

Himmat Singh Vs. State

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Court : Madhya Pradesh

Decided On : Mar-06-2003

Reported in : 2004CriLJ3207

Judge : S.L. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 304; [Evidence Act, 1872](#) - Sections 32

Appeal No. : Cri. A. No. 461 of 1989

Appellant : Himmat Singh

Respondent : State

Advocate for Def. : R.K. Verma, P.L.

Advocate for Pet/Ap. : S.K. Nema, Adv.

Disposition : Appeal dismissed

Judgement :

S.L. Jain, J.

1. The appellant Himmat Singh stands convicted under Section 302 of Indian Penal Code with sentence of imprisonment for life vide impugned judgment dated May 10, 1989 passed by Second Additional Sessions Judge, Jabalpur in S. T. No.

192/86.

2. The facts of the case lie within a very narrow compass. Nek Singh (P.W. 5) is the brother of deceased Jagat Singh, Puna Bai (P.W. 3) is the daughter of Nek Singh, Gopi Bai (P.W. 7) is the wife of Nek Singh, Sita Bai (P.W. 16) is the wife of deceased Jagat Singh and Ram Singh (P.W. 6) is the son of deceased Jagat Singh. A day before the incident cattle of accused Himmat Singh entered the field of deceased Jagat Singh who objected to it. The murder of Jagat Singh is a sequel to this quarrel.

3. On April 1, 1986, at about 8 a.m., deceased Jagat Singh was engaged in threshing crop in his barn. Puna Bai, the niece of the deceased, Guddi, the daughter of deceased and one Jamuna Bai were present in the field of Jagat Singh which is adjacent to his barn. The accused, armed with a lathi entered the barn dealt several lathi blows to him. Puna Bai, along with two aforementioned girls rushed to her home and informed her father Nek Singh about the incident. When Nek Singh along with Puna Bai and two other girls was going towards the place of occurrence, the accused met him mid way. Accused dealt lathi blows to Nek Singh also who sustained 8 injuries described hereinafter, including a fracture. Guddi, Puna Bai and Jamuna Bai brought Nek Singh home. Ram Singh son of Nanhe Singh (P.W. 11), Hakku (P.W. 13), Shivdeen (P.W. 12), Pancham (P.W. 9) and Sita Bai (P.W. 16) wife of deceased Jagat Singh reached the place of occurrence. On being asked, Jagat Singh named accused as assailant. Jagat Singh was brought to his house on a cot. He succumbed to his injuries on way to P.S. Belkheda. Nek Singh (P.W. 5) lodged First Information Report, Ex. P-9 at the P.S. Belkheda at 2.15 p.m., after about six hours of the incident. The body of deceased Jagat Singh was sent for postmortem examination vide Ex. P-1. Postmortem examination was conducted by Dr. A.S. Rajput (P.W. 1) who found the following injuries on the body of deceased Jagat Singh:--

(1) Swelling on the left forearm with fracture of radius and ulna, 4 cm below the elbow joint.

(2) Swelling over the right forearm at the middle with fracture of radius and ulna.

- (3) Contusion on the right arm antero-laterally lenier in shape 11 cm x 3 cm.
- (4) Swelling over the right hand with fracture of 4th and 5th metacarpal bone.
- (5) Contusion lenier at the middle right arm laterally 6 cm x 3 cm adjoining Injury No. 4.
- (6) Lenier contusion obliquely placed on right side of the back extending from 9th, and 10th thoracic vertebra up to inferior angle of scapula 11 cm x 3 cm in size.
- (7) Lenier contusion on the right side of the back extending from 2nd and 3rd thoracic vertebra up to inferior angle of the scapula.
- (8) Fracture of 9th, 10th and 11th ribs present on the right side and fracture of 11th rib on the left side.
- (9) Lenier contusion on the left side of the back at the level of 11th rib, 5 cm x 3 cm.
- (10) Abrasion with contusion behind the left ear extending up to occipital region 11 cm x 6 cm,
- (11) Lacerated wound at the middle of the scalp 3 cm x 2 cm in postero-occipital region.

On opening the skull, Dr. Rajput also found clotted blood in occipital region. There was blood clot in the membrane also. Dr. Rajput also found that the right lung, right lobe of the liver and spleen were ruptured. Dr. Rajput opined that the injuries were sufficient to cause death in the ordinary course of nature. He opined that the cause of death was excessive haemorrhage of vital organs. Ex. P-2 is the report of Dr. A.S. Rajput.

4. Nek Singh was also sent for medical examination to P.H.C., Patan, where he was examined by Dr. A.K. Saxena (P.W. 2), who found the following injuries on his person:--

(1) Lacerated wound 4 cm x 1 1/2 cm x 1/4 cm, on occipital parietal region, 2 cm away from mid-line towards right side.

(2) Abrasion 1 cm x 1 cm on tip of the right shoulder joint.

(3) Abrasion 4 cm x 1 1/2 cm on the forearm postero-laterally, 4 cm away from elbow joint.

(4) Abrasion 1 1/4 cm x 1 cm on posterior point of the elbow joint.

(5) Lacerated wound 2 cm x 1 1/2 cm x 1 cm at the tip of right thumb with swelling.

(6) Swelling over right palm with tenderness. Movement of index finger restricted.

(7) Lacerated wound 2 cm x 1-1/2 cm x 1 cm at the palmer surface of ring finger. Tenderness present. Movement restricted.

(8) Swelling over left palm. Tenderness present. Movement restricted.

Dr. Saxena had advised for X-ray of skull, both palms, ring finger and thumb. Exs. P-4 and P-5 are reports of Dr. A.K. Saxena (P.W. 2). X-ray of Nek Singh was taken by Dr. M.P. Thakur, (P.W. 4), vide Ex. P-7, but no bony injury was seen in the skull. However, there was a fracture of second phalynx of thumb in the right hand and fracture of first phalynx of little finger of the left hand. Ex. P-8 is the X-ray report, written and signed by Dr. Thakur.

5. Dr. A.S. Rajput (P.W. 1) recovered one Bandi and one Dhoti from the body of deceased Jagat Singh and the same were handed over to constable Ramrudra in a sealed packet. This sealed packet was seized by S.I. Tiwari from Ramrudra as per seizure memo Ex. P-10. S.I. Tiwari recorded discovery memo of the accused and allegedly seized a lathi at his instance from the house of Munna Lal Vishwakarma (P.W. 17). The Bandi and Dhoti recovered from the body of deceased and the lathi recovered at the instance of accused were sent to Forensic Science Laboratory, Sagar, for chemical examination. Ex. P-20 is the report of Assistant Chemical Examiner, which confirms the presence of blood on these articles. The Assistant Serellogist and Chemical Examiner, Calcutta in his report Ex. P-21, dated 10-9-86, has, however, stated that the bloodstains on the lathi

seized at the instance of appellant were disintegrated and their origin could not be determined. Similarly the origin of blood present on the Dhoti and Bandi of the deceased could not be determined.

6. After completion of the investigation, a charge-sheet was filed against the accused/appellant for the alleged commission of murder of Jagat Singh and for causing grievous hurt to Nek Singh. A charge for the aforesaid offences was framed against the appellant. The appellant abjured the guilt and pleaded that he is innocent and has been falsely implicated due to enmity.

7. After concluding the trial, the learned trial Judge acquitted the accused for the offence punishable under Section 325 of the I.P.C. but found him guilty for offence punishable under Section 302 of the I.P.C., and sentenced him as indicated above. It is against this conviction and sentence that the appellant has come up in appeal.

8. We have heard Shri S.K. Nema, learned counsel appearing for the appellant and Shri R.K. Verma, learned Panel Lawyer appearing for the State/respondent.

9. Shri Nema led us through the record and contended that the learned trial Judge erred in holding the appellant guilty for committing the murder of Jagat Singh. He submits that the conviction and sentence of appellant are bad, improper and illegal. The evidence regarding oral dying declaration is inconsistent and contradictory. According to him, in fact, no dying declaration was made by deceased Jagat Singh. It was argued by him that Jagat Singh, after sustaining injuries would not have possibly been able to make any statement. His further contention is that at the most the case would fall under Section 325 of the I.P.C. or Section 304 (Part II) thereof. As against this, learned Panel Lawyer has supported the impugned judgment.

10. We shall first consider whether the death of Jagat Singh was homicidal. Dr. A.S. Rajput (P.W. 1) who conducted the postmortem examination of deceased Jagat Singh found as many as 12 injuries including fractures on his body. He also found that the lung, right lobe of the liver and spleen of the deceased were ruptured. He opined that injuries were anti-mortem and were sufficient to cause

death, in the ordinary course of nature. According to him, cause of death was haemorrhage. Learned counsel appearing for the appellant has not very seriously disputed the finding of the trial Court that the deceased died a homicidal death. Therefore, we confirm the finding of trial Court on this count.

11. We now come to the crucial question as to whether the appellant caused the death of Jagat Singh. In this connection the prosecution has relied on the following material:--

- (1) Ocular testimony of eye-witness Puna Bai (P.W. 3),
- (2) Oral dying declaration of deceased Jagat Singh; and
- (3) Recovery of blood-stained lathi at the instance of appellant.

12. We shall first deal with the ocular statement of the eye-witness Puna Bai (P.W. 3). Puna Bai (P.W. 3) is the niece of deceased Jagat Singh. Learned Additional Sessions Judge rejected the testimony of Puna Bai as highly improbable, on the following grounds:--

- (a) Jamuna Bai and Guddi Bai, who accompanied Puna Bai (P.W. 3), have not been examined.
- (b) Gopi Bai (P.W. 7) has admitted that at the time of incident Jamuna Bai and Guddi Bai were in their school and returned home at 10.30 a.m., this falsifies the statement of Puna Bai (P.W. 3) that Jamuna Bai and Guddi Bai were with her.
- (c) Statement of Puna Bai (P.W. 3) in the Court is not consistent with her statement recorded under Section 161 of Cr. P. C.
- (d) The evidence of Puna Bai (P.W. 3) is exaggerated, who states that the accused went on dealing with lathi blows for about an hour.
- (e) Ram Singh (P.W. 11) and Shivdeen (P.W. 12) do not speak about the presence of Puna Bai (P.W. 3) at the place of occurrence.

On re-assessment of her evidence, we also do not find any reason to take a different view.

13. Now we come to the oral dying declaration made by deceased Jagat Singh to Hakku (P.W. 13), Shivdeen (P.W. 12), Pancham (P.W. 9), Ram Singh (P.W. 11) and Sita Bai (P.W. 16). This dying declaration which was made shortly after the incident at the first available opportunity, is the central piece of evidence in this case. Hakku (P.W. 13) has stated that on the date of incident when he was coming from the field of Ram Singh towards his house, he saw Jagat Singh lying in his field. He saw the injuries on the body of Jagat Singh. Jagat Singh requested him to save him and to make some shadow for him. Jagat Singh also informed this witness that he has been assaulted by appellant Himmat Singh. Sita Bai (P.W. 16), who is the wife of the deceased has stated in her evidence that when she reached the field of Ram Singh, she found her husband lying in the field. She found a number of injuries on his person. On being asked, her husband Jagat Singh informed her that Himmat Singh has assaulted him.

14. Gopi Bai (P.W. 7) who is the wife of Nek Singh and sister-in-law of deceased Jagat Singh has stated in her evidence that . when Jagat Singh was brought home, she asked Jagat Singh as to who caused injuries to him. In reply, Jagat Singh informed her that he was assaulted by Himmat Singh.

15. According to prosecution the dying declarations were made by the deceased in presence of Ram Singh (P.W. 11) and Shivdeen (P.W. 12) and Pancham (P.W. 9) also. However, these witnesses have not supported the prosecution case and have consequently been declared hostile. But from the cross-examination of Ram Singh (P.W. 11), it is established that Sita Bai reached the place of occurrence and at that time Jagat Singh was conscious and in a position to speak. From the cross-examination of Shivdeen (P.W. 12), also it is established that Sita Bai (P.W. 16), had reached the place of occurrence. Therefore, from the evidence of Hakku (P.W. 13), Sita Bai (P.W. 16) and Gopi Bai (P.W. 7), it is .established that more than once before his death, Jagat Singh stated that the appellant had assaulted him.

16. The words of a dying man are clothed with sanctity. The principle on which the dying declarations are admitted in evidence is indicated in legal maxim-nemo moriturus praesumitur mentire, that is -- a man will not meet his maker with a lie in his mouth. The situation in which a man is placed on death-bed, is the reason in law to accept the veracity of his statement. At such a solemn moment a person is unlikely to speak lie. It is for this reason that the requirements of oath and cross-examination are waived.

17. Jagat Singh on the verge of death was not likely to tell lies or to concoct a case so as to implicate an innocent person. Statement of law summed up by the Supreme Court regarding dying declaration in Kundula Bala Subrahmanyam v. State of Andhra Pradesh. 1993 (2) JT (SC) 559 : (1993 Cri LJ 1635) is as follows:--

'A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Courts, it becomes a very important and a reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration.'

18. In Smt. Laxmi v. Om Prakash, 2001 (5) JT (SC) 280 : (2001 Cri LJ 3302) the Supreme Court has further held as under (at page 3304 of Cri LJ) :--

'A dying declaration, if found reliable, can form the basis of conviction. A Court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to

the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the Court, making a statement, stating the facts contained in the declaration. If in a given case a particular dying declaration suffers from any infirmities either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the Court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying declaration so infirm as to prick the conscience of the Court, the same may be refused to be accepted as forming safe basis for conviction.'

19. In this case, more weight must naturally and necessarily be attached to the dying declaration made so shortly after the occurrence. It is true that Sita Bai is the wife of the deceased and Gopi Bai is his sister-in-law but there is no reason for the deceased or his relatives to falsely implicate an innocent person. Deceased Jagat Singh made disclosure regarding the occurrence when he got first opportunity to name his assailants. When Hakku, reached the place of occurrence, the deceased named his assailants and also requested him to make shadow for him. The statements of the deceased had been consistent throughout when he made more than one statement. From the evidence of Hakku, Gopi Bai and Sita Bai, it is clearly established that the deceased was conscious at the place of occurrence and at the time when he was brought to his house and he was in a position to speak. He disclosed the name of the assailants not only to Hakku, Sita Bai and Gopi Bai but also to Pancham (P.W. 9), Ram Singh s/o Nanhe Singh (P.W. 11) and Shivdeen (P.W. 12) though they have not supported the prosecution case on this count and these witnesses have been declared hostile but from the evidence of Pancham it is clear that on being called by Ramnath he reached the place of occurrence, at that time Jagat Singh was lying in his field and Hakku was also present there. Jagat Singh requested to carry him to his house. Jagat Singh was put on a cot and was carried to his house. Thus from the evidence of Pancham, at least this much is established that Jagat Singh was conscious and Hakku who is an independent witness was also present there.

20. From the evidence of Shivdeen also, the presence of Hakku and Sita Bai at the time when they claimed that dying declaration was made to them is established.

21. Learned counsel appearing for the appellant very emphatically contended that having regard to the injuries sustained by the deceased, it would not have been possible for him to make such a statement. Dr. A.S. Rajput (P.W. 1) does not say that the injuries on the person of Jagat Singh were such that he would not have been in a position to make a dying declaration. No attempt was made in the cross-examination of Dr. Rajput to show that due to the injuries the deceased was not in a position to speak at all. We have ourselves examined the injuries and we find that there was no such injury which would have affected the brain or heart. On the head there is no serious injury. Rupture of lung, spleen and lobe of liver will not make the deceased unconscious immediately. Dr. Rajput does not say that having regard to the injuries the deceased would have become unconscious immediately. Even if the condition of the injured was deteriorating at the time of making the statements, the mental power of the deceased was not affected and his memory was not impaired. The declaration made soon after the incident, the injured being fully conscious and composed (sic) and in the absence of tutoring or false implication, can be safely acted upon. Therefore, the contention of Shri Nema on this count is not acceptable.

22. Learned counsel for the appellant has contended that the evidence of Hakku (P.W. 13), Sita Bai (P.W. 16) and Gopi Bai (P.W. 7) cannot be safely acted upon as there are serious discrepancies in their statements and when the dying declarations suffer from infirmities, they cannot form the basis of conviction.

23. The evidence of Hakku (P.W. 13), Sita Bai (P.W. 16) and Gopi (P.W. 7) is quite natural. We do not find any inconsistency in their testimony. They are natural witnesses and the trial Court rightly relied on them.

24. Shri Nema, learned counsel appearing for the appellant further submitted that in the F.I.R. the fact of making dying declaration does not find place. The F.I.R. was lodged by Nek Singh, the brother of the deceased. Dying declarations were not made in presence of Nek Singh, therefore, he could not have been aware of them. Nek Singh himself was injured and must be in agony. There is no evidence that Nek Singh was present when Jagat Singh disclosed the name of the assailant to Gopi Bai. There fore, the absence of this fact in the F.I.R. lodged by Nek Singh

cannot outweigh the cogent and reliable evidence regarding dying declaration.

25. Even if, for the sake of argument, we suspect the veracity of the statement of Gopi Bai (P.W. 7) about the dying declaration made at the house of deceased, the dying declaration made to Sita Bai and Hakku at the place of occurrence itself cannot be doubted. The dying declaration made by the deceased to the witnesses clearly implicating the accused is truthful and reliable. Nothing significant has been elicited in the cross-examination of Hakku and Sita Bai. The dying declaration made to Hakku and Sita Bai are free from all infirmities. We cannot discard that merely because in the F.I.R., not lodged by any of these witnesses, there is no mention of the dying declarations. This would not cause any dent to the edifice on which the prosecution case is built. Once the Court is satisfied that the testimony regarding the dying declaration inspires its confidence and does not leave any shadow of doubt, the Court can act upon and rely upon the dying declaration alone and need not require any corroboration. See *Meharban Singh v. State of Madhya Pradesh*, 2001 (10) JT (SC) 459 : (2001 AIR SCW 5019).

26. Besides the dying declaration there is evidence of recovery of weapon of offence. Munna Lal Vishwakarma (P.W. 17) has stated that one lathi was kept by the accused at his house and on the next day accused came to his house along with the police and took out the lathi and handed it over to the police.

27. Devi Prasad (P.W. 15) has also stated , that the accused took out a lathi from his uncle's house and handed it over to the police and this lathi was seized by the police. Thus, from the evidence of Devi Prasad (P.W. 15) and Munna Lal Vishwakarma (P.W. 17) it is clearly established that a lathi was seized.

28. From the report of Assistant Chemical Examiner, Forensic Science Laboratory, Sagar, the presence of blood on the lathi, seized at the instance of the appellant, is established. Therefore, evidence regarding discovery cannot be rejected. Recovery of article based on statement of accused is a material circumstance positively inculcating the accused, therefore, we feel no difficulty in agreeing with the conclusion of the trial Court, so far as it relates to dying declaration and seizure of the weapon of the offence.

29. Shri Nema lastly argued that the offence is one of causing grievous hurt or at the worst of culpable homicide not amounting to murder punishable under Section 304 (Part II) of the I.P.C. The submission that the offence is one of grievous hurt deserves outright rejection because the appellant in fact-situation of the present case must have known that what he was doing was likely to cause death. The short question is, therefore, whether the offence was murder or culpable homicide not amounting to murder. What distinguishes these two offences is degree of probability of death. It is the mental attitude which distinguishes the murder from culpable homicide. Unless the act by which the death is caused is covered by any of the four mental attitudes stated in Section 300 of the I.P.C. the same cannot be said to be a murder.

30. In view of the evidence of Dr. Rajput the case falls under clause 'thirdly' of Section 300, I.P.C. Dr. Rajput has opined that the injuries of deceased described in paragraph 3 of the judgment were sufficient in the ordinary course of nature to cause death.

31. The only two requirements for application of clause 'thirdly' of Section 49 are: intention to inflict injury and sufficiency of injury to cause death in the ordinary course of nature. Ordinarily and generally once existence of injury is proved the Intention to cause it will be presumed unless the circumstances warrant an opposite conclusion.

32. Accused dealt several lathi blows to Jagat Singh which resulted in fracture of 9th, 10th and 11th ribs, in addition to fractures of radius and ulna of both the forearms. Accused dealt blow on the occipital region also. The right lung, right lobe of the liver and spleen were ruptured. Although the medical evidence does not say that any particular injury on the body of the deceased was sufficient in the ordinary course of nature to cause death but cumulatively they were sufficient in the ordinary course of nature to cause death. When the injuries caused by the accused were not accidental or unintentional and circumstances do not reveal that some other kind of injury was intended, it can safely be assumed that the injuries caused were intended.

33. Where the accused caused blows resulting in fractures of ribs and rupture of spleen, liver and lung, only inference that can ordinarily be drawn is that the accused who gave repeated blows intended to cause such bodily injury as would be sufficient in the ordinary course of nature to cause death and as such, the case falls within Section 300, I.P.C.

34. It is not a case of single injury. Emphasis in clause 'thirdly' is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary course of nature. Where such injuries exist and death ensues and causing of injury is intended, the offence is murder. In this case the acts of the accused/appellant were covered by clause 'thirdly' of Section 300, I.P.C. We accordingly hold that the offence was murder.

35. Aforesaid being the position regarding material brought on record by the prosecution to bring home the guilt of the appellant, we find the substance in any of the contentions raised by the learned counsel for the appellant.

36. The trial Court has considered and appreciated the evidence on record in proper perspective. There is no reason for us to interfere with the conviction and sentence passed on the appellant. We do not find any merit in this appeal and the same is, accordingly, dismissed.