

Jujhar Singh Vs State of M.P

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Jan. 9, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 354(3), 366
Penal Code, 1860 (IPC) â€” Section 302, 304

Citation: (2012) ILR (MP) 998

Hon'ble Judges: S.R. Waghmare, J; A.K. Shrivastava, J

Bench: Division Bench

Advocate: M.A. Bohra and R.S. Soni, for the Appellant; S.D. Bohra, P.P, for the Respondent

Judgement

A.K. Shrivastava, J.

The judgment passed in this appeal shall also govern the disposal of connected Criminal Reference No. 1/2011 sent

by learned Sessions Judge, Indore for confirmation of death sentence imposed by him to the accused/appellant Jujhar Singh u/s 354(3) Cr.P.C.

The case of the prosecution, in brief, is that on 1.11.2010 at 9.50 A.M., Narayan Singh Parihar (PW-4) lodged first information report in respect

to the occurrence in the police station that during the midnight of 31st October and 1st November, 2010 quarrel took place between the appellant

and the deceased persons who are three in number, namely, Bhagat Singh, Durjan Singh and Maqsood Ansari in which the appellant by using the

hammer as weapon dealt blows on the deceased persons. It is stated that soon before the incident all these four persons were consuming liquor

and were eating the chicken.

2. At the relevant point of time, the author of the FIR, Narayan Singh Parihar was serving on the post of Security Guard at Ansal Township (under

construction) where the incident had taken place. On receiving the information from Shiv Kumar regarding the quarrel among the accused and the

deceased persons he rushed to the spot and found that all the four persons are in drunken state. It is said that this witness firstly pacified and

thereafter scolded on them. This witness thereafter left the spot and went back to the place of his duty. In the morning of 1.11.2010 when he was

on duty at the gate of the Ansal Chambers which was under construction, witnesses Shiv Kumar, Subhash and Khemchand came and informed

about the murder of deceased persons, namely, Bhagat Singh, Durjan Singh and Maqsood Ansari. He was told that all these three deceased

persons are lying dead on the floor of room No. 25 of the building under construction and the accused Jujhar Singh had already fled from the place

of occurrence. Besides this, these witnesses also informed him about the brawl which had taken place between the deceased persons and the

accused on previous night, as a result of which the accused Jujhar Singh committed the murder of three deceased persons by giving blows of

hammer.

3. On the basis of the FIR lodged by complainant Narayan Singh Parihar a case was registered u/s 302 IPC against the appellant. The investigating

agency arrived at the spot; prepared the spot map; summoned the eyewitnesses and recorded their statements; prepared the inquest report of the

deceased persons; the snap shots of the dead body were also taken; the blood sample lying on the first floor of room No. 25 of the Ansal

Township were also taken and the dead bodies were sent for the postmortem etc.

4. After the investigation was over, a charge-sheet was submitted in the committal Court which committed the case to the Court of Session where

the appellant/accused was tried.

5. The learned Trial Judge on the basis of the allegations made in the charge-sheet framed charge punishable u/s 302 IPC (three counts) which

appellant had denied and requested for the Trial.

6. In order to prove the charges, the prosecution examined as many as eight witnesses and placed Ex. P-1 to P-32, the documents on record.

7. The defence of the appellant is of false implication and that of alibi and same defence he set forth in his statement recorded u/s 313 Cr.P.C.

However, in support of his defence, he did not choose to examine any witness.

8. The learned Trial Judge on the basis of evidence placed on record came to hold that charge u/s 302 IPC (three counts) against the appellant has

been proved and eventually holding the instant case to be the rarest of the rare case passed the death sentence and fine of Rs. 10,000/-; in default

further R.I. of 2 years has been imposed and case has been sent to this Court for confirmation of the death sentence.

9. The contention of learned counsel for the appellant is that the case of the prosecution is not at all proved and the eyewitnesses, namely, Kripal

(PW-1), Khemchand (PW-2) and Shivkumar (PW-3) are not at all reliable. By inviting our attention to their cross-examination it has been

submitted that all the three witnesses have not seen the incident and therefore, learned Trial Court has seriously erred in convicting the appellant by

imposing the extreme penalty of death. Hence, it has been prayed that by allowing this (sic) the impugned judgment be set aside and appellant be

acquitted from all the charge.

10. An alternative submission has also been put forth by learned counsel that because the incident had occurred all of a sudden when the deceased

persons and appellant were drinking the liquor together and were enjoying the chicken and there was no previous enmity between them, at the

most the case would rest under the ambit and scope of Section 304 Part-I IPC.

11. A further alternative submission has been put forth by learned counsel for the appellant that if this Court comes to the conclusion that the

appellant has murdered three persons, since the case is not coming within the ambit and scope of rarest of rare case, therefore, the conviction of

appellant be altered by passing suitable sentence.

12. On the other hand, Shri S.D. Bohra, learned Public Prosecutor argued in support of the impugned judgment and submitted that if the evidence

of the eyewitnesses is considered in true perspective, since at the time of incident only four persons (three deceased and appellant) were present

and looking to the testimony of the eyewitnesses, learned Trial Court has rightly come to the conclusion that the deceased persons have died on

account of hammer injuries given by the appellant. Learned Public Prosecutor submits that cogent reasons are assigned by learned Trial Court by

passing the extreme penalty of death since the present case falls within the sphere of rarest of rare case, therefore, by extending the stamp of

approval by this Court the death sentence referred by learned Sessions Judge be confirmed u/s 366 Cr.P.C.

13. Having heard learned counsel for the parties, we are of the view that this appeal deserves to be allowed in part.

14. In the present, the prosecution has examined three persons as eyewitnesses, they are Kripal (PW-1), Khemchand (PW-2) and Shivkumar

(PW-3). The other important witness is Narayan Singh Parihar (PW-4) who is the author of the FIR (Ex. P-8). Dr. Prashant Rajput (PW-8) is the

Autopsy Surgeon and the postmortem reports Ex. P-33, P-34 and Ex. P-35 are of deceased Bhagat Singh, Maqsood Ansari and Durjan Singh

respectively.

15. In order to see whether the prosecution is able to prove its case beyond reasonable doubt, we shall examine the evidence of aforesaid

witnesses and also the other witnesses examined by the prosecution as well as of the documents which are proved and placed on record.

16. Shivkumar is an eyewitness to the incident who has been examined by the prosecution as PW-3. He has also corroborated the statement of

Kripal (PW-1) and Khemchand (PW-2). In his examination-in-chief, PW-3 is saying that on hearing the shriek coming out from one room where

the incident had taken place, this witness and other witnesses rushed to the place of occurrence and found that appellant was giving hammer blows

to the deceased persons and on seeing him appellant rushed towards him and also tried to give the hammer blow to him as a result of which he ran

away and hid himself. This witness is also saying that earlier to the incident at 10 p.m. the deceased persons and the appellant were drinking the

liquor and were eating the chicken. Thereafter, they were quarreling with each other but on being intervened by the security guard they stopped

quarreling at that time. In para-13 of the cross-examination specifically this witness is deposing that by his own eyes he saw appellant causing

injuries by hammer to all the deceased persons and when he entered inside the room, at that juncture the appellant was in process of giving blows

by hammer to the deceased persons, though he has put his inability that how many hammer blows were dealt by the appellant to each deceased.

17. The other eyewitness to the incident is Kripal (PW-1). Categorically he has stated in his examination-in-chief that he is well acquainted with the

appellant who is present in the Court. According to this witness, he along with other witnesses were sitting at 10 p.m. in the township building

which was under construction. The deceased persons Bhagat Singh and Durjan Singh and the appellant were consuming the liquor in a room of the

building under construction and were also eating the chicken. At that juncture all the three persons started quarreling with each other. On hearing

hue and cry the security guard who is being known by the name Parihar arrived there and pacified them. According to this witness, on the point of

liquor and chicken the quarrel took place. Further it has been stated by this witness that when the quarrel was going on, Supervisor Subhash was

also called and thereafter this witness along with Subhash (supervisor), Khemchand and Shivkumar arrived at the place of occurrence where three

deceased persons and appellant were sitting and were quarreling with each other. According to this witness, he saw appellant giving the blows of

hammer on the deceased persons and on seeing these witnesses, appellant scolded on them that they should flee from the place of occurrence

otherwise they shall also be treated in the similar manner, as a result of which this witness and other witnesses came back on account of fear and

the appellant by carrying hammer in his hand, fled from the place of occurrence. Later on, this witness is saying that appellant Jujhar Singh threw

the hammer out of the building.

18. In cross-examination, a suggestion put to this witness has been emphatically denied by him that he has been tutored by the police. In cross-

examination (para-8) this witness has said that he did not intervene on account of fear. Further in cross- examination he has admitted that he did

not see the appellant causing injuries and further says that he saw him running away from the spot and at that juncture he threw the hammer on the

road. He has also stated that he saw the appellant at a distance of 5 feet. According to us, it has come in the testimony of this witness that in the

room where the incident had taken place only four persons (three deceased persons and present appellant) were there and therefore, soon after

the incident if this witness has seen the appellant running away by throwing the hammer on the road it cannot be held that this witness is concealing

the reality and his testimony cannot be relied upon. The totality of the entire statement of this witness is that when this witness after hearing the

shriek of the deceased persons came to the place of occurrence he saw appellant running away from there by throwing the hammer on the road.

At that juncture, all the three deceased persons were lying on the floor.

19. The last eyewitness to the incident is Khemchand (PW-2) and he has corroborated the statement of Kripal (PW-1). In examination-in-chief

(para-2) he has categorically stated that on hearing the shriek coming out from room No. 25, this witness, Kripal, Shivkumar and Subhash

(supervisor); all of them went to see what has happened in the said room where they saw appellant was causing injuries by hammer on the

deceased persons. This witness has also proved the inquest reports of the deceased persons; Ex. P-1, P-2 and Ex. P-3 and has admitted his

signature on it and stated that in his presence the inquest reports were prepared by the investigating agency. True in para-10 of his cross-

examination he has stated that he has not seen appellant causing injuries by hammer to the deceased persons but if his cross-examination (para-10)

is considered in true perspective it cannot be said that the appellant is an innocent and has not committed the offence. In this para, this witness has

categorically stated that on hearing the shriek of the deceased persons, he rushed to the place of occurrence where he saw that the appellant was

coming out from the room where the incident had taken place by carrying a hammer. Further he has stated that on seeing him, appellant rushed to

give the hammer blow to this witness, as a result of which he ran away and rescued himself. We have already held herein-above that in the room

where the incident had taken place during the odd hours in the night, three deceased persons and appellant were present and none else and

therefore, because deceased persons were having injuries and they were screaming and this witness has categorically stated that he saw the

appellant coming out from the room where the incident had taken place by holding a hammer and he also tried to wield hammer on this witness, we

are of the view that it was only the appellant who caused injury to the deceased persons, as a result of which they had died.

20. Thus, we are of the considered view that even if Kripal (PW-1) and Khemchand (PW-2) have not seen that appellant giving blows of hammer

to the deceased persons, but, when these two witnesses arrived at the spot, appellant was inside the room of occurrence and was running away by

having hammer in his hand and therefore, we are not having any doubt in our mind in holding that the evidence of Kripal (PW-1) and Khemchand

(PW-2) is relevant piece of evidence. It has also come in the testimony of these three witnesses that before the actual incident took place at 2 a.m.,

at 10 p.m. the appellant and three deceased persons in drunken state were quarreling with each other and they were pacified by the supervisor

Subhash. Thus, we are not having any scintilla of doubt in our mind in holding that the deceased appellant had brutally dealt hammer blows on the

deceased persons as a result of which they died.

21. The evidence of above said three witnesses has also been medically corroborated as Dr. Prashant Rajput (PW-8) who has found the following

injuries on the person of deceased, namely, Bhagat Singh, Durjan Singh and Maqsood Ansari.

Injuries found by the doctor (PW-8) on the person of deceased Bhagat Singh:-

(i) Lacerated wound present about 3.5 cm above right eyebrow lateral margin right obliquely placed 3.0 x 1 cm;

(ii) Contused lacerated wound present about 4 cm above right mastoid left oblique 2.5 x 0.5 cm size;

(iii) Contused lacerated wound size 2 x 0.5 cm about 2 cm to right of injury No. 2 left obliquely;

(iv) Contused lacerated wound present about 2 cm above tip of injury No. 3 and 2 cm to right of injury 2.5 cm x 0.5 cm length somewhat in inverted "C";

(v) Contused lacerated wound in Inverted "C" shape present past behind mid part right mastoid bone size 3.5 x 1 cm size;

(vi) Right ear showing lacerated wound of size 3.5 cm starting from upper mid present;

(vii) A vertical abrasion size 1.5 x 0.5 cm present at lower tip of injury No. 1;

(viii) Contused lacerated wound size 1.5 x 0.5 cm vertically 2 cm to right of right eyebrow tip lateral part;

(ix) Abrasion about 0.5 cm below right lateral tip of right eyebrow size 1 x 0.5 cm vertical;

(x) Abrasion present over right clavicle region 3 x 2 cm. Viscera preserved for chemical analysis;

(xi) Head; Scalp ecchymosed internally on bilateral frontal, right temporal region fracture arising from lower posterior bone. Right temporal region

giving fragment which is extended uptill lower part of left frontal eminence. Total length 28 cm meanings tense. Subdural hemorrhage present all

over brain with clots. Subarachnoid hemorrhage present over bilateral frontal, right temporal region. Hemorrhage present over cerebellum, anterior

and right cranial fossa.

Injuries found by the doctor (PW-81) on the person of deceased Durian Singh:-

I. Contused lacerated wound in a slight to "C" shape about 4 cm above lateral part of right eyebrow 1 cm x 0.5 cm;

- II. Contused lacerated wound size 5.5 x 1.5 cm about 8 cm from tip of right pinna in a "U" shape;
- III. Contused lacerated wound size 2.5 x 1 cm vertically about 3.5 cm below posterior tip of injury No. 2;
- IV. Contused lacerated wound size 3.5 x 1.2 cm interially joint behind posterior part of right mastoid bone;
- V. Contused lacerated wound in a slight "C" shape present 8 cm right posterior lower part of mastoid bone size 2.5 x 0.5 cm.;
- VI. Contused lacerated wound size 1 x 0.5 cm between injury No. 3 and 5 left oblique;
- VII Contused lacerated wound 1 x 0.5 cm vertically about 6 cm below mid part of injury No. 2;
- VIII Contused lacerated wound size 1 x 0.5 cm sagittally placed about 1.5 cm posterior to tip of injury No. 3;
- IX Contused lacerated wound size 1 x 0.5 cm sagittally placed about 1.5 cm posterior to tip of injury No. 2 (posterior part);
- X Contused lacerated wound size 3 x 1.5 cm about 5 cm behind (posterior to tip of injury No. 2) posterior part slight "C" shape sagittally;
- XI. Head; Scalp ecchymosis internally over right frontal, right mid tempero lateral occipital region. Multiple radiating fracture evident with
- (depressed fracture) over right anterior temporal size 10 x 6 cm oval horizontally. Brain matter lacerated over depressed part. Subdural
- hemorrhage present all over brain with clots. Sub-arachnoid hemorrhage present over right clavicle and middle clavicle fossa.

Injuries found by the doctor (PW-8) on the person of deceased Maqsood Ansari:-

- (i) Contusion present 0.5 x 0.5 cm mid lower part of lip;
- (ii) Lacerated wound size 1.5 x 0.5 cm transversaly placed upper anterior part of nose;
- (iii) Abrasion 1.5 x 2 cm over anterior mid part of right cheek;
- (iv) Contused lacerated wound 3 x 0.5 cm size left oblique over right lateral part of left eyebrow;
- (v) Contused lacerated wound 3.5 x 0.5 cm right oblique over left lateral part of left eyebrow;
- (vi) Contused lacerated wound 4 x 0.5 cm size over left frontal about 6 cm above left eyebrow lateral part (left lateral);
- (vii) Lacerated wound size 1.5 x 0.5 cm initial right lower part of pinna;
- (viii) Lacerated wound 1.5 x 0.5 cm mid part posterior behind right ear vertical;
- (ix) Lacerated contused wound transversaly placed over upper part right ear medially size 1 x 0.5 cm;
- (x) Lacerated wound contused size 5 x 0.5 cm left obliquely placed underneath fracture left angle of middle vertically placed;
- (xi) Contused lacerated wound 1 x 0.5 cm size vertically placed at upper border of injury No. 10;
- (xii) Contused lacerated wound 1.5 cm left side of injury No. 10 left upper part vertically;
- (xiii) Contusion 2.5 x 1 cm size over mid lateral part of left cheek;
- (xiv) Contused lacerated wound 1 cm x 0.3 cm initial over lower part of left pinna;
- (xv) Contusion present 1 x 0.5 cm upper part size 1 x 0.5 cm over upper anterior part of left pinna;

(xvi) Contused lacerated wound size 1.3 x 0.5 cm just behind upper part of left pinna about 6 cm above left mastoid;

(xvii) Lacerated wound size 3.5 x 0.5 cm about 8 cm above tip of right pinna mid part of right frontal vertically;

(xviii) Head: Subdural hemorrhage present bilateral frontal.

Right mid temporo joint vertical region with clot meanings tense. Subdural hemorrhage present bilateral frontal region.
Hemorrhage present anterior

clavicle fossa.

According to the doctor, all the injuries on the body of the deceased persons were caused by hard and blunt object and were sufficient to cause

death in ordinary course of nature.

22. Thus, according to us, the prosecution has been able to prove the case beyond reasonable doubt that on account of giving hammer blows on

the person of the deceased, who are three in number, by the appellant they had died. Thus, we are of the considered view that the appellant has

committed the offence of culpable homicide amounting to murder and rightly he has been convicted u/s 302 IPC.

23. We are not impressed by the alternative submission put forth by learned counsel for the appellant that because the incident had occurred all of

a sudden and there was no previous enmity the case would rest u/s 304 Part-I IPC. It be seen that repeated blows of hammer that too on the vital

part of the body i.e. head were dealt by the appellant on each deceased person and therefore, it was a cold blooded murder and we are not having

any doubt in our mind that the appellant has committed the offence u/s 302 IPC.

24. The question now would rest whether the learned Sessions Court has rightly proposed to pass the death sentence. Law in this regard is very

settled that unless and until the case comes within the purview of rarest of the rare case the extreme penalty of death should not be passed. In this

regard, the Constitution Bench of Supreme Court Bachan Singh Vs. State of Punjab, may be seen where the principles have been laid down that

what are the circumstances on the basis of which the extreme penalty of death is to be passed. Similarly, three Bench decision of Supreme Court

Machhi Singh and Others Vs. State of Punjab, may be seen. According to us, looking to the evidence placed on record it cannot be said that

appellant has become hazardous to the society and therefore, merely because he has committed murder of three persons would not mean that the

extreme penalty of death is to be awarded to him. The plurality of the murder, according to us, cannot be a determining factor in order to pass the

extreme penalty of death.

25. The learned Sessions Judge in para-46 of the impugned judgment has found that there is no criminal history of the appellant. The death penalty

has been imposed because the deceased persons have come from Uttar Pradesh and Bihar to earn their livelihood and therefore, the case of

appellant comes within the purview of the rarest of the rare case. According to us, merely on this ground the extreme penalty of capital punishment

cannot be passed and therefore, we are not inclined to confirm the death sentence imposed by learned Trial Court.

26. Resultantly, this appeal succeeds in part. The conviction of appellant u/s 302 IPC (three counts) is hereby affirmed. However, the sentence of

death is altered to life imprisonment (three counts) and the fine as imposed by learned Trial Court with a defaulting clause. Needless to say, all the

sentences shall run concurrently. Accordingly, Criminal Reference No. 1/2011 is hereby also disposed of. Let a copy of this judgment be also kept

in the record of Criminal Reference No. 1/2011.