death the alleged dying declaration was not relevant under Section 32 of the Evidence Act. It is fundamental to the provision in Section 32 of the Evidence Act that there must be death. The statement must relate to cause of death or to any of the circumstances of the transaction which resulted in death when the cause of death comes into question. If the deceased is not proved to have died as a result of the injuries received in the incident propounded by the prosecution, her statement cannot be said to be statement as to cause of her death or to any of the circumstances which resulted in her death.

7. In view of the aforesaid factual and legal discussion, we allow this appeal.

8. Conviction and sentence of the appellant are hereby set aside. Appellant is on bail, his bail bond and surety bond stand discharged.

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