

Jugru Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jul-24-2003

Reported in : 2004(2)MPHT333; 2004(1)MPLJ530

Judge : Rajeev Gupta and ;S.L. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149 and 302; ;[Evidence Act, 1872](#) - Sections 3, 27, 45 and 60

Appeal No. : Criminal Appeal No. 1177/93

Appellant : Jugru

Respondent : State of Madhya Pradesh

Advocate for Def. : Alka Pandya, Govt. Adv.

Advocate for Pet/Ap. : Neena Khera, Adv.

Disposition : Appeal dismissed

Judgement :

S.L. Jain, J.

1. We propose to dispose of these five appeals : Criminal Appeal Nos. 1176/93 (Rosan alias Ramesh v. State of M.P.), 1177/93 (Jugru v. State of M.P.), 1178/93 (Gulab v. State of M.P.), 1179/93 (Madan v. State of M.P.) and 1180/93 (Raja v.

State of M.P.) by this common judgment, since they arise out of the same judgment and order dated 15-4-93 passed by First Additional Sessions Judge, Hoshangabad, in Sessions Trial No. 60/91. All the appellants in the aforesaid appeals stand convicted for offences punishable under Section 148, IPC with sentence of two years' R.I. and life imprisonment each respectively.

2. The prosecution case, as unfolded during trial is that Jugru, Gulab and Rosan alias Ramesh, who are the appellants in Criminal Appeal Nos. 1177/93, 1178/93 and 1176/93 respectively, are the real brothers. Madan and Raja who are the appellants in Criminal Appeal Nos. 1179/93 and 1180/93, respectively, are the sons of Jugru and are the residents of Village Dob. Deceased Champa Lal was also a resident of same village. He was living at a very short distance from the house of appellants. Laxmi Bai (P. W. 4) and Raju (P.W. 3) are the widow and younger brother of the deceased Champa Lal respectively whereas Rekha Bai (P.W. 12) and Sunil (P.W. 13) are his children.

3. On 20-9-89 at about 8 P.M. while Champa Lal was in his house along with his wife, younger brother Raju and children Rekhabai and Sunil, the appellant Jugru called him. Champa Lal came out of his house and went along with Jugru towards the house of later. Soon after, on hearing the cries of Champa Lal, Laxmi Bai rushed towards the spot and found that all the above referred appellants were assaulting her husband Champa Lal. At that time Jugru was armed with a sword, Gulab with an axe, Madan with a Ballam and Rosan and Raja had lathis. When Laxmi Bai tried to intervene, appellant Jugru pushed her away. Raju (P.W. 3), Rekha (P.W. 12) and Sunil (P.W. 13) also reached the place of occurrence and witnessed the incident. Champa Lal died on the spot itself. On the same day at about 10 P.M. Laxmi Bai lodged FIR (Ex. P-5) at police out post, Pathrota of P.S., Tawanagar. A marg was registered as per Ex. P-4. Crime was registered at P.S., Tawanagar.

4. Investigating Officer N.K. Sharma (P.W. 17) reached the spot and held inquest and prepared Panchnama (Ex. P-27). The dead-body of Champa Lal was sent for post mortem examination to J.S.R. Hospital, Itarsi. Dr. P.D. Agrawal (P.W. 6) conducted the post mortem examination on the body of deceased Champa Lal. He

found the following injuries on his body:--

- (1) Incised wound 3' x 1' x muscle deep over right parietal region.
- (2) Incised wound 1-1/2' x 1/4' x muscle deep, just above the lateral end of the eye-brow.
- (3) Incised wound 1 1/2' x 1/2', cutting the upper lip completely on left side from the left angle of mouth.
- (4) Incised wound 1-1/2' x 1/2' through and through the lower lip going upto the nostril over middle of upper lip.
- (5) Diffused contusion over right upper and lower eye lids.
- (6) Diffused swelling over right cheek with fracture of maxilla.
- (7) Incised wound 3' x 1' over front of neck, at the level of middle of both sterno mastoid muscle. Trachea was cut by 3/4th of the circle.

Dr. Agrawal opined that all the above injuries were ante-mortem in nature. He also opined that injury Nos. 1, 2, 3, 4 and 7 were caused by hard and sharp object while injury Nos. 5 and 6 were caused by hard and blunt object. Dr. Agrawal further opined that cause of death of Champa Lal was extensive shock following multiple injuries including injury to vital organ trachea. According to him the death occurred within 24 to 48 hours of the post mortem examination. Ex. P-6 is the report of Dr. Agrawal.

5. One Baniyan, one Lungi and one underwear were recovered by the doctor from the dead body which were sent to the police station in a sealed packet.

6. Plain earth, blood-stained earth, blood-stained hair, broken teeth, one pair of chappals and a piece of electric wire with holder were seized from the spot as per seizure memo (Ex. P- 3). One blood-stained Baniyan was seized from appellant Madanlal. An underwear was seized from appellant Raja. A sword was seized at the instance of appellant Jugru vide seizure memo (Ex. P-9). An iron rod was seized at the instance of appellant Madan as per seizure memo (Ex. P-11). A lathi

was recovered at the instance of appellant Raja as per seizure memo (Ex. P-12). An axe was recovered at the instance of appellant Gulab vide seizure memo (Ex. P-17). A lathi was recovered at the instance of appellant Rosan alias Ramesh as per seizure memo (Ex. P-7).

7. All the recovered articles were sent to Director, F.S.L., Sagar vide letter Ex. P-21 for chemical examination. Ex. P-22 is the report of Assistant Chemical Examiner, according to which, blood was found on all the articles except plain earth. The articles were sent to Serologist and Chemical Examiner of the Government of India, Calcutta, for determination of origin of blood. According to the report of Serologist (Ex. P-23) human blood was found on Janghiya, recovered from the body of deceased, lathi recovered from the appellant Raja and axe recovered from appellant Gulab. The origin of blood on other articles could not be determined as they were disintegrated. However, the blood groups could not be determined.

8. After completing the investigation, a challan was filed against the appellants for the aforesaid offences and the case was committed to the Court of Session.

9. Learned Additional Sessions Judge framed charges against all the appellants. The appellants abjured the guilt and pleaded that they have been falsely implicated in the offence. After concluding the trial, learned Additional Sessions Judge found all the appellants guilty for the offences punishable under Section 302/149 and Section 148 of the IPC and as such convicted and sentenced them as indicated above.

10. Aggrieved by their conviction and sentences recorded by the Additional Sessions Judge, appellants Rosan alias Ramesh, Jugru, Gulab, Madan and Raja have filed Criminal Appeal Nos. 1176/93, 1177/93, 1178/93, 1179/93 and 1180/93 respectively.

11. We have heard Ku. Neena Khera, learned Counsel appearing for the appellants and Ku. Alka Pandya, Govt. Advocate, appearing for the State, in all the appeals and perused the record of the case.

12. Ku. Neena Khera, learned Counsel for the appellants led us through the record and contended that the learned Additional Sessions Judge committed an error in holding the appellants guilty for the charges levelled against them. She submitted that the conviction and sentence imposed upon the appellants are bad, illegal and incorrect. On the other hand, Ku. Alka Pandya, learned Govt. Advocate has supported the judgment and order passed by the learned Trial Judge.

13. The first question that arises for determination is whether Champa Lal died a homicidal death. N.K. Sharma (P.W. 17) has stated that he made an inquest and prepared Panchnama of the dead body of deceased Champa Lal vide Ex. P-27. Dr. P.D. Agrawal (P.W. 6) has stated that he conducted the post mortem examination on the dead body of Champa Lal and found the injuries described hereinbefore. In the opinion of Dr. Agrawal, the injuries found on the dead body of Champa Lal were ante-mortem. The cause of death of Champa Lal was extensive shock following multiple injuries including injury to the vital organ trachea. From this evidence, it is quite clear that deceased Champa Lal died a homicidal death. Learned Counsel for the appellants has also not very seriously disputed the findings that the death of Champa Lal was homicidal. Therefore, we have no hesitation in holding that the deceased Champa Lal died a homicidal death.

14. This brings us to the crucial question as to who caused the death of Champa Lal. The prosecution examined Laxmi Bai (P.W. 4), Raju (P.W. 3), Rekha Bai (P.W. 12) and Sunil (P.W. 13) as eye-witnesses of the incident. Laxmi Bai (P.W. 4) has stated that on the date of incident in the evening when she, her husband Champa Lal, her brother-in-law Raju and her children were in the house, appellant Jugru called her husband. Her husband went along with Jugru. After a short while, she heard cries of her husband. She rushed towards the house of appellant Jugru. Her husband's brother Raju and Shakun Bai also followed her. She found that her husband was lying in the street near the house of appellant Jugru and appellant Madan, Jugru and Gulab were armed with Ballam, sword and axe respectively whereas appellants Raju and Rosan alias Ramesh had lathis. They were assaulting Champa Lal with their respective weapons. When she tried to intervene, appellant Jugru threatened her with dire consequences.

15. Raju (P.W. 3) has stated that on the date of occurrence he was in the Ordinance Factory. When he was going to Village Dob to bring her sisters namely, Lata and Shakun, he saw that near the house of Jugru all the five appellants were assaulting deceased Champa Lal. Jugru was armed with a sword, Gulab was armed with an axe, Madan was armed with a Farsa; and Rosan alias Ramesh and Raja were armed with lathis. He rushed to Ordinance Factory and informed his brother Kanhaiyalal. When he again reached Village Dob, he found his brother Champa Lal dead.

16. Rekha Bai (P.W. 12), daughter of the deceased has stated that at the relevant time when she and her father Champa Lal were taking food at their house, appellant Jugru called her father. Her father went along with Jugru. After some time she heard cries of her father. Her mother Laxmi Bai rushed towards the scene of occurrence. She along with her brother Sunil also went to the spot where she found that her father was lying in front of the house of Jugru. All the five appellants were standing there. Her father was surrounded by the appellants. Appellant Raja and Rosan were armed with lathis, appellant Madan was armed with a Ballam, appellant Jugru was armed with a sword and appellant Gulab was armed with an axe. When she reached the spot, assault was already over.

17. Sunil (P. W. 13), was a child of about five years of age on the date of incident, has stated that on the fateful day, appellant Jugru called his father Champa Lal. His father went along with Jugru. After some time, he heard cries of his father. He rushed towards the place of occurrence where he saw that Jugru was armed with a sword, Gulab was armed with Kulhari, Madan was armed with a Ballam and Rosan and Raja were armed with lathis. His father was lying on the spot. When he reached the spot, the appellants ran away.

18. Ku. Neena Khera, learned Counsel, appearing for the appellants, has submitted that in Paragraph 7 of her statement, Laxmi Bai (P.W. 4) has admitted that she sent her daughter Shakun Bai to call her brother-in-law (Kanhaiyalal) from the Ordinance Factory. When Kanhaiyalal, Shakun Bai and Raju came to her house, she went to the place of occurrence. At that time, her husband was lying at the spot quite alone and no other person was present there.

19. This argument is devoid of any force. We have to read the evidence of Laxmi Bai (P.W. 4) as a whole. While reading Paragraph 7 of her deposition we can not ignore her statement recorded in Paragraph 2 thereof, wherein she has specifically stated that when she reached the place of occurrence, she saw the appellants assaulting her husband. She tried to intervene also. It is quite clear that after seeing the incident, she asked Shakun Bai to call her brother-in-law Kanhaiyalal and when Kanhaiyalal, Shakun Bai and Raju came to her house, she again went to the place of occurrence. It means that she went to the place of occurrence twice. Firstly, when the appellants were assaulting her husband and secondly, when her brother-in-law, Kanhaiyalal, Shakun Bai and Raju came from Ordinance Factory.

20. Statement of Raju (P.W. 3) in Paragraph 2 of his deposition makes the things further clear. He stated that 'MEIN JAB APNE BADE BHAU KE GHAR DOBARA DOB GAONGAYA TO MAINE APNE BHAU CHAMPA LAL KI HAALAT DEKHI'. It is thus quite clear that Laxmi Bai had seen the appellants assaulting her husband. Even if Laxmi Bai did not reach at the scene of occurrence, she could have seen the incident from her house itself. According to the witness, the incident took place at a distance of 50 feet from her house. She could have seen the incident even from a distance of 50 feet. She has clearly stated that the way from her house towards the place of occurrence is straight. In Paragraph 6 of her cross-examination, Laxmi Bai (P.W. 4) has clearly stated that when she reached the spot, appellants were assaulting the deceased. Thus, there is no reason to discard her testimony.

21. Ku. Khera, learned Counsel for the appellants, invited our attention towards a sentence in Paragraph 6 of the statement of Laxmi Bai (P.W. 4) which reads thus :--

'MAINE UPAR JO BATAYA KI ABHIYUKTGAN KHADETHE, YAH BAAT SAHI HAI'.

and submitted that she did not see the actual assault. This sentence does not mean that she did not see the appellants assaulting and saw them only standing at the place of occurrence. By this sentence, she actually meant to say that by the

time she reached at the place of occurrence, appellants did not run away and were present at the spot.

22. Regarding the evidence of Raju (P.W. 3), learned Counsel for the appellants submitted that this witness has admitted that while he was going towards Village Dob from Ordinance Factory, he saw the incident and statement of Laxmi Bai that he was in her house is untrue. This contention also is bereft of any substance. Raju (P.W. 3) in Para 1 of his statement has clearly stated that he first went to the house of Lata and thereafter in the village he saw the appellants assaulting his brother. In Paragraph 6, he further makes it clear that when he reached the house of his brother his Bhabhi (Laxmi Bai) was in the house. She informed him that his brother Champa Lal is being beaten. He has further stated that he also saw the appellants assaulting his brother. In Paragraph 7, Raju has further clearly stated that he reached the Village Dob at about 12.00 noon. Therefore, statement of Laxmi Bai that when she heard cries of her husband, her brother-in-law Raju was present in her house can not be doubted. Evidence of a witness must be read as a whole. We can not read only few sentences infringed out of their context. On reading the evidence as a whole we are convinced that Laxmi Bai (P.W. 4) and Raju (P.W. 3) are the eye-witnesses of the incident and they have specifically stated that appellants were the assailants of the deceased Champa Lal.

23. It is true that Rekha Bai (P.W. 12) has admitted that she did not see any of the appellants assaulting her father, but she found the appellants standing near the dead body of his father. Similarly, Sunil (P.W. 13) has also admitted that he did not see the appellants assaulting his father but he had seen his father lying on the ground surrounded by the appellants. It is quite possible that Rekha Bai (P.W. 12) and Sunil (P.W. 13) reached little later and, therefore, they could not see the actual assault. On the contrary, it indicates that these witnesses are honest and truthful witnesses as they have deposed only about that part of the incident which they actually witnessed. We have no reason to disbelieve Laxmi Bai (P.W. 4) and Raju (P.W. 3) on this count.

24. Learned Counsel for the appellants further submitted that Kanhaiyalal (P.W. 2) has admitted in his statement before the Court that on the relevant date, daughter

of Champa Lal came to his quarter at Ordinance Factory and informed him that appellants are assaulting ,her father. On this information he went to Village Dob along with Raju and Laxmi Bai in an ambulance. Learned Counsel for the appellants submitted that this statement suggests that Laxmi Bai reached the spot from the Ordinance Factory in an ambulance and she had no opportunity to witness the occurrence.

25. Kanhaiyalal (P.W. 2) in Paragraph 7 of his statement had clearly stated that he did not state in his statement under Section 161, Cr.PC to the police that he along with Raju, Laxmi Bai and Shakun went to the place of occurrence in an ambulance from his factory quarter. Thus, this statement regarding ambulance seems to be an after thought. Even if, this statement is taken to be true, it is possible that after sending his daughter to call Kanhaiyalal (P.W. 2), Laxmi Bai, along with Raju might have gone to the house of Kanhaiyalal to inform him about the incident. The ordinance factory quarters are not far away from the place of occurrence. On the basis of vague statement of Kanhaiyalal (P.W. 2) the evidence of Laxmi Bai (P.W. 4) and Raju (P.W. 3) which otherwise inspires confidence can not be discarded.

26. Learned Counsel for the appellant further submitted that Laxmi Bai is wife of the deceased and Raju is his brother and as such both these witnesses being close relatives of the deceased are interested witnesses and in view of the discrepancies narrated above as well as the fact that they did not try to save the deceased, their evidence should not be believed.

27. The mere fact that the witnesses are relatives of the deceased and are interested witnesses is no ground to disbelieve them unless motive is proved to spare the real assailants and falsely implicate other persons. The evidence of both these witnesses is convincing and is of sterling worth. Simply because both the witnesses are relatives of the deceased, they can not be branded as interested witnesses. A witness can be called interested only when he or she derives some undue benefit from the result of the case. The relationship of witnesses with the deceased would add to the value of their evidence because they would be interested in getting the real culprit punished rather than innocent person or persons.

28. When there is evidence of interested witnesses on record, it puts the Court on guard to scrutinize their evidence with more than ordinary care. Nothing as come in the cross- examination of Laxmi Bai (P.W. 4) and Raju (P.W. 3) to discredit them. Merely because due to fear the wife of the deceased did not try to save her husband whom the accused persons were assaulting, it can not be said that she was not present at the place of occurrence. While examining the truthfulness of a witness the Court should not be influenced by the fact that wife and brother of the deceased did not express any emotion even though the husband/brother was killed in their presence. Such an approach is not proper for the reason that every person has his own way of expressing his emotions and no universal standard can be adopted while examining the conduct of the witnesses. The evidence of Laxmi Bai (P.W. 4) and Raju (P.W. 3) if tested in the crucible of credibility, it is clear that Laxmi Bai and Raju are the witnesses of truth. There is no likelihood of any attempt on their part to falsely implicate the appellants. The incident occurred near the house of these witnesses and as such they were natural witnesses. Their testimony can not be discarded on speculative grounds as contended by the learned Counsel for the appellants.

29. The evidence of Laxmi Bai (P.W. 4) and Raju (P.W. 3) is further corroborated by medical evidence. The learned Trial Judge has accepted the evidence of these witnesses. In a matter of appreciation of evidence and the credibility of the witnesses the opinion of the Trial Court should not be lightly disturbed in appeal. A Trial Judge sees, hears and questions the witnesses and a finding of fact arrived at by him on oral testimony should not be disturbed except where some error, susceptible of being dealt is disclosed. We do not mean to say that the judge of first instance should be treated infallible but his finding based on proper appreciation should not be dislodged very lightly.

30. In this case, we do not find any valid ground to disturb the finding of the Trial Court. The learned Trial Judge has approached the evidence from a correct stand point and has applied correct standard on the question of credibility of the witnesses and we accept the assessment of the Trial Judge.

31. Evidence of Laxmi Bai (P.W. 4) is corroborated by her FIR (Ex. P-5) lodged promptly. The evidence of the eye-witnesses is further corroborated by the seizure of weapons used in the commission of offence. From the evidence of S.I., N.K. Sharma and Narendra Shukla it is established that a sword was seized at the instance of appellant Jugru, an iron rod was seized at the instance of appellant Madan, lathis were seized at the instance of appellants Raja and Rosan alias Ramesh and an axe was seized at the instance of appellant Gulab. From the report of Assistant Chemical Examiner it is quite clear that blood stains were present on the lathis, seized at the instance of appellants Raja and Rosan alias Ramesh and the axe seized at the instance of appellant Gulab was found stained with human blood. Appellants could not explain the presence of blood on the weapons seized at their instance.

32. Learned Additional Sessions Judge has refused to give any weight to this circumstance only on the ground that these articles were not sent to the doctor who conducted the post mortem examination of deceased Champa Lal. According to Dr. P.D. Agrawal (P.W. 6), injuries found on the deceased were either incised wound or diffused contusion. The doctor has opined that the injury Nos. 5 and 6 were caused by hard and blunt object and other injuries were caused by hard and sharp object. When sharp objects were recovered at the instance of appellants Jugru and Gulab and hard and blunt objects were recovered from the other appellants, and these weapons were found blood stained and no explanation has been given by the appellants regarding the presence of blood on these articles, and in the absence of any explanation by the accused persons in that behalf it becomes an incriminating circumstance which corroborates the evidence of the eye-witnesses.

33. The proved facts that the appellants caused several injuries by sharp edged weapons mercilessly, the vital organ like trachea was also cut, death ensued directly from the injuries and Champa Lal died on the spot, lead us at once to draw the inference that the intention of the appellant was to cause death. The presumption of law is that a person intends the natural and inevitable consequence of his own acts.

34. The learned Counsel for the appellants submitted that in this case the author of the fatal injuries is not known and it is not possible to say who inflicted the fatal injuries, hence none of the appellants can be convicted for the murder. This contention also can not be accepted. It is a case of joint attack with dangerous weapons by five persons on one man and the later died almost instantaneously on the spot as a result of the injuries inflicted on him, therefore, the mere fact that it is not possible to say who inflicted the fatal injuries would not be sufficient to support the contention that the offence of murder has not been committed. The killing was in the prosecution of the common object of the unlawful assembly, therefore, the members of the assembly can not escape the liability under Section 302, IPC with the aid of Section 149 thereof.

35. From the aforesaid discussion, it is quite clear that the prosecution has established the charge levelled against the appellants beyond reasonable doubt. Learned Trial Judge has committed no error in convicting and sentencing the appellants for the offences levelled against them. Consequently, we do not find any merit in these appeals and as such, they are dismissed.