

**Misara Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Sep-04-1987

**Reported in :** 1988WLN(UC)64

**Judge :** K.S. Lodha, J.

**Appeal No. :** S.B. Criminal Jail Appeal No. 47 of 1986

**Appellant :** Misara

**Respondent :** State of Rajasthan

**Disposition :** Appeal dismissed

**Judgement :**

**K.S. Lodha, J.**

1. Accused Misra has been convicted under Section 304, Part-II, IPC and sentenced to 7 years' rigorous imprisonment with a fine of Rs. 200/-, in default of payment of fine, further rigorous imprisonment of two months by the learned Sessions Judge, Jalore by his judgment dated 19th December, 1985. Aggrieved of this judgment, the appellant has filed this appeal through jail.

2. I have heard learned Amicus Curiae and the learned Public Prosecutor and have gone through the record.

3. The facts of the case, briefly stated, are that on April 25, 1985 one Govind Ram was going to his shop from his house, when accused Misra armed with spade came near him and started giving blows with the spade Govind Ram fell down raising cries, but Misra did not stop and went on giving more blows. In the meantime, Hariram and Chamanlal, who were going to the house of Govind Ram reached the spot and saw the incident. They, however, could not interfere out of fear. After inflicting few blows and taking Govind Ram to be dead, Misra ran away from the spot. Then Hari Ram went to the house of Govind Ram and informed his son Jai Shankar about this incident. Jai Shanker then came to the spot and saw the condition of his father. Govind Ram was then taken to the hospital as his condition was serious. Dr. M.S. Rajpurohit, examined his injuries and informed the police, whereupon the ASI Bhanwar Singh reached the spot where Jai Shanker handed over the written report of this incident to him. A case under Sections 307 and 324 IPC was registered. The condition of the injured Govind Ram was deteriorating and, therefore, he was sent to Jalore Hospital where he succumbed to his injuries. Dr. Rajendra Purohit (PW 7) performed the post-mortem examination. Accused Misra was arrested on April 26 1985 The 'dhoti' and the shirt which he was wearing at the time of his arrest were stained with blood and, therefore, they were taken in possession by the police and sealed on that very day. Misra gave information while in custody to the police about the spade, which was recorded by the Investigating Officer vide Ex. P. 12. In pursuance of this information the 'Phawara' was recovered from house of the accused vide Ex.P/17 on April 27, 1985. After completing the investigation, the police put up the challan for offence under Section 302, IPC against accused Misra. He was committed to the court of Sessions where he pleaded not guilty to the charge under Section 302, IPC and was tried. The prosecution examined 11 witnesses and produced number of documents. The accused was, then, examined. He denied the prosecution story, but did not produce any evidence in defence. After hearing the learned Public Prosecutor and the learned Counsel for the accused, the learned Sessions Judge found the accused guilty and sentenced him as aforesaid.

4. The learned Sessions Judge has found that the fact that accused inflicted blows with a spade on the person of Govind Ram on April 25 1985 is amply established by direct evidence of PW 2 Hari Ram and PW 3 Chaman Lal, who had reached

the spot while Misra was inflicting the blows on Govind Ram and it is fully corroborated by the evidence of Jai Shanker son of Govind Ram, to whom, Govind Ram had narrated the story when he reached the spot. As Govind Ram was in serious condition at that time and later on died, the dying declaration made by him orally before Govind Ram is, therefore, admissible and corroborates the direct evidence. He has further found that this fact further stands corroborated by the medical evidence given by Dr. M L. Rajpurohit, who examined Govind Ram when he was first brought to the hospital at Sanchore and had found the following injuries on his person:

(1) Incise wound 3' X 3/4' X 1/2' horizontally placed over upper lip just below nose cutting upper lip in middle extending upto mandible;

(2) Incised wound 2' X 3/4' X bone deep horizontally placed extending from outer aspect of right upper lip to zygomatic grooves;

(3) Incised wound 3' X 3/4' X bone-deep horizontally placed over right half of occipital region 3' from right ear;

(4) Abrasion 3-1/2' X 1' vertically placed on lateral aspect of right fore-arm below elbow;

(5) Abrasion 1 1/2' X 3/4' vertically placed on lateral aspect of right arm 1-1/2' above elbow.

He has further stated that these injuries could have been caused by a spade. Dr. Rajendra Purohit, who performed the post-mortem examination on the dead body of Govind Ram also corroborates the evidence of Dr. M.L. Rajpurohit. He also states about these injuries and further that on opening the skull of Govind Ram he found blood collected on the right side as also in the duramater on both the sides of skull. He also found that lower part of the brain had depressed. According to him, Govind Ram died on account of shock on the head injury, which was sufficient in the ordinary course of nature to cause death. The story is further supported by the recovery of the axe, which was found to be stained with human blood on chemical and serological examination and also by the clothes which were

taken in possession by the police at the time of the arrest of the accused, which were stained with blood. Thus according to the learned Sessions Judge, it was amply established that the injuries on the person of Govind Ram had been inflicted by the accused Misra. On the question of nature of the offence, the learned Sessions Judge was of the opinion that since only one blow with the spade had been caused on the head, which resulted into a linear fracture and the other injuries were caused on the other non-vital parts of the body, the accused cannot be held guilty under Section 302, IPC as it appeared that the injuries intended to be inflicted by him were not sufficient in the ordinary course of nature to cause death, although the doctor has opined that the injuries were sufficient to cause death in the ordinary course of nature. He, therefore, convicted him under Section 304, Part-II, IPC.

5. Learned Amicus Curiae has raised a number of grounds challenging the prosecution case and has urged that the learned Sessions Judge should not have relied upon the prosecution evidence and the conviction could not have been based on it. I shall deal with these objections one by one.

6. The first contention of the learned Amicus Curiae is that the FIR has been lodged with delay and in any case it was sent to the court quite late. This according to him, makes the prosecution story suspicious and doubtful, but I do not find much substance in this contention. The incident had taken place at about 5.30 or 6.00 p.m. on April 25, 1985. The information about this incident was given to Govind Ram by Hari Ram by going to his house. Then, Jai Shanker came to the spot, saw the condition of his father and then he carried him to the hospital where the Doctor examined the injuries and thereafter he informed the police, whereupon the SHO Bhanwar Singh reached the hospital and, there, the First Information Report was handed over to him by Jai Shanker at 7.30 p.m. In these circumstances, the First Information cannot be said to be delayed. As to the sending of the First Information Report to the court concerned, it is urged by the learned Amicus Curiae that although the report was lodged on April 25, 1985 it reached the court as late as on 25 April 1985, whereas the police station and the court are situated in the same town. On a careful scrutiny of the record it appears that, as a matter of fact, the FIR had reached the court on April 26, 1985 because

there is a note by the clerk concerned to the effect that the FIR had been delivered through local Dak register by FC No. 163 on April 26, 1985 at 10 a.m. Thus, it appears that although it had reached the court on April 26, 1985, it may have been placed before the Presiding Officer on 25-1985 when he recorded that it may be registered. He has not mentioned that it has been received on the day. In these circumstances, the receipt of the FIR by the court also cannot be said to be delayed.

7. He, then pointed out that there is discrepancy in the evidence of the two eye-witnesses about the time of the incident as also the vehicle by which Govind Ram was carried to the hospital. According to the PW 2 Hari Ram, incident had taken place at about 5.30 p.m., whereas in the FIR it is mentioned that it took place at about 6.00 p.m. Further PW 2 Hari Ram says that Govindram was taken to the hospital in a hand, driven cart, whereas Chamanlal (PW 3) says that it was a 'Lorry'. PW 1 Jai Shankar says that it was a hand-driven lorry. In my opinion, these discrepancies are wholly immaterial and trivial. The time has been stated by the witnesses approximately and not by watch and, therefore, the difference of time between 5.33 p.m. and 6.00 p.m. cannot be said to be such as may make the statement of the witnesses wholly unreliable. The discrepancy about the vehicle pointed out by the learned Counsel does not appear to be in fact any discrepancy inasmuch as the nomenclatures of a hand-lorry, hand-cart and lorry have been given by different witnesses about the same vehicle. Hand-cart is commonly known as a hand-lorry also in common parlance.

8. Learned Public Prosecutor then pointed out that the alleged eyewitnesses Hariram and Chamanlal belong to the same casts as deceased Govind Ram and therefore, they are interested witnesses and cannot be relied upon. This contention does not at all appeal to me. The witnesses cannot be deemed to be interested merely because they belong to same caste as the complainant or the deceased. It depends upon the circumstances of the case and if the presence of the witness is natural and the evidence is otherwise reliable, it cannot be discarded on the ground that he belongs to the same caste as the deceased or the complainant. In this case, no doubt the complainant Jaishankar and the two witnesses Hariram and Chamanlal belong to the same caste, but their presence at

the spot cannot be said to be unnatural. It is stated by them that Govind Ram's daughter who was ailing for some time had come from Ahmedabad and they were going to pay visit to her to enquire about her health. On their way to Govind Ram's house, they happened to see this incident. Therefore, their attendance at the spot does not appear to be casual or uncommon. The incident had taken place in the village Sanchore and it is not surprising that being members of the same caste Hariram and Chamanlal were going to enquire about the health of the daughter of Govind Ram, who had come from Ahmedabad after treatment. It may further be stated that nothing has been brought in the cross-examination of these witnesses to discredit their testimonies nor has it been shown that they were in any way inimical towards accused Misra to falsely implicate him. Therefore, I am of opinion that the learned Sessions Judge was perfectly justified in relying upon that evidence.

9. It was then pointed out by the learned Amicus Curiae that as a matter of fact Hariram was not at all an eye-witness in as much as towards the end of cross-examination he has clearly stated that he had not seen the incident personally. I have carefully gone through the whole statement of Hari Ram and am clearly of the opinion that this evidence is highly misfit and appears to have been recorded incorrectly, because throughout in the examination in Chief and cross-examination up to that stage the witness was maintaining that he had seen the incident. There is absolutely nothing otherwise in the statement of this witness which may go to suggest that he was a fake witness. His presence at the spot, is deposed by Chamanlal also.

10. Learned Amicus Curiae then urged that the incident had taken place in the market and it is surprising that nobody except the two witnesses Hari Ram and Chamanlal who belonged to the caste of the deceased would have reached the spot on hearing the cries raised by Govind Ram. Therefore, according to him the story put-forward by these witnesses cannot be accepted. The site plan and the inspection note would go to show that as a matter of fact, the incident had not taken place in a busy market or a residential locality. The site plan shows that near about the place of incident, there were empty plots. The only residential houses shown near the place of occurrence are those of the accused and Rama and

Gova. It has not been brought out in the cross-examination of the witnesses that any one of them was present in their houses at the time of this incident, In these circumstances the prosecution cannot be held guilty of with-holdining any independent witness. If any of the inhabitants of the houses of Govind and Ramu Mochi were present at the spot they could have been produced by the accused in his defence. This has not been done and therefore, the evidence of the 2 witnesses cannot be discarded on the ground that the other persons who could be present at the spot in the normal course have not been produced. Therefore, I am clearly of the opinion that the criticism levelled by the learned Amious Curiae against the evidence of eye-witnesses Hariram and Chamanlal and the circumstantial evidence of Jaishankar, is without substance and on that count the testimony of these witnesses cannot be discarded. When the testimony of these witnesses is further corroborated by medical evidence as also the recovery of the axe at the instance and in pursuance of the information given by the accused and the recovary of the blood stained clothes of the accused from his person at the time of his arrest soon after the incident. Thus the evidence completely brings home the fact that accused Misra had inflicted the injuries on the person of Govind Ram as alleged by the prosecution.

11. In these circumstances the conviction of the appellant under Section 304 IPC is well founded. I am informed by the learned Counsel for the complainant that leave to appeal against acquittal of the accused under Section 302 was filed by the State, but was refused and in these circumstances, the conviction does not call for any interference.

12. Coming to the question of sentence, it may be pointed out that although the accused is an old man and on that ground, learned Amicus Curiae prayed for leniency. I am of the opinion that the sentence awarded to him is proper and does not call for any interference in as much as the deceased was an old man aged about 68 years. The accused not only caused injury on the head of the deceased but went on inflicting other injuries. The ground on which the accused is said to be annoyed with the deceased is that the deceased had earlier rebuked him for his misbehaviour under intoxication. For such a motive if the accused had acted in the aforesaid manner, does not deserve any leniency.

13. The result, therefore, is that the appeal fails and is hereby dismissed.

14. Before parting with the case, I must express my gratitude to the learned Amicus Curiae, who has thoroughly prepared the case and has argued it well.

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