
(2003) 01 MP CK 0039

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal A. No. 733 of 1994

Prabhu and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Jan. 29, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 149, 300

Citation: (2003) CriLJ 2130

Hon'ble Judges: S.L. Kochar, J; Deepak Verma, J

Bench: Division Bench

Advocate: Jaisingh, sisted by Vikas Yadav, for the Appellant; G. Desai, Dy. A.G., for the Respondent

Final Decision: Dismissed

Judgement

1. The appellants, eleven in number, have preferred this appeal against the judgment dated 27-10-1994 rendered by the learned Addl. Sessions Judge, Jaora District Ratlam in Sessions Trial No. 127/1993 thereby convicting the appellants for the offences punishable under Sections 148, 450 and 302 read with Section 149 of the IPC and sentencing them each to R.I. for six months with fine Rs. 500/-, in default of payment of fine to suffer two months" additional R.I. u/s 148, IPC, R. I. for three years and fine Rs. 500/-, in default of payment thereof to suffer additional R.I. for two months u/s 450, IPC and imprisonment for life with fine of Rs. 4,000/-, in default of payment of fine, to suffer additional R.I. for six months u/s 302/149, IPC. The substantive sentences have been directed to run concurrently, The amount of fine, which works out to Rs. 55,000/-, has been ordered to be paid to the widow of deceased as compensation.

2. The facts as unfurled by the prosecution before the trial Court are that on 16-5-1993 at about 2.30 or 3.00 p.m. (PW 1) Jagannath was reciting "Ramayan" in the verandah of his house. At that juncture deceased Ranjit Singh alias Babb Banna,

after wishing, sat near him. At that time, all the accused/appellants reached over there. Seeing the appellants, who were armed with Dharies and Lathis deceased, rushed inside the house of PW 1 Jagannath. The appellants challenged the deceased to come out of the house. When the deceased did not come out, the appellants broke open the door by means of a pickaxe (Gainti) and crowbar (Sabbal), entered inside the house and brought the deceased out assaulting him. They were saying that the deceased had done Mangu Bagri to death, they would not spare him (the deceased). At that time, PW 2 Siddhnath had reached there. It is said that the appellants took the deceased towards village school and there also, they assaulted him with their respective weapons. PW 3 Nagusingh and PW 11 Jamnalal were passing through by that way at that time. They also saw the Incident and Informed Bharatsingh (PW 4), uncle of the deceased who informed the police about the Incident, on telephone. Thereupon, the Station House Officer M.K. Upadhyaya (PW 11) rushed for the scene of occurrence at village Lalkheda with police force. There he saw the deceased lying dead. The dead body of Mangu Bagri was also lying nearby. PW 1 Jagannath narrated the incident to the SHO Shri Upadhyaya (PW 11) whereupon he recorded Dehati Manishi (Ex.P/1) and prepared the spot map (Ex. P/2).

3. The dead bodies were sent to the hospital for post mortem examination. He also found the door of the house of Jagannath in broken condition, one pickaxe and one crowbar lying there. They were seized. The accused persons were arrested. Two Dhariyas and a sword were seized from accused Prabhu, Bhawarlal and Kailash. At the instance of remaining accused/appellants lathis were seized.

4. Dr. Mahaveer Khandelwal performed autopsy on the dead body of deceased Ranjeet Singh alias Banna and found as many as 12 injuries including number of incised wounds and multiple contusions and swelling on right and left hands. Injury No. 2 is also describing two abrasions. Therefore, the deceased sustained number of injuries. Postmortem report is Ex. P/13. In the opinion of the doctor, the deceased died of shock due to multiple injuries.

5. After usual investigation, the accused/appellants were put to trial. They pleaded not guilty and claimed to be tried. Their defence was that they have been falsely implicated.

6. We have heard Shri Jaisingh, learned Senior counsel assisted by Shri Vikas Yadav for the appellants and Shri G. Desai, learned Dy. Advocate General appearing for the State and carefully perused the entire record available.

7. Having regard to the postmortem report (Ex. P/13) and the statement of the medical Expert Dr. Khandelwal, it is crystal clear that the deceased died a homicidal death. _

8. Learned counsel for the defence has strenuously argued that the appellants had acted in a right of self defence of person of Mangusingh whose dead body, was

found near the scene of occurrence, where the dead body of the deceased Ranjeetsingh was lying. According to him, even if right of defence of person of Mangusingh was not pleaded specifically by the appellants, they could be given benefit of this exception and for this there are material circumstances available on record. He also argued that Dehati Nalishi (Ex.P/1) is an important piece of evidence and it could not be termed as First Information because, prior to that telephonic information was also given to the police, which is Ex. P/5 recorded in Roznamcha Sanha No. 568 at the same Police Station. In this Roznamcha Sanha Report, the names of the appellants are not mentioned.

9. To bolster his submissions, he placed reliance on the judgments of the Supreme Court rendered in *Pariasami v. State of T.N.* 1997 SCC 121 : (1997 Cri LJ 4097) and [Seriyaal Udayar Vs. State of Tamil Nadu](#). In opposition, the learned Dy. Advocate General Shri Desai has vehemently argued and submitted that the accused persons have not taken the plea of right of self defence. In cross-examination of eye witnesses, no suggestions were given to them giving opportunity to them to explain the death of Mangusingh from the appellants' side. In accused-statement u/s 313, of the Cr.P.C., the appellants have not uttered even a single word about acting in self defence. They have not examined any witness in their defence and also not filed and got proved any document to that effect whereas u/s 105 of the Evidence Act, burden lies on the accused persons to prove their defence by preponderance of probabilities though the same is not as onerous as on the prosecution. But, at least they must come out with some story which may be examined by the Court for coming to a true conclusion. He further submitted that the defence has submitted before the trial Court that the deceased Ranjeetsingh of the present case and Mangu Singh Bagri (deceased of the other side) entered into quarrel and assaulted each other resulting into their death. But, postmortem report of Mangu Bagri has not been filed and got proved by the defence. This story does not appear to be acceptable in view of the number, nature and size of injuries present on the deceased Ranjeetsingh which clearly indicates that he was assaulted by different weapons by number of persons. He further put forth that there is clear evidence available on record through Station House Officer PW 13 N.K. Upadhyaya that at the first instance in village Lalakhed at 2.00 p.m. Mangu Bagri belonging to the accused/appellant party was done to death and thereafter, the deceased of the present case named Ranjeetsingh was brought from inside the house of Jagannath (PW 1) up to the school, where the dead body of Mangu Bagri was lying and there just to wreck vengeance the appellants had assaulted him. After commission of murder of Mangu Bagri, Crime 116/93 was registered against the deceased Ranjeetsingh alias Banna and since he was dead, the said case was closed and the deceased Ranjeetsingh alias Banna was murdered by the appellants for taking revenge. Therefore, the appellants are not entitled to the benefit of self defence or defence of grave and sudden provocation.

10. The appellants are not expected to take the law in their own hands. Both the incidents had taken place at different time. Therefore, the question of acting in self defence of Mangu Bagri by the present appellants would not arise.
11. According to the prosecution Ex. P/15 Sanha Report cannot be treated as First Information Report because, it was not disclosing any cognizable offence. Every telephonic message about any incident to the police cannot be treated and considered as First Information Report as per provision u/s 154 of the Code of Cr. Procedure. Over and all, the learned Prosecutor has supported the judgment and findings recorded by the trial Court.
12. Learned counsel for the parties have invited attention of this Court towards the order sheet dated 8-8-1994 by which, the learned trial Court ordered for production of the case diary of Crime No. 116/93 pertaining to the murder of Mangu and order sheet dated 11-10-1994 whereby the learned Trial Court had dismissed the application of the prosecution u/s 311, Cr.P.C., for production and proving the First Information Report and Dehati Nalishi lodged by Prabhu (son of the deceased Mangu and appellant No. 1 in the instant appeal). This application was vehemently opposed by the appellants. With the consent of the counsel, this Court has directed for production of complete case diary of Crime No. 116/93 regarding murder of Mangu, father of appellant No. 1.
13. We have perused the First Information Report, Dehati Nalishi and Postmortem Report. The First Information Report is showing the date and time of the incident as 16-5-1993 at 2.00 p.m. in village Lalakheda on interesection of three roads, where the deceased Mangu and deceased Ranjeet Singh (deceased in the present appeal) were present and talking with each other and deceased Ranjeet Singh caused him three knife blows. This was witnessed by appellant No. 1 Prabhu. Postmortem Report is also, showing three injuries. Obviously after receiving these three injuries, the deceased Mangu could have not been in a position to cause as many as 12 injuries, out of which some were the multiple contusions and all injuries were by different weapons. In this First Information Report and Dehati Nalishi, the appellant No. 1 has also not described the presence of more than one person. Photo-stat copies of all these documents duly certified by the Prosecutor Shri Desai are taken on record. We are also keeping the complete case diary of Cr. No. 116/93 along with the record of this appeal permanently because, now this diary is not required any where for any purpose. We have used the case diary by invoking the provisions u/s 172(2) of the Cr.P.C.
14. It is also pertinent to note here that though the trial Court has passed the order for production of this case diary on 8-8-1984, but the defence (appellants/accused persons) had not paid any heed to remind the Court for insisting the prosecution to produce the case diary. This was obvious because, the facts of this case are clearly indicating that the incident of deceased Mangu was altogether a different incident at different place and time in comparison to the incident of murder of deceased

Ranjeet Singh in the present appeal.

15. Having heard learned counsel for the parties and after going through the entire record carefully, we are of the opinion that the judgment and finding arrived at by the trial Court is not required to be interfered with as the same is based on proper, legal and sound reasoning as well as appreciation of evidence available on record.

16. There cannot be any denial regarding legal principle that initial burden lies on the prosecution to prove its case beyond reasonable doubt and the prosecution cannot get strength from the weakness of the defence. Even if specific defence is not taken by the appellant-accused persons regarding, falling of their case in any of the exceptions of Indian Penal Code, but the same can be considered, if material available on record is spelling out such defence in their favour. They also cannot take alternative defence. But, at the same time, the provision u/s 105 of the Evidence Act cannot be ignored which reads as under :--

"105 : Burden of proving that the accused comes within exception."

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

17. Supreme Court in the case of [Patil Hari Meghji and Another Vs. State of Gujarat](#), has held that (Para 7)--

"The nature of injuries on the deceased clearly shows that there could be no question of a plea of private defence. The accused party had come to teach the deceased a lesson for having raised dispute in respect of land about which they had hinted even a month back when the report was lodged.

Also see : [Mohinder Pal Jolly Vs. State of Punjab](#), .

18. Dealing with the first contention of the learned counsel for the appellants for establishing the case of private defence that there was no trail of blood available on the road from the house of Jagannath (PW 1), from where the deceased was dragged and was taken up to the scene of occurrence as shown in the map (Ex. P/2). But, no questions were put by the defence to the eyewitnesses PW 1 Jagannath, PW 2 Siddhnath and PW 3 Nagusingh that there was trail of blood on the road. In the map (Ex.P/2) house of Jagannath is shown at point No. 10 from where the deceased Ranjeet Singh was taken up to the point No. 2. This is a village road. Possibility of non availability of blood cannot be ruled out by the time of arrival of police on this road, because, of use of road by the people and vehicles. Apart from this, no questions were put to the Investigating Officer by the defence in this regard whether there was absolutely no blood available on the said road or blood was available but the same was not seized. This factual aspect will make a lot of

difference.

19. Supreme Court in the case of [Garib Singh and Others Vs. State of Punjab](#), in para 11 has appreciated this kind of argument and held that the blood would first get soaked in the clothes of the injured. Moreover, by the time the police had come to the spot, number of villagers and vehicles may have passed to and fro over the path. In this judgment, in para 7 the Supreme Court has held as under regarding way of appreciation of evidence in the criminal case --

"We have only disposed of the defence version first because the learned counsel for the appellants placed it in the forefront and tried to convince us that it was not as incredible as the High Court thought it to be. Learned counsel for the appellants asserted that truth is stranger than fiction. We think that at any rate in appraising evidence led in law Courts, such an assumption would be extremely, hazardous one to adopt. If it were adopted it would introduce an illegal criterion for appraising evidence. Section 3 of the Indian Evidence Act enables a Court to employ only the standards of a prudent man in judging what is to be deemed to be proved according to law. And, Section 114 of the Evidence Act enables the Courts to presume only that which accords with the ordinary course of events and human nature and not what would be an aberration from such course. Indeed if such a principle was to be applied in judging some of the features of the prosecution case before us which are assailed by the learned counsel for the appellants, these features will appear to be more and not less credible. The degree which proof must reach before a Court trying a criminal case will convict is no doubt that which a prudent man will employ in reaching a conclusion beyond reasonable doubt whereas an accused need not prove his case to the same extent in order to succeed. But, the standards employed in judging each version are those of a reasonable and prudent man. Such a man can only adopt what is natural to expect and what accords with commonsense and ordinary experience but not what is extraordinary and unexpected as a reliable test of credibility of witnesses."

xx

xx

xx

xx

20. The say of PW 1 Jagannath in para 7 is that blood-stained earth and simple earth were seized from nearby school. This witness has also deposed that broken door, shoe, pick-axe and crowbar were also seized. All these articles were produced before the Court and identified by this witness. This evidence is clearly establishing that the deceased was forcibly taken from the house of PW 1 Jagannath and after breaking open the door, was done to death near the school where the dead body of Mangu Bagri was already lying. The timings of both the incidents are different. The deceased Ranjeet Singh suffered more than 12 injuries. Number and kind of injuries are also clearly indicating that the assailants were more in number.

21. PW 3 Nagusingh has testified in para 6 that after witnessing the incident, he came to Jaora and disclosed the incident before Bharat Singh (PW 4) that deceased

was being assaulted by ten to eleven persons near the school of Lalakheda. At that time, he did not disclose the names of the appellants. On this information, Bharatsingh telephoned at the Police Station which was recorded in Roznamcha Sanha at No. 568. This Roznamcha Sancha is not disclosing the names of the appellants as well as commission of any cognizable offence. Therefore, such a cryptic information cannot be treated as First Information Report (See : [Tapinder Singh Vs. State of Punjab and Another,](#)).

22. Investigating Officer PW 13 M.K. Upadhyaya has deposed in para 28 that for the death of Mangu Bagri, Crime No. 116/93 was registered. The report was lodged by his son Prabhu and on the basis of this report, offence was registered against Ranjeet Singh (deceased in the present case). According to the witness, the time of incident pertaining to Mangu was 2.00 p.m. whereas the time of murder of Ranjeet Singh was between 2.30 and 3.00 p.m. As per the statements of PW 1 Jagannath PW 2 Siddhnath and PW 3 Nagusingh, the appellants came to the house of Jagannath (PW 1) where the deceased Ranjeet Singh was sitting. He was virtually abducted from that place and thereafter, was done to death near the school. The defence has not even cared to get produced and proved the Postmortem Report of Mangusingh which might indicate the number and nature of injuries on the basis of which, one may assess the use of different kinds of weapons and number of participants.

23. The evidence available on record is nowhere indicating the case in favour of the appellants that they acted in self defence. If such would have been the case, they would have not maintained complete silence in this regard and even would have not failed to get proved the First Information Report, Medical Report and other relevant documents of Crime No. 116/93 about the death of Mangu Bagri. All these documents were very important and relevant to visualise the situation whether the incident had taken place at one point of time and who was the aggressor.

24. In a case of determination of right of private defence of person in favour of the accused persons, the crucial point for consideration is as to who was the aggressor. If the complainant party (deceased's side) was aggressor, only when the accused persons could get the benefit of exception of right of private defence.

25. Learned counsel for the defence has vehemently argued that the police has concocted a false case at the instance of PW 4 Bharat Singh, who was the Ex Home Minister, but all these suggestions have been emphatically denied by the Investigating Officer PW 13 M.K. Upadhyaya in paras 39 and 40 of his deposition. Apart from this bald suggestion, the defence is not able to bring any material to substantiate reasonably the allegations levelled by the defence that a false case was concocted against the appellants at the instance of PW 4 Bharat Singh.

26. In the present case, no suggestion was given to the eye-witnesses about acting of the deceased in self defence. The First Information Report and medical reports were also not brought on record and exhibited. There is no whisper of acting in self

defence in the statements of the appellants u/s 313 of the Code of Cr. Procedure, which leads to the judicial mind while appreciating the evidence on record to draw adverse inference against the appellants because, these were some very important and glaring material documents, evidence and circumstances which would have assisted the Court to decide the arguments of the learned counsel for the appellants that they acted in right of private defence of person of deceased Mangusingh Bagri. If these appellants were not present and participated in commission of murder of Ranjeet Singh (deceased in present case) then, it is impossible to believe that Mangusingh alone could have caused multiple injuries by different kind of weapons. [Patil Hari Meghji and Another Vs. State of Gujarat](#), .

27. In the wake of aforesaid facts and circumstances of the case and legal and factual analysis, we are of firm view that there is no substance in this appeal of the appellants and the same is liable to be dismissed. It is accordingly, dismissed. The appellants No. 2 to 5, 7, 8 and 11 are on bail. Their bail bonds shall stand cancelled.