
(1995) CriLJ 1870

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Appeal No. 582 of 1986

Naniya Nanuram and
Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Nov. 17, 1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 157#Penal Code, 1860 (IPC) " Section 302, 304(II), 323, 34, 341

Citation: (1995) CriLJ 1870

Hon'ble Judges: R.D. Shukla, J; J.G. Chitre, J

Bench: Division Bench

Advocate: Jaisingh, for the Appellant; G. Desai, for the Respondent

Judgement

R.D. Shukla, J.

The appeal is directed against the judgment and order dated 28th October" 86 of IIIrd Additional Sessions Judge, Dhar,

passed in S.T. No. 177/84, whereby the accused-appellants 1 to 4 have been convicted u/s 302/34, I.P.C., for having committed murder of

Babulal s/o Narottam, on 6-9-84, in village Chor Baodi and sentenced them to undergo imprisonment for life each. Accused Naniya and Gulab

have been further convicted u/s 323/34 for having caused simple-injuries to Ramgopal and Madan and sentenced them to undergo R. I. for 3

months each. Appellant Rajababu has been acquitted of the offence under Sections 302/34 and 323/34, I.P.C., but has been convicted u/s 341,

I.P.C., and sentenced to a fine of Rs. 500/- each. In default of payment of fine he shall undergo R. I. for 7 days.

2. Brief history of the case is that deceased Babulal, (PW 7) Ramgopal and (PW 8) Madan, who are residents of Bachhanpur had gone to jungle

(forest) for collecting teak leaves to be used for constructing huts. They were returning at about 3 p.m. They were crossing the rivulet, near village

Chor Baodi, the 4 accused persons Naniya, Gulab, Jamiya and Rugga stopped them and asked them that they are being called by accused

Rajababu. Madan and Babulal were carrying the head load of thin sticks of teak wood (Kimdis as it is called in the local dialect) Ramgopal was

carrying the bundle of leaves. All the three persons put off their head load. Meanwhile 4 accused persons reached near them. They took out kimdis

(thin sticks of teak wood) and began beating them. Babulal fell down because of the beating and became serious. It is alleged that beating was

done at the instance of accused-appellant Rajababu. Thereafter Babulal was dragged near Rajababu. Ramgopal and Madan have also sustained

injuries. Because of the beating, Babulal had become unconscious. Thereafter Rajababu asked all the three injured persons to be released and

asked them not to come to that area.

Babulal was brought to village Bachhanpur on a cot and thereafter he was taken to police station, but he died on way.

3. The matter was reported by Ramgopal in police station Nalchha. Madan and Ramgopal both were medically examined and doctor found 4 & 5

injuries respectively on their body. The autopsy on the body of Babulal was conducted by P. W. 6 Dr. B. C. Puri. He found nearly 11 injuries on

his body. There was dislocation of wind pipe and congestion over it; fracture of cervical vertebree and fracture of 10th rib of the right side of

sterno costal region. He further found fracture on the middle of left 10th rib. lung was also injured because of fracture of right rib. Doctor further

opined that the injuries could be caused by kimdis (thin sticks) which were seized during investigation and sent to Medical Officer.

The Police Officer Abrar Ahemad (PW 10) prepared the spot map and recorded statements of the witnesses and after completion of the

investigation filed challan against the accused persons, which was committed to the Court of Session in due course.

The accused abjured the guilt and pleaded false implication. Learned trial Judge has convicted and sentenced them, as above. Hence, this appeal.

4. The contention of the learned counsel for the appellants is that P.W. 1 Gulab, P.W. 2 Badrilal and PW 3 Kamdar like accomplices, their

involvement in the offence was itself suspected and they are, therefore, got up witnesses.

P.W. 7 Ramgopal and P.W. 8 Madan are though injured persons, but they did not know the accused persons from before and, therefore,

identification by them of the accused persons is doubtful. Since no identification parade was held and, therefore, the identification in dock carried

no value.

It has also been submitted that FIR is anti-dated and there was no compliance of Section 157 of the Cr. P. C. and, therefore, the same cannot be

read in evidence and cannot be taken in aid for basing the conviction.

It has also been submitted that there was no charge of wrongful confinement or wrongful restraint and, therefore, Rajababu could not be convicted

u/s 341 of the I.P.C., as the same cannot be termed to be a minor offence of murder or assault.

It has further been submitted that in the inquest report there is reference of beating by kick & fist blows and stones, but the eye-witnesses have not

stated any-thing about the injuries having been caused by kick, fist blows and stones, and, therefore, their version cannot be accepted.

5. As against it, learned counsel for the respondent-state has supported the case of the prosecution and submitted that even if P.W. 1,2 & 3 are

taken to be accomplished their evidence cannot be wholly discarded. The only requirement is that their version should be corroborated from other

reliable evidence.

Ramgopal and Madan have sustained injuries during the incident and, therefore, their presence on the spot cannot be doubted. The incident had

happened at 3 p.m. and they are the residents of neighbouring village and, therefore, there was no possibility of mistaken identification.

It has also been submitted by the learned counsel for the State that though there has been compliance of requirement of Section 157, Cr. P. C.,

and the same was not challenged during cross-examination of the witnesses, but even if it is taken that there was no compliance the whole

prosecution case cannot be thrown overboard, specially in view of the presence of eye-witnesses account by five persons in the case.

6. The injuries found on the body of deceased Bapulal has not been disputed during the course of arguments. P.W. 1 Gulab, P.W. 2 Badrilal,

P.W. 3 Kamdar, P.W. 7 Ramgopal and P.W. 8 Madan have supported the story of prosecution. The credibility of these witnesses has been

vehemently attacked by the learned counsel for the defence.

We would like to examine the evidence of P.W. 1 Gulab, P.W. 2 Badrilal and P.W. 3 Kamdar first, as they were present on the spot from before

the arrival of Bapulal, Ramgopal and Madan. P.W. 1 Gulab has stated that he was present in the hut of one Jhitra and was roasting maize. He also

stated about the presence of Jhitra, Nanuram and Kamdar.

Meanwhile, Babulal, Gopal and Madan came from jungle and were going to village Bachhanpur. Thereafter, Rajababa asked all the four accused

persons to catch hold of them and to bring them before him. He further, states that all the three were brought. They were being beaten by kimdis.

He, further, states that accused Rugga @ Rughnath and Jamiya caused injuries to Babu, thereafter, Naniya and Gulab also caused injuries. He

further states that he asked him, Kamdar and Nanuram to go and save Babulal or else he may be beaten to death. He went to Babulal, he was in

severe pain. He along with other persons tried to save him. Babulal walked few steps and fell down. He has further stated that Kamdar and

Nanuram took Babulal to village Bachhanpur on a cot. Similar statements have been given by P.W. 2 Badrilal and P.W. 3 Kamdar. All the three

witnesses have admitted that they were detained in the police station for few days and were released thereafter.

On the basis of this admission, learned counsel for the defence has submitted that since they were themselves suspected as persons involved in the

case they cannot be relied on for basing the conviction of the accused persons.

6A. Even if as these three witnesses, referred above, were suspected at one stage of investigation, as being persons involved in the incident, their

evidence cannot be totally rejected. However, the same will have to be accepted with caution and shall have to be scrutinised closely and further

corroboration in the matter may be sought.

These three witnesses firstly stand corroborated from the medical evidence as 11 injuries were found on the body of deceased Babulal and 4 to 5

injuries each were found on the body of P.W. 7 Ramgopal and P.W. 8 Madan.

7. P.W. 7 Ramgopal and P.W. 8 Madan have also given similar story. They have stated that these 4 accused persons caused injuries to Babulal

and to them also. They were medically examined. Four to five injuries were found on the body of both these witnesses. Since these two persons

were also assaulted and sustained injuries during incident, therefore, their presence on the spot cannot be doubted.

Thus, these three witnesses referred above, stand corroborated fully from the evidence of these two witnesses.

8. Learned counsel for the defence has then submitted that even if the presence of these witnesses Ramgopal and Madan at the place of incident is

accepted, they cannot be relied as they did not know the accused persons from before.

Learned counsel has tried to support his arguments on the basis of admissions made by P.W. 1 Gulab in para-6 of his statement that Ramgopal

and Madan had inquired from him in village Bachhanpur as to whether he knows and can identify the assailants and the same was answered in the

affirmative by him (P.W. 1 Gulab). The assailants are residents of neighbouring village and, therefore, it cannot be said that they were totally

unknown to these witnesses i.e., Madan and Ramgopal. Secondly, the incident has happened during day time at about 3 p.m. in the sun light and,

therefore, there was no possibility of mistaken identification.

9. Even if the contentions of learned counsel is accepted for the sake of arguments that Ramgopal and Madan were not knowing these accused

persons but they fully stand identified from the three witnesses referred above i.e., P.W. 1 Gulab, P.W. 2 Badrilal and P.W. 3 Kamdar. Since

these three witnesses stand corroborated from the evidence of these two injured persons, that further fortifies their contention. It would no doubt

has been prudent to hold! identification parade with respect to witnesses who did not know the accused persons before occurrence, but failure to

hold such a parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification would be a

matter, of course, of fact. (AIR 1989 SC 350):(1958 Cri LJ 698).

In this case P.Ws. 1,2 & 3 undisputedly know all the accused persons from before. Even if they are termed to be accomplished their testimony

would only require independent corroboration and cannot be rejected wholly. Presence of prosecution witnesses (P.W. 7 Ramgopal and P.W. 8

Madan), they being injured persons cannot be doubted and as referred above. These three witnesses (P.W. 1, P.W. 2 & P.W. 3) stand fully

corroborated from the evidence of P.W. 7 and P.W. 8. The name of these accused persons find place in the FIR Ex. P/9 also, which has been

lodged by Ramgopal P.W. 7.

Since these accused persons have been named in the FIR test identification parade was not required to be conducted. Dharamvir and Another Vs.

The State of Madhya Pradesh,

Thus, P.W. 1, P.W. 2 & P.W. 3 stand corroborated not only from the evidence of P.W. 7 Ramgopal and P.W. 8 Madan, but from the FIR (Ex.

P/9), postmortem report, (Ex.P/14) and statement of Dr. B. L. Puri (P.W. 6). The injuries found on the body of P.W. 7 Ramgopal and P.W. 8

Madan have been proved by Dr. J. S. Awasiya (P.W. 5) vide Ex. P/12 & P/11 respectively. Jhitra P.W. 4 is also eyewitnesses of the incident. He

has also stated that under the directions of accused Rajababa all the 4 accused persons caught hold Ramgopal, Madan and Babu. They were

carrying head load of kimdis. He has also stated that all the four caused injuries to Madan, Ramgopal and Babulal. There is absolutely nothing in

the cross-examination of this witness, which can render his evidence unreliable. Thus, along with the five eye-witnesses referred above the eye

witness account of P.W. 4 Jhitra is also available in this case. This all goes to prove that the accused persons caused injuries to Ramgopal and

Madan and further cause fatal injuries to Babulal, in pursuance of common intention of their all.

10. Learned defence counsel, thereafter, submitted that, it has not been proved as to whether the information of FIR was sent to the Magistrate u/s

157, Cr. P. C., and, therefore, the FIR (Ex. P/9) would not be admissible in evidence.

Though, it is the requirement of law that the report of the offence, if any, be immediately sent to the Magistrate having jurisdiction, but any

irregularity in that will not be sufficient to throw the case of the prosecution over board. What is required is that the evidence should be closely

scrutinized and the possibility as to whether FIR has been anti dated should also be examined.

11. In this case, there is eye witness account of six witnesses. It is not the case of the defence that they are in any way on inimical terms with the

accused persons and, therefore, the entire testimony of all the six eye-witnesses cannot be rejected merely because the fact, of information being

sent to Magistrate u/s 157, Cr. P. C., has not been proved.

Even otherwise, it appears that the same was not challenged at the earlier stage and now this point has been raised at appellate stage.

12. Learned counsel has referred to a case, reported in The State Vs. Nanda Singh Jhanda Singh, and submitted that police officer was interested

in the success of the prosecution and he has done much padding in the case.

We are in agreement with the observations made by Division Bench of this Court that the police are too often tempted to introduce padding in a

case in their over-zealousness to establish a charge, which they believe to be true in support of which the evidence in their possession is weak and

this practice has to be condemned. We do not find that padding. In this case, all the six eye-witnesses referred above, with no inimical terms with

accused are not likely to speak falsely against them and, therefore the case referred does not help the accused persons in any way.

13. Learned counsel, therefore, referred to a case reported, in 1993 MP LJ 90, and submitted that the prosecution has failed to prove prompt

compliance of Section 157 of the Cr. P. C. and, therefore, the same ought to be accepted to be anti timed. We do not agree with this contention

of the learned counsel as the observation in that case was made in view of the special facts of that case. Here is the case in which the prosecution

rests on eye-witnesses account given by 6 eye-witnesses.

14. Learned counsel, thereafter, tried to show minor inconsistencies in the statement of these eyewitnesses. In our opinion the eye-witnesses

account of the witnesses cannot be rejected because of minor inconsistencies in their statements. It is a matter of common experience that if parrot

like story is not given by the witnesses, the same is bound to have some discrepancies. Every person who witness an offence tries to describe it

from his own angle and according to his own perception. Under these circumstances certain differences are bound to occur, but evidence of eye

witness if it is otherwise reliable, cannot be rejected merely because of minor discrepancies, differences or contradictions.

In our opinion, therefore, it has rightly been found that accused persons i.e., appellant Nos. 1 to 4 have caused injuries to Ramgopal, Madan and

Babulal and Babulal died in consequence of injuries caused by them.

Learned trial Judge has found them guilty for murder, but looking to the size of sticks used for beating we do not believe that they really wanted to

commit murder of Babulal. However, injuries were caused on vital part of the body and, therefore, it can not be assumed that they had knowledge

of likelihood of murder. -In our opinion, therefore, the accused persons cannot be taken to be guilty of murder u/s 302, I.P.C., but they shall

definitely be held responsible for culpable homicide not amounting to murder i.e., causing injuries with a knowledge of likelihood of death, which is

punishable u/s 304(II) of the I.P.C.

15. Learned counsel for the defence has submitted that Rajababa (accused-appellant No. 5) has been acquitted of the offence of murder, but has

been convicted u/s 341 of the I.P.C., and since there was no charge of wrongful confinement and wrongful restraint he cannot be convicted for the

same.

Accused Rajababa was also charged u/s 302, I.P.C. It has been proved beyond reasonable doubt that the two injured persons Ramgopal and

Madan and deceased Babulal were brought by force by accused appellant Nos. 1 to 4 under orders of Rajababa.

16. Asking a person to go to a particular direction Would amount to & wrongful confinement. The wrongful restraint would be an offence when a

person is prevented from proceeding towards a particular direction. Here the injured and deceased were forced to walk to a particular direction

under duress and because of fear and, therefore, the offence would amount to wrongful confinement. Rajababu has been convicted for a lesser

offence.

17. From the evidence above, it appears that the whole incident happened under the orders and directions of Rajababa (appellant No. 5) and his

acquittal in the case does not appear to be justified, but there is no appeal against him by the State, therefore, we refrain to express further opinion

in the matter.

18. Now, so far as the objection as to the nature of offence and punishment for minor offence is concerned, .in our opinion, a person charged for

murder can be convicted u/s 342 or 341 like offence u/s 411, I.P.C., when he is found in possession of some stolen property.

19. As a result, the appeal filed by Rajababa, appellant No. 5 fails and is dismissed. The appeal of accused appellant Nos. 1 to 4 viz. Naniya @

Nanuram, Gulab s/o Gopiya, Jamiya @ Jamsingh and Rugga @ Rughnath are partly accepted. They are acquitted of the offence punishable u/s

302, I.P.C., i.e., for committing murder of Babulal. However, they are convicted u/s 304(11), I.P.C., for culpable homicide not amounting to

murder and sentenced to imprisonment for 7 years each, with a fine of Rs. 2000/- each; in default of payment, of fine they shall further undergo R. I.

for ten months. The fine, if recovered, Rs. 5,000/- be paid to the heirs of deceased Babulal, as compensation.

So far as the appeal of Naniya and Gulab against their conviction u/s 323 read with Section 34, I.P.C., for causing injuries to Ramgopal and

Madan is concerned the same is dismissed and the sentences imposed is also affirmed. Sentences shall run concurrently.

The accused-appellants are on bail, they shall surrender before the C.J.M., Dhar on or before 5-12-94 for serving out the remaining part of the

sentences, as awarded.