

Dashrath and Others Vs State of M.P.

Court: Madhya Pradesh High Court

Date of Decision: March 27, 1998

Acts Referred: Penal Code, 1860 (IPC) â€” Section 302, 304(I), 34

Citation: (1999) 2 JLJ 79

Hon'ble Judges: Rajeev Gupta, J

Bench: Division Bench

Advocate: S.K. Tiwari, for the Appellant; Riyaz Mohammad, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

Rajeev Gupta, J.

This judgment shall govern the disposal of Criminal Appeal No. 695/1987 also, which is an appeal filed by these very three Appellants" from jail, against their conviction and sentences.

2. Appellants Dashrath, Chaitu and Sampat stand convicted u/s 302 and in the alternative u/s 302 read with 34, of the Indian Penal Code (for

short the IPC), with sentence of imprisonment for life vide judgment dated 24.3.1987, passed by Additional Sessions Judge, Betul in Sessions

Trial No. 37/86.

3. The factual matrix of the case, in a narrow compass, is that Thaggi Bai, daughter of accused Dashrath, was married to Paras Ram (since

deceased). On the fateful day of 1.12.85, Paras Ram and his wife Thaggi Bai had gone to the field of accused Dashrath, on his invitation, for the

celebration of Kartik festival and for attending the feast. As Paras Ram did not return to his house that night and in the next morning Anandrao

informed Shikari, father of Paras Ram, that he had heard some uproar in the night, Shikari, on getting suspicious, went to the field of accused

Dashrath and found his son Paras Ram lying injured inside the hut. Accused Dashrath, Chaitu and Sampat were also present there. On the query

of his father, Paras Ram informed him that during some altercation between them the three accused persons had assaulted him by means of fist,

kicks and stones. Shikari then brought injured Paras Ram to his village. Paras Ram, on his way to the police station, succumbed to his injuries.

Thereafter, the First Information Report about the incident was lodged by Shikari, at 5.45 p.m., on 3.12.87, giving rise to the registration of a case

at Crime No. 328/87, at police station Multai, for an offence u/s 302 read with Section 34, of the IPC. After observing the necessary formalities,

the body of deceased Paras Ram was sent for post-mortem examination. The Autopsy Surgeon found two contusions and 10 abrasions on his

body, as detailed in his post-mortem Report (Ex.P/5). In his opinion, the cause of death of deceased Paras Ram was coma and shock resulting

from the injuries on the head region and the left lung. During the course of investigation, the accused persons were arrested and in pursuance of the

information, one lathi each from accused persons Dashrath and Chaitu, and a piece of stone from Sampat was seized, on 7.12.85. After

completing the investigation, police Multai charge-sheeted the three accused persons for the commission of the offence u/s 302 read with Section

34, of the IPC.

4. The accused persons abjured their guilt and pleaded false implication to the charges, framed by the trial Court, u/s 302 and in the alternative u/s

302 read with 34, of the IPC.

5. At the trial, prosecution examined as many as 12 witnesses, whereas the accused persons did not examine any witness in their defence. The trial

Court, on the ocular and medical evidence on record, held it proved that deceased Paras Ram had sustained multiple external injuries with

corresponding fractures, on 1.12.85, and had died a homicidal death. Relying upon the eye-witness account of Thaggi Bai (PW/2), the trial Court

held the accused persons guilty of commission of murder of deceased Paras Ram and, therefore, convicted and sentenced them as mentioned

above.

6. Shri S.I. Tiwari, the learned Counsel for the Appellants, contended that the trial Court has erred in recording the Appellants' conviction on the

solitary evidence of Thaggi Bai (PW/2), whose evidence suffers from serious infirmities. In the alternative, it was submitted that the acts of the

Appellants, in the facts and circumstances of the present case, would only amount to the offence punishable u/s 304 Part (I), of the IPC, and for

that Appellants have already served out sentence of more than 12 years. Shri Riyaz Mohammad, the learned Government Advocate, on the other

hand, supported the impugned judgment of conviction and vehemently argued that the solitary evidence of Thaggi Bai (PW/2) is sufficient for

establishing the charge of murder against the Appellants and, therefore, no interference, in this appeal against conviction, is warranted.

7. The facts that deceased Paras Ram had sustained multiple external injuries, on 1.12.85, and had died a homicidal death were neither disputed at

the trial nor are under challenge before us in this appeal. Even otherwise, there is overwhelming ocular and medical evidence on record for

establishing the above facts beyond any shadow of doubt and, therefore, we uphold the findings, recorded by the trial Court in that behalf.

8. The Appellants' conviction is founded on the sole eye-witness account of Thaggi Bai (PW/2), who happens to be the wife of deceased Paras

Ram. True, she is also the daughter of accused Dashrath, but it has come in her evidence that on account of some dispute they were not on visiting

terms with the accused persons. The incident of assault on deceased Paras Ram is said to have taken place in the night of 1.12.85. The First

Information Report Ex.P/1 came to be lodged only at 5.45 p.m. on 3.12.85 i.e. after about 44 hours of the incident. There is no satisfactory

explanation on record as to why the report could not be lodged for about 2 days.

9. Though Thaggi Bai (PW/2) claims herself to be an eye-witness of the incident of assault on her husband Paras Ram, but in the First Information

Report (Ex. P/1), lodged by Shikari, father of the deceased, on the basis of the information given by deceased Paras Ram himself, there is not even

a whisper about Thaggi Bai having witnessed the assault on her husband. That apart, the case diary statement of Thaggi Bai was recorded on

4.12.85 i.e. after 3 days of the incident.

10. Thaggi Bai (PW/2), with a view to make her claim as an eye-witness strong, deposed that she too was assaulted by the accused persons.

There is no material on record to show that Thaggi Bai was ever examined medically for any such injury, or nay such injury was found on her

person by the Doctor. Not only this, even in the First Information Report there is no mention that Thaggi Bai was also assaulted by the accused

persons.

11. Thaggi Bai (PW/2), contrary to the prosecution case, as unfolded in the First Information Report (Ex.P/1), stated in her deposition in the Court

that the three accused persons had assaulted her husband Paras Ram by means of lathis, whereas the initial prosecution case was that the assault

on the deceased was by means of fist, kicks and small stones.

12. True, accused Dashrath is related to Thaggi Bai (PW/2) as her father and the other two accused persons Chaitu and Sampat too are related to

her as uncles. A witness, so closely related to the deceased and the accused, is not normally expected to depose falsely against his/her own

relatives, but in the present case Thaggi Bai (PW/2) has categorically admitted in para 9, of her deposition, that there was some dispute persisting

between her husband and the three accused persons on account of which she and her husband were not on visiting terms with the accused

persons. The above admission of Thaggi Bai. about the strained relations between deceased Paras Ram and his wife on the one hand and the three

accused persons on the other, takes out the very bottom of the prosecution case that the deceased had gone to the field of the accused persons on

their invitation.

13. From the above close scrutiny of the evidence on record, it emerges out that the relations between the accused persons and deceased Paras

Ram were strained for quite sometime; though the incident of assault on the deceased leading to his death is said to have taken place in the night of

1.12.85, but the First Information Report came to be lodged only in the evening of 3.12.85; the case diary statement of the sole eye-witness

Thaggi Bai (PW/2) was recorded on 4.12.85 i.e. ...after 3 days of the incident; the initial story as contained in the First Information Report was

that the assault on the deceased was by means of fist, kicks and small stones, whereas in her deposition in the Court, the sole eye-witness Thaggi

Bai (PW/2) came out with a story that the accused persons had assaulted her husband Paras Ram by means of lathis; though Thaggi Bai also

claims to have been assaulted by the accused persons, but neither this fact was mentioned in the First Information Report, nor any injury

whatsoever is proved to have been found on her person. There is not even an iota of any other evidence which can be used as corroboration to the

evidence of Thaggi Bai. In our considered view the uncorroborated evidence of Thaggi Bai (PW/2) alone, which is found impregnated with the

above mentioned glaring infirmities, by itself, is not sufficient for establishing the capital charge of murder against the three Appellants. Her evidence

falls short of furnishing the foundation, strong enough, for basing the Appellants' conviction on the charge of commission of murder of Paras Ram.

The trial Court obviously has fallen into an error in not giving due weight to the above mentioned infirmities in the evidence of the sole eye-witness,

Thaggi Bai (PW/2). The Appellants' conviction, therefore, cannot be sustained and is liable to be set aside.

14. For the foregoing reasons, the appeal, filed by the Appellants, against their conviction and sentences, deserves to be allowed and is hereby

allowed. Their conviction u/s 302 and in the alternative under Sections 302 read with 34, of the Indian Penal Code, and sentence of imprisonment

for life are hereby set aside. They are acquitted of the above charges.

15. Appellants Dashrath, Chaitu and Sampat are in custody. They be set at liberty forthwith, if not wanted in connection with any other case.