

Uttam Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-01-2002

Reported in : 2003CriLJ560

Judge : Rajeev Gupta and ;P.C. Agrawal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302; [Evidence Act, 1872](#) - Sections 8 and 118

Appeal No. : Cri. A. No. 309 of 1991

Appellant : Uttam Singh

Respondent : State of M.P.

Advocate for Def. : S.K. Rai, P.L.

Advocate for Pet/Ap. : Paresh Parekh, Adv.

Disposition : Appeal dismissed

Judgement :

P.C. Agarwal, J.

1. Appellant stands convicted by 7th Addl. Sessions Judge, Bhopal in S.T. No. 282/89 (State of M. P. v. Uttam Singh) under Section 302 of the Indian Penal Code ('Code' for short) by impugned order dated 17-7-90 and sentenced to

imprisonment for life.

2. It is undisputed that deceased Chain Singh S/o Gaidaji was father-in-law of the appellant. Smt. Narayani Bai (P.W. 1) is his wife. Smt. Prem Bai (P.W. 4) and Krishna Bai (P.W. 6) are daughters while Ram Singh (P.W. 5), is a son of deceased Chain Singh. Smt. Krishna Bai (P.W. 6) is the wife of the appellant.

3. As per prosecution on 30-8-89 deceased Chain Singh and his minor son Ram Singh (P.W. 5) aged about 11 years, were sleeping in the verandah of their house. Smt. Narayani Bai (P.W. 1) and her two daughters Prem Bai (P.W. 4) and Krishna Bai P.W. 6) were sleeping inside the adjoining room. At about 4.00 a.m. Ram Singh (P.W. 5) shouted that deceased Chain Singh was hit by an axe by the appellant. Narayani Bai (P.W. 1), Prem Bai (P.W. 4) and Krishna Bai (P.W. 6) rushed out of the room and saw the appellant with an axe running towards the house of Baldev, a neighbour. Deceased Chain Singh was lying all in blood on his cot. Blood was oozing out of his neck. He was dead. On cries of Narayanai Bai (P.W. 1). neighbours Cyan Singh (P.W. 2), Moti Singh alias Motilal (P.W. 3), Hukum Singh (P.W. 9), Baldev, Bhawarlal and Narayan Singh rushed to the spot and witnessed the appellant running with axe towards the field.

4. As per prosecution the appellant used to misbehave and harass his wife Krishna Bai (P.W. 6). She had come with her brother to her parent's house and not to return back to the house of the appellant. However, the appellant was insisting to take her back to his house. However, Krishna Bai (P.W. 6) refused to go a day before the event. This had angered the appellant who had left away threatening that he would do away someone of the family. This was the only motive behind the event.

5. Narayani Bai (P.W. 1) lodged first information report Ex. P.1 on 30-8-89. The appellant was arrested next day i.e. on 31-8-89 vide Ex. P.9. On his information vide Ex. P. 10 a blood-stained iron axe was seized vide Ex. P. 11 by the side of a nallah.

6. As per prosecution Dr. D. S. Badkur (P.W. 7) had examined the dead body of deceased Chain Singh on 30-8-89 and vide Ex. P. 4 had noted the following ante-

mortem injuries on his person :--

(1) Incised Chop wound 8 x 4 x 6 cm. situated transversely on right side of mandible and neck 1.5 cm. below the louble of ear and 5 cm. below the zrygomatic arch, extending posteriorty from the Ramus of mandible. Upper margin bevelled in downward direction with slicing effect and sharply cut. Thin (1 mm.) abrasion present at the upper margin, lower margin sharply cut and shows flapping and hanging over the wound. Both angles are also sharply cut. The maximum depth of the wound (6 cm.) present in the middle part and innothed vertebral column and spinal cord and towards the periphery wound was shallow and muscle deep. Internally paroted gland, ramus and angle of mandible, neck muscles, veins, external caroterar artery, C2 and C3 vertebra and spinal cord up to subarachnoid space are cut. The Rt. side of neck muscles are heavily ecchymosed all over.

(2) Incised wound 4 cm. x .5 cm. x .5 cm. muscle deep situated transversely of right side of neck, on lateral aspect, one 1 cm. below the lower margin of injury No. 1. Margins are sharply cut, both angles are sharply cut. Wound is maximum deep .5 cm. in the middle 2 cm. area and shallow (skin deep) in the periphery surrounding areas ecchymosed.

(3) The junction of C7 and T1 is fractured and ligaments of intervertebral disk are torn and fractured. Spinal canal and cord are exposed. Paravertebral muscles and tissues are ecchymosed from C5 to T3 region. Sub arachnoid and Subdural space is full of blood. No external injury is present in the corresponding skin. Injuries were ante-mortem and were sufficient to cause death in ordinary course of nature. Injuries Nos. 1 and 2 were caused by sharp-cutting heavy objects and No. 3 by blunt force.

Opinion. Death was due to shock and haemorrhage as a result of injuries in the neck. Injuries were caused by sharp-cutting heavy object and were homicidal in nature. Duration of death was within 24 hours since post-mortem examination.'

7. After due investigation charge-sheet under Section 302 of the Code was filed.

8. Appellant pleaded not guilty. According to him he is innocent and he has been falsely implicated. Police had brought him from his house. He denies that he had either killed his father-in-law or that any axe was seized from him.

9. As already seen, learned Addl. Sessions Judge held the appellant guilty of murder, and sentenced him to undergo life imprisonment.

10. Here in appeal advocate of appellant has claimed that no offence is proved against the appellant. According to him Ram Singh (P.W. 5) the child witness is not reliable. He has been tutored. Smt. Narayani Bai (P.W. 1), Smt. Prembai (P.W. 4) and Smt. Krishna Bai (P.W. 6) are near relatives of the deceased Chain Singh and thus are interested witnesses. The police has neither seized the blood soaked bedding of deceased Chain Singh and has not produced the report of the Serologist. According to him there is no clinching evidence against the appellant.

11. On the other hand learned Panel Lawyer has claimed that the prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt.

12. We have heard both the advocates and have carefully perused the record and judgment of the learned Addl. Sessions Judge. Homicidal death of deceased Chain Singh is proved beyond reasonable doubt by statements of Narayani Bai (P.W. 1), the widow, Prern Bai (P.W. 4), Krishna Bai (P.W. 6), daughters, Ram Singh (P.W. 5) the son i.e. near relatives of deceased Chain Singh and Cyan Singh (P.W. 2), Moti Singh (P.W. 3) and Hukum Singh (P.W. 9) the villagers. Bhupendra Singh (P.W. 12) the Investigating Officer has visited the spot and has prepared the inquest memo Ex. P.3 after giving notice Ex. P.2 to the panch witnesses. Such inquest memo fully supports the prosecution story. Dr. D. S. Badkur (P.W. 7) has conducted the autopsy on dead body of deceased Chain Singh and has found the antemortem injuries which have already been quoted in earlier part of this judgment. He has clearly held that deceased Chain Singh had died due to bleeding and shock caused by injuries to his neck and his death was homicidal. The appellant has merely denied such a story which is of no avail to him. Thus this finding of learned trial Court is affirmed.

13. Now, the question is whether the appellant caused the death of deceased Chain Singh? Prosecution version is proved by Ram Singh (P.W. 5) a child witness aged about 11 years who is son of deceased Chain Singh. He was sleeping with his father deceased Chain Singh at the time of event on the same cot. He was awakened hearing the sound of fatal blow of axe on the neck of deceased Chain Singh. Naturally, he tried to wake up his father but he did not speak. Frightened he called his mother shouting 'Mother Run, Uttam Jija has cut the father' whereupon the mother Narayani Bai (P.W. 1) and both the sisters Prem Bai (P.W. 4) and Krishna Bai (P.W. 6) had come out of the adjoining room. All of them saw the appellant with an axe in his hand. Hearing shouts and the commotion; neighbours Guan Singh (P.W. 2), Moti Singh alias Motilal (P.W. 3) and Hukum Singh (P.W. 9) with certain others came on the spot, and saw the appellant running with an axe, in his hand. This story is supported by prompt, FIR lodged within a period of 3 1/2 hours by the widow Narayani Bai (P.W. 1). Name of appellant as the assailant is there in such FIR.

14. Obviously as the murder took place in the dwelling house the members of family the inmates of the house were very natural witnesses whose presence there was insured. *Ramambhai Narari Bhai Patel v. State of Gujarat*, (2000) SCC 358 : (1999 Cri LJ 5013); *Ramji .Singh v. State of Bihar*, (2001) 9 SCC 528 : (AIR 2001 SC 4853); *State of Rajasthan v. Tejram*, (1999) 3 SCC 507 : (1999 Cri LJ 2588). The widow, two daughters and the son of the deceased cannot be disbelieved only on the ground of close relationship. Actually such relationship is a sure guarantee of their truth as they are not likely to spare the real culprit and falsely implicate the appellant who also happens to be their near relative being the husband of Krishna Bai (P.W. 6) the daughter of Narayani Bai (P.W. 1) and sister of Prembai (P.W. 4) and Ram Singh (P.W. 5). *Racham-reddy Chenna Reddy v. State of A.P.*, (1999) 3 SCC 97 : (1999 Cri LJ 1445). Normally the close relations of the deceased are not likely to falsely implicate a person in the incident leading to the death of the relation unless there are very strong and cogent reasons. *State of Rajasthan v. Hanuman*, (2001) 1 SCC 337 : (2001 Cri LJ 485). Appellant being a close relative and the husband of Krishna Bai (P.W. 4) is clearly an additional guarantee of truth of these witnesses.

15. Obviously, Ram Singh (P.W. 5) is a child witness. A child witness also is a competent witness. No witness can be discredited merely because he is a child, though of course his evidence has to be scrutinized with caution and circumspection as a child witness is open to suggestions, tutoring and is likely to succumb to make belief or may intermingle truth with fantasy. *Suryanarayan v. State of Karnataka*, (2001) 9 SCC 129 : (2001 Cri LJ 705); *State of Maharashtra v. Damu*, (2000) 6 SCC 269 : (2000 Cri LJ 2301); *State of U.P. v. Ashok Dixit*, (2000) 3 SCC 70 : (2000 Cri LJ 1436); *Shishan v. State of Rajasthan*, (2000) 10 SCC 249. In the present case frightened Ram Singh (P.W. 5) the child witness has shouted instantaneously for help naming the appellant as the assailant. His mother Narayani Bai (P.W. 1), two sisters Prem bai (P.W. 4) and Krishna Bai (P.W. 6) and three neighbours Gyan Singh (P.W. 2), Moti Singh alias Motilal (P.W. 3) and Hukum Singh (P.W. 9) have supported him about the language used in such shouting. Such shouts being natural and probable in the facts of the case are admissible in evidence as a part of the same transaction as *res geste* under Section 6 of the Evidence Act. Conduct of the witness is also relevant under Section 8 of the same Act. Such story is further supported by prompt FIR as well. Thus, evidence of Ram Singh (P.W. 5) the child witness could not be discredited.

16. It is noteworthy that there has been no motive why the prosecution witnesses—the widow, two daughters and the son of deceased and three neighbours whose statements are not otherwise discrepant could falsely implicate the appellant. In absence of bias and discrepancies in statements of these witnesses their testimony has to be relied upon *Lokeman Shah v. State of W.B.*, (2001) 5 SCC 325 : (2001 Cri LJ 2196) and *Ramji Singh v. State of Bihar*, (2001) 9 SCC 528 : (AIR 2001 SC 4853). It is also noteworthy that their statements were recorded by I.O. on the date of occurrence itself.

17. The advocate for appellant has particularly drawn our attention to para 5 of Ram Singh (PW 5) in which he claimed that he had seen the appellant running towards house of Baldeo and was out of gate. However, this statement has to be read in the context of his statement in para 3 where he is positive and specific that he himself had seen the appellant hitting his father, the death blow. In reflex he shouted for help naming the appellant which is a well supported story. It is true

that Narayani Bai (PW. 1) and Krishna Bai (PW. 6) though they were sleeping in the adjoining room, have deposed that when they came out they could see the deceased Chain Singh dead. It is argued that had Ram Singh (PW. 5) seen the murderous assault and shouted immediately, his mother and sisters could have come to the spot before deceased Chain Singh could die. However, it has not to be forgotten that we are dealing with a child witness and rustic women. No attempt was there from the side of appellant to clarify in their cross-examination that deceased chain Singh was either actually dead or was merely gasping when they had reached the spot. In our considered opinion such discrepancy is not inconsistent and is not destructive of the prosecution case. Actually, such minor discrepancy is merely Indicative of the truth of the prosecution story.

18. As per medical evidence, at least two blows were hit on the neck of the deceased. However, Ram Singh (PW. 5), child witness could speak about only one blow being dealt with. It is noteworthy that it was night time, deceased Chain Singh as well as witnesses were fast asleep. Ram Singh was awakened by the sound of the blow and stir created thereby. Other blow could well be dealt with while he was asleep. Thus, no complaint can be there that there has been any discrepancy between the ocular evidence and the medical evidence. It is true that the bedding or the covers of the deceased Chain Singh have not been seized. This is merely a lapse on the part of prosecution yet it is over shadowed by the testimony of eye-witnesses. Sukhdeo Yadav v. State of Bihar (2001) 8 SCC 86 : (AIR 2001 SC 3678). No prejudice has been there to the appellant by such a lapse.

19. It is true that the learned trial Court has discarded the evidence about extra-judicial confession on good grounds. Firstly, it was unnatural and improbable that the appellant should have come back to the spot to claim that he has killed his father-in-law and to declare that he is going to police station. It is noteworthy that the appellant had not gone to police station. Secondly, there was no mention of such extra-judicial confession in Ex. P. 1 FIR lodged by Narayani Bai (PW. 1). Thirdly, none of the prosecution witnesses had referred to such extra-judicial confession in his statement recorded by Bhupendra Singh (PW. 12), the investigating officer under Section 161 of the Code of Criminal Procedure. It is also

note worthy that merely because the prosecution witnesses indulged in such embellishment of their statement, their statements are not falsified. Falsus in uno falsus in omnibus is riot a maxim of universal application. Swaran Singh v. State of Punjab (2000) 2 SCC 668 : (2000 Cri LJ 2780). In their zeal sometimes witnesses resort to such improvements. It is note worthy that trial Court on appreciation of the evidence has found the witnesses trust worthy despite such improvement. This appeal Court should not disturb such finding of fact lightly. It is the totality of the situation which is to be taken note of Munshi Pd. v. State of Bihar (2002) 1 SCC 351 : 2001 Cri LJ 4708.

20. It is note worthy that the appellant was arrested on next day. On his Information vide Ex. P. 10 an axe was seized from Nala by Bhupender Singh (PW. 12) vide Ex. P. 11. The medical officer Dr. D. S. Badkur (P.W. 7) examined the axe and held that it could be the weapon of offence. It correspondent in size to the injuries on person of deceased Chain Singh. The axe was sent to the F.S.L. for chemical examination. The FSL found blood on the same. This axe was sent to serologist, however, his report is not there on record. Of course, it is a lapse on the part of prosecution, yet it is also over shadowed by the testimony of witnesses. Merely because report of serologist is not there on record the case of prosecution cannot be thrown out, the same being established by other evidence on record.

21. Appellant has merely denied the offence though he admits the relationship. His denial has been evasive and thus is of no avail to him.

22. In this case statement of child witness has been most natural and probable. It is supported by his shouts in which name of appellant as assailant is taken. Hearing such shouts near relatives inmates of the house have rushed to the spot. Certain neighbours also gathered. All of them saw the appellant with an axe running. Such story is supported by prompt FIR lodged within 3 hours at a police station situate about 3 kilometre away and by the medical evidence. Appellant merely denied the offence. There being no reason for false implication of the appellant, prosecution witnesses being common relatives of both the deceased and the appellant, in these facts and circumstances, the finding of fact recorded by the trial Court is unassailable.

23. Now, as to what offence is made out against the appellant? Appellant, has dealt with at least two blows of axe on his father-in-law cold bloodly without any provocation from him. Deceased Chain Singh was sleeping in his house defenceless. Cause of murderous assault was dispute about return of his wife Krishna Bai (PW. 6) who had come to her parents house harassed by the appellant by his cruel treatment and was demurring to return the refrom to the appellant. Injuries caused by dangerous weapon on the neck and mandible on vital part causing instantaneous death. Thus, clearly intention of appellant was to cause death or at least he had intended to cause such injuries which were sufficient in ordinary course of nature to cause death of deceased Chain Singh. Thus, it is a clear case under Section 302 of the Code. There has been no mitigating circumstance. Thus, we hold that conviction under Section 302 of the Code by the trial Court was justified.

24. Hence, there is no substance in this appeal. Conviction of the appellant under Section 302 of the Code is confirmed. The trial Court has already chosen the lesser penalty. There is no scope for interference. Hence, the appeal is dismissed. Finding and sentence awarded by trial Court are confirmed.