courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 09/11/2025

(2003) 04 MP CK 0042

Madhya Pradesh High Court

Case No: Criminal Appeal No. 429/90

Rammilan and Others	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision: April 25, 2003

Acts Referred:

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

Citation: (2003) 4 MPHT 469

Hon'ble Judges: Deepak Verma, J; A.K. Awasthy, J

Bench: Division Bench

Advocate: Siddharth Datt, for the Appellant; Sanjay Yadav, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Awasthy, J.
Being aggrieved by the judgment dated 7-2-1990, delivered by the First Additional Sessions Judge, Shahdol in Sessions Trial No. 86 of 1989 convicting the accused u/s 302 read with Section 34 of the Indian Penal Code and sentencing for imprisonment for life, this appeal is preferred by the accused/appellants.

2. Admitted facts of the case are that accused No. 1 Rammilan and deceased Rampratap were real brothers and accused No. 2 Ram alias Ramprasad and accused No. 3 Laxman are sons of accused No. 1 Rammilan. Mahadeo (P.W. 1) aged 10 years and Usha (P.W. 4) aged 13 years are son and daughter respectively of the deceased Rampratap.

3. Succinctly, the prosecution case is that on 29-4-1989 at about 11.00 a.m. at Village Kuthadi, when the deceased Rampratap was going on bicycle with his son Mahadeo (P.W. 1) to nearby market, then about 1/2 kilometer away from the village, accused Nos. 2 and 3 stopped the deceased and started beating him. That the accused Nos. 2 and 3

dragged Rampratap near to their house and on reaching there the accused Rammilan also joined and started giving lathi-blows on the head and other parts of the body of Rampratap. Accused Nos. 2 and 3 also pelted stones on the deceased Rampratap. The prosecution alleges that Mahadeo (P.W. 1) and Usha (P.W. 4) started crying and the eye-witnesses Ramdas (P.W. 7), Ramnath (P.W. 9) and others tried to intervene and save the deceased.

4. Ku. Usha (P.W. 4) immediately narrated the incident to Thakur Vikram Singh where the accused No. 1 Rammilan also reached and confessed his guilt before Ramsunder (P.W. 11) and Charansingh (P.W. 12) and he has stated that he has beaten to his brother, the deceased. The First Information Report (Ex. P-8) was lodged by Usha (P.W. 4) on that very day at about 5.00 p.m. in the Police Station, Jaitpur which was recorded by Head Constable Rajbahadur Singh (P.W. 13). On 29-4-1989, Investigating Officer, Prabhat Kumar Shukla (P.W. 15) prepared the Panchnama (Ex. P-3) of the dead body and body was sent for post-mortem to the Primary Health Centre. The autopsy of the dead body was conduced by Dr. A. Rahim (P.W. 5) and he found 11 lacerated wounds caused by hard and blunt object vide his report (Ex. P-9). Dr. A. Rahim (P.W. 5) opined that the injuries on the head and scrotum of the deceased were dangerous to life. The cause of death was syncope and shock due to haemorrhage. The map (Ex. P-14) of the place of incident was prepared by the Investigating Officer and the blood stained and plain earth was recovered from the spot. The Investigating Officer took recovery statement (Ex. P-4) of accused No. 1 and the stick was recovered vide Ex. P-6 from his possession. After the usual investigation the charge-sheet was filed against the accused persons u/s 302 of the Indian Penal Code.

5. The guilt was abjured by the appellants and in their statements u/s 313 of the Code of Criminal Procedure, the statement of the prosecution witnesses were denied and simple plea of false implication was taken by the appellants. No witness in defence was examined.

6. Learned Additional Sessions Judge has recorded the statements of Mahadeo (P.W. 1), Sukhram (P.W. 2), Sahdev (P.W. 3), Ku. Usha (P.W. 4), Dr. A. Rahim (P.W. 5), Budhulal Head Constable (P.W. 6), Ramdas (P.W. 7), Ram Kumar (P.W. 8), Ramnath (P.W. 9), Rajendra Singh alias Dadda (P.W. 10), Ramsunder (P.W. 11), Charansingh (P.W. 12), Rajbahadur (P.W. 13), Suphal Singh (P.W. 14) and Prabhat Kumar Shukla (P.W. 15) and on the basis of the statement of eye-witnesses Mahadeo (P.W. 1), Usha (P.W. 4) and Ramdas (P.W. 7), all the appellants were convicted u/s 302 read with Section 34 of the Indian Penal Code.

7. The appellants have assailed the judgment of the learned Additional Sessions Judge on the ground that the statement of eye-witnesses are not reliable. That there was no motive or enmity to cause the death and that the deceased was not beaten by the object dangerous to life and as such their conviction u/s 302 of the Indian Penal Code is bad in law.

8. Learned Counsel for the State has submitted that there is overwhelming evidence on record to establish the complicity of the appellants in the crime and the learned Additional Sessions Judge has rightly believed the statement of eye-witnesses to convict and sentence the appellants u/s 302 read with Section 34 of the Indian Penal Code.

9. Dr. A. Rahim (P.W. 5) has stated that on 1-5-89 in the Primary Health Centre of Jaitpur the dead body of Rampratap Tiwari was brought by the police constable for post-mortem and after the autopsy injuries caused by hard and blunt object were seen which are as follows :--

(i) A diffuse swelling 3" in diameter at the right temporal and parietal bone of skull; colour of skin of scalp blackish. When incised there was haematoma beneath the injury (between scalp and bone of skull). The right parietal bone (anterior side) fractured. The membranes of the brain were deeply congested. Clotted blood over brain vessel present.

(ii) Multiple bruise over face present 3" x 3" over right cheek black in colour. When incised clotted blood was present. A bruise was present over left cheek size 2.5" x 3" blue and black in colour.

(iii) A bruise was present over left cheek as described in S. No. (ii).

(iv) Multiple abrasions over mouth 2.3" x 2". There was abrasion on left side of mouth 1" x 1". Clotted blood was present in both.

(v) Abrasion 1" x 1" on left side of mouth as described in S. No. iv.

(vi) A bruise over the back 5.6" x 4.6" Bluish and blackish in colour. When incised blood clots were present.

(vii) A bruise 5.5" x 5" over the back middle bluish in colour,

(viii) One bruise on lower side of back 4" x 4" blue in colour,

(ix) A bruise on the right knee 3" x 2" blue in colour.

(x) The scrotum was extremely swollen. There was a bruise 3" x 3" bluish in colour. When incised testicles were swollen, blood clots were present.

(xi) There was swelling on the right hand back side in 4" diameter 0.5" x 0,5" over right little finger blue black in colour, upper phalynx fractured.

(xii) A diffuse swelling 4" in diameter at the back of right hand bluish black in colour, third carpal bone was fractured.

10. Dr. A. Rahim (P.W. 5) has stated that the injury Nos. 1 and 10 on the deceased was dangerous and were sufficient in the ordinary course of nature to cause death. This fact is

not challenged that Rampratap has died on account of the alleged extensive injuries. Consequently it is proved that the death of Rampratap was homicidal in nature.

11. In order to bring home the involvement of the appellants in causing the murder of Rampratap, the prosecution has examined 4 eye-witnesses, i.e., Mahadeo (P.W. 1), Usha (P.W. 4), Ramdas (P.W. 7) and Ramnath (P.W. 9) and now we will proceed to examine the testimony of these witnesses.

12. Usha (P.W. 4) aged 13 years has stated that his brother Mahadeo (P.W. 1) and father, the deceased went on cycle to the market and after about 15 minutes her brother apprised her that appellant Nos. 1, 2 and 3 are beating the deceased. Usha (P.W. 4) has further stated that on reaching on the spot she saw that the appellant No. 1 Rammilan was beating her father with lathi and other co-accused were injuring her father by pelting stones. Usha (P.W. 4) has deposed in her statement that Ramdas (P.W. 7) and Ramnath (P.W. 9) and others tried to rescue her father but the appellant/accused did not stop and dragged her father towards her house. Usha (P.W. 4) has deposed that she rushed to the house of Thakur Vikram Singh and after few minutes appellant No. 1 Rammilan also came there and on the enquiry by Vikram Singh, he admitted that he has caused the injuries to the deceased. Usha (P.W. 4) has further deposed in her statement that she went to the Police Station, Jaitpur and lodged the First Information Report (Ex. P-8).

13. In searching and long cross-examination of Ku. Usha (P.W. 4), some contradictions in her statement on oath and the earlier police statement have come. From the close scrutiny of the contradictions it is clear that the contradictions are not touching the core of the story narrated by her. These contradictions are very minor and insignificant and alleged discrepancies are not sufficient to discredit her credibility. The conduct and statement of Usha (P.W. 4) are natural and trustworthy. The story narrated by Ku, Usha (P.W. 4) in her First Information Report (Ex. P-8) which was promptly lodged is in consonance with her statement. The distance of Police Station, Jaitpur from the place of incident is 21 kilometers and the report was lodged within six hours, that is, at 5.00 p.m. on 29-4-1989, As such the unblemished promptly lodged First Information Report lends valuable support to the statement of Usha (P.W. 4) because in such early lodged report there are little chances of concoction of the real story. Consequently the learned Additional Sessions Judge has rightly observed that the evidence of Usha (P.W. 4) is reliable.

14. Mahadeo (P.W. 1) aged 10 years has stated that when at about 10.00 a.m. he was going on a cycle with his father Rampratap to the market then after covering some distance, the appellants stopped them. He has further stated that appellant Rammilan started beating his father with lathi and other appellants threw stones on his father. Mahadeo (P.W. 1) has further stated that when the appellants were dragging his father towards his house, he and his sister Usha (P.W. 4) came there and started crying for help. Mahadeo (P.W. 1) was declared hostile by the prosecution because in the examination in chief he has stated that the accused Nos. 2 and 3 were holding the hands

of his father and they did not beat him. Mahadeo (P.W. 1) in cross-examination has clearly stated that along with appellant No. 1 his sons appellant Nos. 2 and 3 were also causing injuries by pelting stones to his father. The abovestated variance in the examination in chief and cross-examination of Mahadeo (P.W. 1) aged about 10 years appears to be innocent and as such insignificant. Statements of Mahadeo (P.W. 1) are consistent and coherent.

15. Ramdas (P.W. 7) and Ramnath (P.W. 9) have stated that accused Nos. 2 and 3 were dragging the deceased Rampratap and when he was brought near to his house, then the appellant Rammilan started inflicting the lathi blows and other appellants pelted stones to him. These witnesses have further deposed that Mahadeo (P.W. 1) and Usha (P.W. 4) reaches there and they made an attempt to rescue the deceased but the appellant did not stop beating. There is no contradiction in between the statement of Ramdas (P.W. 7) and Ramnath (P.W. 9). These witnesses have not contradicted their earlier police statement nor there is instance of exaggeration from the story of the prosecution. Ramdas (P.W. 7) and Ramnath (P.W. 9) have stated that they are living 200 to 300 steps away from the place of incident. Ramdas (P.W. 7) and Ramnath (P.W. 9) have not rancour or reasons to give a false evidence against the appellants. From the perusal of the cross-examination of Ramdas (P.W. 7) and Ramnath (P.W. 9) it is clear that their statements are natural and inspire confidence. Consequently we are of the opinion that Ramdas (P.W. 7) and Ramnath (P.W. 9) are independent witnesses and their presence at the time of the incident is natural and the statements are blameless. Consequently the eye-witnesses Ramdas (P.W. 7) and Ramnath (P.W. 9) along with the statement of Mahadeo (P.W. 1) and Usha (P.W. 4) proves beyond the shadow of doubt that the appellants have caused the injuries to the deceased Rampratap.

16. There is circumstantial evidence in form of the confession by the appellant Rammilan just after the incident before Thakur Vikram Singh which is proved by the statement of Ramsunder (P.W. 11) and Charansingh (P.W. 12). Consequently we agree with the conclusion of the learned Additional Sessions Judge that the appellants were responsible for causing the fatal injuries to the deceased Rampratap.

17. Learned Counsel for the appellants has argued that the appellants have not caused the injuries by the weapons dangerous to life and the incident has taken place without premeditation and as such the conviction u/s 302 of the Indian Penal Code is bad in law. From the statement of Dr. A. Rahim (P.W. 5) it is clear that there was fracture of temporal bone and multiple injuries on the scrotum which were in the ordinary course of nature sufficient to cause death. The existence of 11 injuries and presence of two fatal injuries clearly establishes that the deceased Rampratap was brutally beaten to death. The manner in which the appellants caused the injuries and dragged him, is sufficient to hold that the deceased was murdered in furtherance of common intention of all the appellants.

18. Consequently, the learned Additional Sessions Judge was right in convicting the accused u/s 302 read with Section 34 of the Indian Penal Code.

19. The appeal is devoid of merit and as such it deserves to be dismissed. We accordingly dismiss the appeal.