

(1967) 01 MP CK 0004

Madhya Pradesh High Court

Case No: Criminal Appeal No. 376 of 1965

Fattiya Kalji

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Jan. 11, 1967

Acts Referred:

- Penal Code, 1860 (IPC) - Section 148, 149, 302, 34

Citation: (1967) JLJ 504 : (1967) MPLJ 680

Hon'ble Judges: V.B. Newaskar, J; S.B. Sen, J

Bench: Division Bench

Advocate: V.K. Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

S.B. Sen, J.

This judgment will govern two appeals, Criminal Appeals Nos. 376 of 65 and 377 of 1965, as they arise out of the same judgment.

Originally seven persons including the two Appellants Fattiya and Awalsingh were prosecuted for offence u/s 302, Indian Penal Code for committing murder of one Jawaniya, on 16-1-1965 at village Mehni. There were also other charges against all the accused persons under Sections 149 and 148, Indian Penal Code. After trial only the two Appellants Fattiya and Awalsingh have been convicted u/s 302 read with Section 34, Indian Penal Code and sentenced to rigorous imprisonment for life.

The prosecution story is very simple. On 16-1-1965, the deceased Jawaniya climbed a Tada tree which was standing in the field of one Bhimsingh. This was a disputed tree but that is not very material for the purpose of this case. All the accused persons assembled under that tree. Both the Appellants were armed with axes, bows and arrows. The other five persons had bows and arrows. All of them discharged arrows at Jawaniya which did not strike him. Then Fattiya and Awalsingh started cutting the

tree with their axes. Jawaniya shouted for help. His wife Ditali P.W. 4, son Kalsingh P.W. 5 and Pemsingh P.W. 6 and Kamla P.W. 7 (same there when the accused persons stretched their bows and arrows towards them and so they could not help. Then the Tada tree fell down owing to the cut. Jawaniya received injuries on account of the fall. The accused then assaulted him with the weapons they had.. Jawaniya died on the spot. After giving blows Fattiya made a report at the Police Station Sorwa. It was recorded by Fatesingh head-constable. After investigation seven accused persons were prosecuted for the offences already mentioned out of which Fattiya and Awalsingh have been convicted and sentenced as stated above. They have now filed these appeals.

The prosecution has sought to prove the case against the Appellants on the basis of the evidence of the eye-witnesses, supported by the first information report and the medical evidence. The defence of the Appellants is that they did not cut the tree; it was already cut and it fell on account of the gust of the wind. This defence has not been accepted.

The first contention is that the first information report Exh. P /2 given by the accused Fattiya is not admissible in evidence as it contains a confessional statement made to the Police. We think there is substance in this contention. The first information report clearly mentions that Fattiya and other accused started cutting Tada; Jawaniya did not get down. They therefore cut the tree which fell down along with Jawaniya. His two legs were broken. Injuries were caused on his temporal region and he died immediately. As this information is included in the report, the first information report is definitely inadmissible as it is a confession made to the Police.

Faddi v. State 1964 MPLJ 609 (SC) is a decision of the Supreme Court in which it has been observed:

The first information report made to the Police by a person who is subsequently made an accused in respect of the offence reported by him is admissible in evidence and can be used against him at the trial if the statement does not amount to a confession.

Similar view has also been expressed in [Aghnoo Nagesia Vs. State of Bihar](#), . In the instant case it is clear that the first information report made by Fattiya amounts to a confession and therefore Exh. P/2, the report has to be excluded from consideration.

But even after excluding this document which is undoubtedly an important evidence, there is enough evidence on record on which the convictions can be upheld. It has not been disputed that Jawaniya fell down along with the tree and received injuries. There is no evidence in support of the defence version that the tree fell of its own accord or it was cut on the previous day or it fell because of a gust of wind, as suggested by the Learned Counsel for the defence. The Learned Counsel made a reference to the statement of P.W. 4 Ditli in which in her cross-examination

she has stated that a day before the incident one Nasria had cut the Tada tree. This is a solitary statement which even does not indicate that it was cut in such a manner that it would fall down of its own accord. It cannot be said that the tree fell down because of the cut of the previous day.

The crucial point is what happened when Jawaniya was on the tree. Dr. H.L. Gotre P.W. 1 conducted the post mortem examination of the dead body of Jawaniya on 17-1-1965. He found six antemortem injuries on the body which are as follows:

1. Fracture of middle right thigh.

Compound fracture middle left thigh.

Compound fracture of left wrist joint.

Fracture of right wrist joint.

Bruise on right shoulder joint.

Both upper and lower jaws were fractured.

The doctor opined that the cause of death was shock caused by the injuries which could be caused in a single fall from a great height. Cumulative effect of the injuries was sufficient in the ordinary course of nature to cause death. Therefore, the injuries were caused by fall cannot be disputed.

The next question is who caused the fall. Nobody has stated that it was an accidental fall. The witnesses are unanimous on the point that the arrows were first shot at Jawaniya and then the two Appellants cut the Tada tree. Ditli P.W. 4 has stated in clear terms that on the day of incident at 8 a. m. her husband Jawaniya was in Bhimsingh's field. She heard cries MARE RE MARE RE. She then along with her son Kalsingh went to the tree. She saw her husband on the tree. He was saying that he should be allowed to get down and he should not be assaulted. At that time the tree was being cut by Fattiya and Awaliya, the two Appellants. She then went to Pemsingh Patel. She returned with other witnesses who were prevented at the threat of shooting arrows at them. When she returned she found the tree just fallen down and her husband also fell along with the tree. When Jawaniya fell down Fattiya and Awalsingh gave axe blows on the face of Jawaniya. The other accused persons also assaulted him.

We may mention here that the latter part of the story about assaults on Jawaniya after he fell down has not been believed because such a statement does not find place in the Police diary. There are reasons for discarding that portion. But so far as cutting down of the tree by the two Appellants and Jawaniya falling down along with the tree and thereby receiving injuries is concerned, there is no contradiction. On this point Ditli has been supported by the other three eye-witnesses Kalsingh P.W. 5, Pemsingh P.W. 6 and Kamala P.W. 7. It is not necessary to repeat their evidence. They fully corroborated the story given out by Ditli.

The contention of the Learned Counsel for the Appellants is that when the witnesses have told falsehood in respect of other accused persons they should also not be believed so far as the two Appellants Fattiya and Awaliya are concerned. This argument cannot be accepted. It cannot be said that a witness who tells lies on one point should not be believed on the other point. The only condition is that in such a case he can be believed if there is corroboration. It is a settled law that a witness can be believed on a part of the story if there is corroboration. The witnesses are unanimous on the point that Jawaniya was on the tree; it was cut down by the two Appellants Fattiya and Awaliya with axes; the tree fell down along with Jawaniya who received injuries on account of fall and died on the spot.

The contention of the Learned Counsel that the tree fell down on account of gust of wind is a mere suggestion. There is no evidence on record to that effect. Even assuming that the tree was out on a previous day, it is clear that the immediate cause of falling of the tree was on account of blows given by the two Appellants, What we have to see is what was the cause of death of Jawaniya. The offence of committing murder is complete if it clearly comes under 4th clause of Section 300, Indian Penal Code which says:

Fourthly culpable homicide is murder.....If the person committing the act knows that it is so imminently dangerous that it must, in a)l probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any exonae for incurring the risk of causing death or such injury as aforesaid.

It was a deliberate act on the part of the Appellants. Their convictions u/s 302, Indian Penal Code are proper, so also the sentences.

The result is both the appeals are dismissed.

Appeals dismissed.