
(1985) 07 MP CK 0010

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Appeal No. 128 of 1981

Chain Singh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: July 31, 1985

Acts Referred:

- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 302, 304

Citation: (1986) J LJ 679 : (1986) MPLJ 226

Hon'ble Judges: T.N. Singh, J; R.C. Shrivastava, J

Bench: Division Bench

Advocate: N.K. Agarwal, for the Appellant; D.R. Sharma, Deputy Govt. Advocate for State, for the Respondent

Final Decision: Dismissed

Judgement

Dr. T.N. Singh, J.

On 5-3-1980, at around 1.30 p.m. Kamar Bai lodged a F.I.R., stating that her husband Mannulal had been gravely injured on being assaulted by the appellant by a Ballam, on his chest, at 11.00 a.m. that day. She had left the injured at home after he was given first aid by Compounder Ram Prasad. The occurrence had taken place when Mannulal had finished his meals and was washing his hands. She had shouted as she witnessed the occurrence when deceased's brother Diwan Singh as also, others came to the scene, seeing whom, the appellant fled away. Indeed, Diwan Singh accompanied the informant to Police Station and this fact finds place in the F.I.R. She also stated that the appellant was related to her previous husband Kaptan Singh and he could not reconcile to her living with the deceased as his wife, so much so that he had taken out warrant for her arrest and had brought Police to deceased's village to have her.

In the course of investigation, the Police seized the Ballam, pursuant to appellant's statement u/s 27 Evidence Act (Ex.P/5). As the deceased was found dead when the I.O. reached the place of occurrence accompanying the informant, he prepared the spot-map (Ex.P/2) and also held inquest over the dead-body, which he sent for autopsy. Witnesses were also examined and a search was made for the accused in his village, but he was found absconding. Until 11-9-1980, he was at large and on that day, he surrendered in Court. On 30-9-1980, police submitted charge-sheet against the appellant u/s 302, I.P.C. on which his trial proceeded in the Court of the learned First Additional Sessions Judge, Guna.

At trial, prosecution examined as many as twelve witnesses, of whom P.Ws. 8 and 12 were Investigating Officers, while the Autopsy Surgeon was examined as P.W. 7, to prove the charge to which the appellant pleaded not guilty. However, he did not examine any witness. The trial Court believed the eye-witness, deceased's wife Kamar Bai (P.W.1) whose testimony, it found supported not only by other witnesses, namely P.Ws. 2 to 6, but also by important circumstances proved in the case. Accepting Surgeon's opinion that the injury, which he found on deceased's person, was ante mortem and homicidal and was sufficient to cause death in the ordinary course of nature, the trial Judge held the appellant guilty of the charge u/s 302, I.P.C. and sentenced him to rigorous imprisonment for life.

Before us, in this appeal, appellant's counsel, relying on the decision of their Lordships of the Supreme Court in [Tholan Vs. State of Tamil Nadu](#), and [Jagtar Singh Vs. State of Punjab](#), strenuously contended that the appellant is liable to be convicted not u/s 302, but u/s 304, I.P.C. inasmuch as medical evidence as well as the ocular evidence corroboratively established the factum of a single injury being caused by the appellant. However, before we examine this contention, it is necessary for us to evaluate the conclusion reached by the trial Court as to appellant's guilt and we have to do so on a fresh appraisal of the evidence, because the appellant is exposed to the extreme penalty.

We have read carefully the evidence of the eye-witness, deceased's wife, and found that she has given a consistent version of the occurrence and she stood unshaken in the searching cross-examination to which she was put. Her evidence is that for four months before the occurrence, she was staying with deceased Mannulal as his wife. On the day of occurrence, at around 11.00 a.m., she was busy in cooking. After Mannulal finished his meals, he came out for washing hands. Appellant struck him in the chest with the Ballam which he held with both hands. Mannulal fell on the ground. She saw the occurrence with her own eyes and shouted that Chain Singh (appellant) had killed her husband. Hearing her cries, Diwan Singh, P.Ws. Gajraj Singh, Tofan Singh and also one Meharaban Singh came running. These persons pursued Chain Singh, but they could not apprehend him. He fled the place taking with him the Ballam. This is the core of her testimony and this version of the prosecution case, as we shall see, is clear and consistent.

However, in her cross-examination, the details of the occurrence were brought out by the defence. It is true that in the F.I.R. or even in her statement before the Police, she had not given the details which came to be disclosed in her evidence in Court during the course of cross-examination. From general trend of the cross-examination directed not only against her, but against other witnesses as well, much stress appears to have been laid on non-mention of the word "Ghinauchi" by them in their earlier statements. But, it is also in evidence that it is the place where water is kept or stored and, therefore, it is difficult to accept the defence insinuation that the place of occurrence was shifted by the witnesses in their evidence. All along, all witnesses, have consistently stated that Mannulal was found lying near "Ghinauchi" and the eye-witness (P.W.1) consistently stated that when Mannulal came out to wash his hands after finishing his meals, he was given the fatal Ballam blow by the appellant. Merely because P.W. 1 did not mention the word "Ghinauchi", it cannot be said that any effort was made by the prosecution to shift the place of occurrence because it is her categorical evidence and also her earlier version in the F.I.R. as also in the Police statement that the deceased was going to wash his hands, which cannot be put at "Ghinauchi". No fault can be found with any of the witnesses for speaking about "Ghinauchi" though the word is not used even in the spot-map which, however, corroborates the version given by all the witnesses that Mannulal was found lying profusely bleeding at the distance of about 5 to 7 paces from the house outside, in the open.

In her cross-examination, P.W.1 spoke of some other details also, but we are not prepared to accept the same either as improvements of (sic) and in no case as contradiction. In the F.I.R. or even in her Police statement, she had not mentioned that she had accompanied her husband when he came out of the house to wash hands. She had not also earlier said that she had seen the appellant and that Mannulal also had seen him when they came out of the house by which (sic) probably wanted merely to show that the blow could be averted or even the (sic) avoided by taking precautionary measures. In her cross-examination, she also admitted that P.W. 4 (Kailash) had seen the appellant in the village on the preceding day and this information he had conveyed to her as well as to her deceased husband. We do not understand how her omission to state these facts in the F.I.R. or even in her Police statement can at all afflict or indent her veracity.

There is still one more point about her testimony that remains to be dealt with. Though defence does not appear to have capitalised it and indeed, before Us as well no argument was advanced on it. Because it attracted our attention, we considered it proper to deal with it. In the paper Book, F.I.R. is typed at page 10, wherein the following sentence finds place:

MERE PATI MANNULAL KHANA KHA KAR HATH DHO RAHE THE KI EKDAM CHAIN SINGH PUTRA MAJBUT SINGH NIVASI VARKHEDA THANA UNARS1 KA JISKE HATH MEN LOHE KI BALLAM THI AA KAR MERE PATI KI CHHATI KE NICHE BAI TARAPH MAR

DI KI EK DAM MERE PATI JAMIN PAR GIR PADE AUR MAIN JOR-JOR SE CHILLANE LAGI KI DAUDIYON RE MERE PATI KO CHAIN SINGH NE MAR DIYA KI ITNE MEN MERE JETH DIWAN SINGH TOFAN SINGH MEHTAB SINGH, GAJRAJ AA GAYE AUR WOH BALLAM PATAK KAR BHAG GAYA.

(Italics ours).

The use of the word "patak" in the above sentence created some difficulty. So we looked into the original. But, we found that it is difficult to read the word as such in the original. Indeed, it is difficult as well to make out any sense of the letters used in the original as the writing is not very clear. It appears to us that the typist having failed to decipher the word correctly, drew upon the imagination. As alluded, defence did not confront the informant (P.W.1) with her statement in the extracted sentence and, therefore, no adverse inference against her can be drawn to suggest that she gave a different version later in her evidence where she stated that the appellant fled the place of occurrence carrying the Ballam with him.

Let us read the other evidence also to test the veracity of P.W. 1. Whether she is corroborated in material particulars by the other witnesses? P.W. 2 deposed that Diwan Singh, Tofan Singh, Meharban Singh were sitting with him in his portico. They heard P.W.1 shouting that her husband was killed by Chain Singh. All four of them ran to Mannulal's house and found him lying near Ghinauchi, bleeding from the chest. He saw Chain Singh fleeing with the Ballam in his hand and all four of them pursued him for about a furlong, up to the drain. They, could not apprehend him and came back to Mannulars house. There, they found Compounder Ram Prasad and Hariram. Mannulal had been given first aid and was removed and laid on a wooden cot. It is also his evidence that about a month or 15 days before the occurrence, the accused brought Police to the village to get Kamat-Bai (P.W.1) arrested. His house was just opposite to Mannulal's house, intervened by a public thoroughfare. Diwan Singh, Tofan Singh and Meharban Singh had also their houses close to Mannulal's house. Meharban Singh was his brother and they lived together. He was only confronted with his omission in Police statement as respects Ghinauchi. The next witness P.W.3 (Tofan Singh) corroborates him, saying that the four were sitting together in P.W.2's portico when they heard P.W. 1 shouting as deposed to by P.W. 2. It is also his evidence that four pursued the accused who was fleeing with a Ballam in his hand, but they could not apprehend him. It is also found in his evidence that Ram Prasad (P.W.6) had his hoase close to Mannulal's. In his evidence, it is also found that the distance between the Ghinauchi and the wooden cot was by the side of the Ghinauchi His evidence is also that he saw Mannulal lying on the ground two or three paces from Ghinauchi and that Ram Prasad and Hariram had lifted Mannulal and laid him on the wooden cot. He is also accosted in cross-examination for (sic) in his Police statement.

The evidence of P.Ws. 5 and 6 who deposed to an important episode may also be read. Hariram (P.W.5) gave evidence that he was known as a Compounder and he

was working in Ramnagar Ayurvedik Dispensary. On the date of occurrence, at about 11.00 a.m., Diwan Singh's little children came running to him, and they asked him to come and see their uncle. On being asked, the children had told him that Mannulal was assaulted and he was lying. When he reached Mannulal's house, he found there his wife Kamar Bai and her sister-in-law and aunt and others. He saw a deep wound on the left side of Mannulal's chest. When he asked Kamar Bai about it he was told that Chain Singh had assaulted with a Ballam and (sic). Ram Prasad was present there, but Diwan Singh, Gajraj Singh, Meharban Singh and Tofan Singh, he saw coming later. He arranged to have Mannulai lifted and laid upon a wooden cot. He also bandaged the wound. It is his evidence that Ram Prasad helped him as also Kamar Bai in lifting Mannulai and laying him on the cot. It is also in his evidence that the wooden cot was near Ghinauchi, at a little distance, about one or two cubits away. P.W. 6 (Ram Prasad) corroborates him in all material particulars. It is in his evidence that on the day of occurrence, when he was working in his kitchen garden, he heard Kamar Bai and also little children crying that Mannulal was killed. He ran to Mannulal's house and saw him lying near Ghinauchi. On being asked, Kamar Bai told him that he had been assaulted by Chain Singh and she was weeping and horrified and he was not told by her with what Chain Singh made the assault. Hariram and he lifted Mannulai and laid him on a wooden cot. Hariram bandaged Mannulai. He also saw Tofan Singh, Gajraj Singh, Diwan Singh and Meharban Singh coming there. His further evidence is that Kailash (P.W. 4) had told him on the preceding day that he had seen the accused at night near the well and that the accused requested him to take him to Mannulal's house. He is supported by Kailash (P.W.4) in this matter. He has deposed that on the day preceding Mannulal's death, accused Chain Singh came to his thrashing ground where there is a well and requested him to take him to Mannulal's house. It is also his evidence that next morning, he had informed Ram Prasad (P.W. 6) about this incident. It is not necessary to read the evidence of the I.Os (P.Ws8 and 10) as nothing is found in their evidence to discredit P.Ws. 1 to 6. Some "omissions" in the police statement of these witnesses, which, though proved by the defence through them, are not material. In our opinion, those omissions are not such as may amount to "contradictions" and the witnesses may be discredited on that account. About this we have already expressed our view in another context. We may only say that "discovery" of the Ballam or seizure of blood-stained soil from the place of occurrence by the Police have little evidentiary value as chemical examination of the said article is not proved. Reading the ocular evidence in the case, we saw no reason to differ from the conclusion reached by the trial Court which had accepted the evidence of the eye-witness. We could not find any intrinsic infirmity in her evidence which, on the other hand, we found fully corroborated in material particulars by the other witnesses and indeed these witnesses being natural and independent witnesses, their testimony could not be discarded. However, the circumstances on which the trial Court has placed reliance, in our opinion, also lend assurance to the

prosecution case that the accused had caused the fatal injury on the person of Mannulal. We may also recount some of them while endorsing the view of the trial Judge:

- i) The eye-witness (P.W. 1) immediately shouted and named the appellant as Mannulal's assailant, which is corroborated by P.Ws. 2 and 3.
- ii) P.Ws. 2 and 3 saw the accused fleeing with a Ballam in hand and they pursued the appellant.
- iii) P.W. 1 lodged the F.I.R. immediately and she named therein appellant as the assailant.
- iv) P.Ws. 5 and 6 deposed that appellant's name as assailant was given to them by P.W. 1 immediately on their Teaching the place of occurrence.
- v) The evidence of P.Ws. 4 and 6 that the appellant had come to deceased's village on the preceding day and he wanted to be taken to deceased's house.
- vi) Motive for the Crime: Appellant's failure to get P.W. 1 removed from the deceased's company by getting her arrested by the Police for the apparent reason that he was not reconciled to her staying with the deceased as his wife. Besides the testimony of P.Ws. 1 and 2, this position is also projected in Exts. P-12 and P-13, relating to the proceeding dated 10-12-1979 in a Magistrate's Court.

For the foregoing reasons, we have no hesitation to hold that the appellant was the author of the crime. It was he, who, it is proved beyond reasonable doubt, had caused fatal injury to Mannulal as a result of which the latter died. The only point that now remains to be considered is validity of the contention pressed by appellant's counsel. We have still to see if the appellant was rightly convicted u/s 302, I.P.C. We have to see if the culpable homicide committed by him does amount to murder. For this, we propose to extract below relevant portions from Ex. P/6 wherein the autopsy surgeon described the details of the injury:

A. On inspection following external injury was noticed. There was a punctured or stab wound, obliquely running downwards, towards Epigastrium across the Left side of chest 2" below the Left Nipple, Elliptical in shape. 3" in length, 1" broad in centre and 3" deep having clean edges and well defined margin.

B. O.H. opening the thorax and abdomen following external injuries were noticed.

(1) There was stab wound in 6th intercostal space, obliquely running downward, towards Epigastrium. It was Elliptical in shape 3 1/2" in length 1 1/2" in breadth in centre and 3" deep. The intercostal muscle in the 6th intercostal space were torned in the direction of muscle fibre. Clotted blood seen.

C. On opening Abdomen following visceral injury seen. There was punctured or stab wound over anterior lower part of left lobe of liver, which was 3" x 1" x 2" deep in

the substance of liver.

It is also found mentioned in Ex. P/6 that "all the above mentioned External and Internal injuries resulted in internal haemorrhage and shock due to injury to vital organ i.e. Liver as result of stab by sharp instrument and caused death of late Shri Mannulal". The Surgeon (P.W.7) proved Ex. P/6 and opined categorically that in the ordinary course of nature the single blow which was given by sharp instrument like a Ballam, and which resulted in the aforesaid injury being caused on vital organ like liver, was sufficient to cause death. In this context, we have also the evidence of P.W. 1, who stted that the appellant had thrust the Ballam with great force as he held the weapon with both hands when he struck the same in the chest of the deceased.

Now, the Law. According to Section 300, I.P.C. culpable homicide is murder if the act by, which death is caused is done, inter alia, with the intention of causing death of, or if it is done with intention of causing bodily injury to, any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. According to us, intention of a person causing the fatal injury can be gauged from several circumstances, such as, the nature and gravity of the injury, the part of the human body on which it is inflicted, the weapon used and the manner in which the injury is inflicted. It is the duty of the Court to consider these circumstances. The mere fact that a single blow is given, in any case, would not conclusively indicate that the assailant had no intention to cause death of the person concerned by his act or that he has no intention of causing such bodily injury to him as would be sufficient to cause his death in the ordinary course of nature. In the instant case, there is preponderance of evidence to suggest that the appellant had the intention to cause Mannulal's death and with that intention, he thrust a dangerous weapon like the Ballam with great force in Mannulal's chest, as a result of which, such vital organ of his body as the liver was punctured and badly damaged. Indeed, there is evidence also in this case, as discussed, of premeditation and of motive which further buttressed the presence of the requisite intention (on appellant's part) as contemplated u/s 300, I.P.C.

The case law pressed in service by the appellant's counsel, in our opinion, is clearly distinguishable. In Jagtar Singh (supra), it was held that following sudden quarrel, on spur of moment, arising out of trivial reason, on chance meeting of the parties, infliction of a single blow by knife (by the young man) without any premeditation of malice, did not conclusively establish that the appellant intended to cause death or such bodily injury as would cause death and that he could not be convicted u/s 302, I.P.C. Though, it could still be inferred that he had the knowledge that he was likely to cause such bodily injury to the person concerned which was likely to cause death and, therefore, he could be convicted u/s 304 (Part II), I.P.C. This decision was considered and also other relevant earlier decisions, in Tholan's case (supra). The facts of the case were almost similar to those in Jagtar's case inasmuch as there was no evidence of premeditation or malice and a single blow with knife was given on

the spur of moment. Their Lordships held that although in such a case, exception I of Section 300, I.P.C. is not attracted in terms, on the facts and circumstances of the case it was difficult to attribute to the appellant requisite intention, contemplated u/s 300. We have no doubt that the law propounded in Tholan reiterates merely the position that it would be necessary for the Court to evaluate facts and circumstances of each case to come to a definite conclusion as to whether the requisite intention as alluded, could be conclusively attributed to the accused to convict him u/s 302, I.P.C. Indeed, when there is categorical evidence of premeditation or malice, as in the instant case, it would lend adequate assurance to the conclusion that the accused had the requisite intention. The law is, manslaughter becomes murder when malice prepense is established from surrounding circumstances.

We are, therefore, constrained to hold that the contention must fail and that the appellant was rightly convicted u/s 302, I.P.C. for the offence of murder of Mannulal.

In the result, the appeal fails and is dismissed.