
(2018) 05 MP CK 0194

Madhya Pradesh High Court (Jabalpur Bench)

Case No: Criminal Appeal No. 2340 Of 2005

Ram Baksha Patel

APPELLANT

Vs

State Of Madhya
Pradesh

RESPONDENT

Date of Decision: May 8, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 302, 304, 307, 325

Citation: (2018) 2 MPWN 54

Hon'ble Judges: S.K. Gangele, J; Anjuli Palo, J

Bench: Division Bench

Advocate: Mukesh Pandey, A.P. Singh

Final Decision: Dismissed

Judgement

S.K. Gangele J

1. Appellant has filed this appeal against the judgment dated 26/10/2005 passed in Sessions Trial No. 245/2003.

2. Appellant was prosecuted for commission of offence punishable under Sections 302 and 307 of the IPC. The trial court has convicted the appellant

for commission of offence punishable under Sections 302 and 325 of IPC and awarded sentence as mentioned in the impugned judgment.

3. Prosecution story in brief is that Bitol Bai along with her mother Pan Bai was travelling in the tractor of Kashiprasad. When the tractor was started

moving, appellant chased them. He had lathi with him. Both the persons Bitol Bai and Pan Bai alighted from the tractor and ran away from the place.

Appellant chased them and inflicted injuries on the head of Pan Bai. He had also inflicted injuries to Bitol Bai. Other persons reached there. They had

tried to pacify the quarrel. Deceased Pan Bai was died on the spot. Appellant had enmity with the deceased because he had belief that Bitol Bai and

Pan Bai both had implicated his son-in-law. Bitol Bai lodged report at the police station-Nagoud. Police conducted investigation and filed charge-sheet.

Appellant abjured his guilt and pleaded innocence. The trial court held appellant guilty and awarded sentence.

4. Learned counsel for the appellant has submitted that conviction of the appellant is based on the sole evidence of PW/1 who is daughter of the

deceased, hence his evidence is not reliable. It is further submitted by learned counsel for the appellant that even if the evidence of the prosecution be

accepted and looking to the injuries sustained by the deceased, offence committed by the appellant would fall under Section 304 Part-I of IPC. In

support of the aforesaid contentions learned counsel for the appellant relied on the judgment of the Apex Court in the case of Kusha Laxman

Waghmare Vs. State of Maharashtra (2014) 10 SCC 298. It is further submitted by learned counsel for the appellant that as per FIR one injury was

caused by the appellant to the deceased on his leg.

5. Contrary to this learned counsel for State has submitted that there is sufficient evidence to hold the appellant guilty for commission of offence of

murder. He chased both the ladies and he had beaten them badly. His intention and motive was to kill the deceased. The trial court has rightly held

appellant guilty for commission of offence of murder and awarded proper sentence.

6. PW/1 Bitol Bai, is the daughter of the deceased, she is an injured eye witness. She deposed that on the date of incident at around 10 O'Clock I

and my mother were going on tractor of Mr. Kashiprasad, when the tractor was started at Tighara, appellant ran away towards us. He had lathi with

him. We ran away from the place. Appellant had inflicted 8 to 10 blows at my mother. First blow was given by him on her head and other blows on

her leg and other parts of the body. She fell down. I tried to save my mother. He had also beaten me. My mother was died on the spot. Other persons

also reached at the spot. Appellant was saying that you had implicated my son-in-law, I will not leave you alive. Son-in-law of the appellant is real elder

brother of my husband. Thereafter I went to police station-Nagoud and lodged report. I affixed my thumb impression on the report which Ex. P/2.

7. PW/2 turned hostile. PW/3 & PW/4 turned hostile. Both the witnesses deposed that deceased fell down, hence, she received injuries.

8. PW/ 5 Kashiprasad deposed that at around 10 O'Clock I was going in a tractor from Tighara to Badora. Panbai and Bitolbai were also sitting in

the tractor. Appellant stopped the tractor, after that Panbai and Bitolbai alighted from the tractor . They ran away. At that time appellant inflicted

injuries by lathi at Pan Bai, Bitol Bai tried to save her, he had also beaten Bitolbai. She had gone to the hospital and police station.

9. PW/6 Rajkumar Patel, admitted his signature on Ex. P/9 spot map prepared by Patwari.

10. PW/7 Chandra Kumar Shrivastava, Patwari who prepared spot map.

11. PW/8 Ramprasad, is the witness of seizure of Saree of the deceased.

12. PW/11 Dr. B.P. Mishra, who examined injured Bitol Bai. He also performed postmortem of the deceased. He deposed that on 25/04/2003 I

examined Bitol Bai D/o late Heeraman Patel and noticed following injuries on her person.

1. 7.2x9 cm

2. 2x1.5 .

3. 2x2.5

4. 2x1.3 .

5. 7x1x5x7 .

6. 10x6 . 106

He further deposed that on 25/04/2003 I performed postmortem of the deceased and noticed following injuries on her person of the body.

1- 20x18

Ã, 2- 10x6 -1

3- 2x1x0.8

4- 2x1x06

Ã, 5- 5x1x1

13. PW/10 L.P. Mishra, deposed that on 25/04/2003 I was posted as Sub-Inspector, Police Station- Nagod. Injured Bitol Bai lodged report at Police

Station which is Ex. P/2, I had written the report. She affixed her thumb impression. I sent Bitol Bai for medical examination thereafter, I prepared

spot map Ex. P/15. I also seized plain earth and red earth vide seizure memo Ex. P/5. On the memorandum of appellant Ex. P/14 a lathi was seized

from his house vide seizure memo Ex. P/6. I signed both the documents. I recorded statements of Ramabai, Bitolbai, Brajesh Kumar, Shailendra

Kumar, Beerendra Kumar, Kashi Prasad on 25/04/2003. Appellant was arrested on 26/04/2003 vide arrest memo Ex. P/16.

14. Although PW/1 is the daughter of the deceased, she is an injured eye witness. As per evidence of doctor PW/11, PW/1 Bitol Bai also received

serious injuries in the incident when she tried to save the deceased.

15. Hon'ble Apex Court in the case of Abdul sayeed Vs. State of Madhya Pradesh (2010) 10 SCC 25 9has held as under in regard to

appreciation evidence of injured eye witnesses.

Ã“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has

been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a

witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the

crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

""Convincing evidence is required to discredit an

injured witness"". (Vide Ramlagan Singh & Ors. v. State of Bihar, AIR 1972 SC 2593; Malkhan Singh & Anr. v. State of Uttar Pradesh, AIR

1975 SC 12; Machhi Singh & Ors. v. State of Punjab, AIR 1983 SC 95;7 Appabhai & Anr. v. State of Gujarat, AIR 1988 SC 696; Bonkya

alias Bharat Shivaji Mane & Ors. v. State of Maharashtra, (1995) 6 SCC 447; Bhag Singh & Ors. (supra); Mohar & Anr. v. State of Uttar

Pradesh, (2002) 7 SCC 606; Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270; Vishnu & Ors. v. State of Rajasthan, (2009) 10 SCC

477; Annareddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh, AIR 2009 SC 226;1 Balraje alias Trimbak v. State of Maharashtra,

(2010) 6 SCC 673).

16. The Apex court has held that the evidence of injured eye witnesses has to be considered as most reliable. Apart from PW/1 there is another eye

witness PW/5, he deposed that appellant had beaten the deceased, PW/1 and deceased were ran away from the spot.

17. Now the next question is that what offence the appellant has committed. As per the evidence when the tractor was started, the deceased and

PW/1 mother and daughter had apprehension that appellant could beat them, they alighted from the tractor and ran away. Appellant was armed with

lathi. He chased both the persons. He inflicted two blows on the head of the deceased. Those injuries were on vital part which was serious in nature.

As per evidence of doctor injuries were caused by hard and blunt object. PW/1 is the daughter of the deceased, when she tried to save her mother

appellant had also beaten her badly. She received near about six injuries. There was also a fracture on PW/1. Deceased was died on the spot. Lathi

was seized from the appellant. Blood was found on the lathi. Aforesaid fact has been proved from the FSL report Ex. P/20.

18. In view of the evidence on record, in our opinion, the intention and motive of the appellant was to cause murder of the deceased. PW/1 also

received serious injuries, hence, the trial court has rightly convicted the appellant for commission of offence punishable under Section 302 and 325 of

IPC. We do not find any merit in this appeal, it is hereby dismissed.