# Mohammad Asif Vs State of M.P.

**Court:** Madhya Pradesh High Court

**Date of Decision:** April 25, 2003

**Acts Referred:** Penal Code, 1860 (IPC) â€" Section 302, 304

**Citation:** (2003) 4 MPHT 343

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

**Bench:** Division Bench

**Advocate:** J.K. Lodhi, for the Appellant; Chanchal Sharma, Panel Lawyer, for the Respondent

## Judgement

Awasthy, J.
The appellant has preferred this appeal against judgment dated 11-5-1990 passed by IVth Additional Sessions Judge, Bhopal

in Sessions Trial No. 32 of 1989 against his conviction u/s 302 of the Indian Penal Code and sentence of life imprisonment.

2. The prosecution case is that on 28-9-1988 at about 1.35 P.M. at Kabitpura, Bhopal, deceased Irfan had scuffle with the appellant and the

appellant took out the knife and gave blow on the chest of Irfan. That Irfan ran towards his house and he was chased by the accused. When the

deceased reached his house the accused went away saying that he will not leave him to go to the hospital. Eye witnesses of the offence are mother

of deceased Khalikulnisha (P.W. 5), her daughter-in-law Kiswar Jahan (P.W. 4) and her son Taufique (P.W. 9). Kiswar Jahan (P.W. 4) rushed

to the Police Station, Shahjahanabad and First Information Report (Ex. P-7) was recorded on that very day at about 1.51 P.M. by Assistant Sub-

Inspector R.N. Mishra (P.W. 8). Irfan was declared dead in the hospital and post-mortem of the dead body was conducted by Dr. J.N. Soni

(P.W. 2). Dr. J.N. Soni (P.W. 2) has found that in the left side of the chest of deceased, there was an incised wound which had cut the lungs and

the cause of the death was the shock and haemorrhage due to the injury. Investigating Officer Kuber Singh Rajput (P.W. 11) took the recovery

statement (Ex. P-2) of the appellant on 29-9-1988 and a knife was recovered on his instance from nearby bushes. Investigating Officer has also

prepared map (Ex. P-13) of the place of incident and after recording statements of eye-witnesses Rahman Khan (P.W. 6) and Mehruddin (P.W.

10), charge-sheet was filed against the appellant u/s 302 of the Indian Penal Code.

3. The accused abjured the guilt and he in his statement u/s 313, Cr.PC denied the statement of the prosecution witnesses and pleaded false

implication due to enmity.

4. The learned Sessions Judge has examined the statements of P.W. 1 to P.W. 11 and convicted the appellant u/s 302 of the Indian Penal Code

and sentenced as aforesaid.

5. The contention of the learned Counsel for the appellant is that the learned Trial Court has erred in relying the oral testimony of Kiswar Jahan

(P.W. 4), Khalikulnisha (P.W. 5) and Taufique (P.W. 9) and the conviction is liable to be set aside.

6. Learned Counsel for the State has supported the judgment of the learned Additional Sessions Judge and alleged that the statements of all the

three eye-witnesses are unblemished and trustworthy and there is no substance in appeal.

7. Dr. J.N. Soni (P.W. 2) has stated that on 28-9-1988, in Gandhi Medical College, Bhopal, dead body of Irfan aged 16 years was brought for

the post-mortem by the police and during autopsy, it was seen that there was stab wound on the left pectoral region which was sized 4 cm x 1.5

cm. deep into the lungs. Dr. J.N. Soni (P.W. 2) opined that the death was due to shock and haemorrhage as a result of the chest injury which was

caused by a sharp and penetrating object. Thus, it is clear that the death of Irfan aged 16 years was caused due to stab wound and the death was

homicidal in nature.

8. Khalikulnisha (P.W. 5) has stated that deceased Irfan was her son who came running to her house and was crying for the help. Khalikulnisha

(P.W. 5) has deposed that the accused came running with the knife in his hand and he was saying that Irfan will be killed. Kiswar Jahan (P.W. 4)

has stated that Irfan was the younger brother of her husband and when she was in her house, then the appellant came chasing Irfan and Irfan was

saying that the appellant had inflicted knife blow on him. Taufique (P.W. 9) has stated that Irfan was his brother and the appellant had inflicted a

knife blow on the chest of his brother Irfan. Taufique (P.W. 9) has further stated that when Irfan was running for the rescue towards his house then

the accused chased and abused him and he was saying that he would not allow Irfan to reach the hospital. There is no contradiction in the

statements of the eye-witnesses Kiswar Jahan (P.W. 4), Khalikulnisha (P.W. 5) and Taufique (P.W. 9). These witnesses were cross-examined at

length and there is no material contradiction or exaggeration from their previous statements made to the police. The presence of Kiswar Jahan

(P.W. 4), Khalikulnisha (P.W. 5) and Taufique (P.W. 9) at the time of incident is quite natural. In the FIR (Ex. P-7) which was recorded within

fifteen minutes after the incident, it was stated that these witnesses have seen the occurrence. These witnesses have no rancour or axe to grind

against the accused. As such the fact that these witnesses are close relatives of deceased, is no ground to doubt their testimony which is otherwise

unblemished.

9. Kiswar Jahan (P.W. 4) has stated that she went to the police station and lodged the FIR (Ex. P-7) against the appellant. The distance of the

Police Station from the place of incident is only one kilometre. FIR was recorded on 28-9-1988 at 1.51 P.M. just within fifteen minutes after the

incident. The story disclosed in the First Information Report is coherent and in consonance with the statements of the eye-witnesses. Such

promptly recorded First Information Report (Ex. P-7) is an important piece of evidence to corroborate the statements of the eye-witnbss Kiswar

Jahan (P.W. 4). It is observed in Narayan Singh and Others Vs. State of M.P., , that in promptly lodging FIR there is hardly time to Concoct false

story against the accused and such report is valuable to corroborate the version disclosed by the prosecution witnesses. Consequently, we hold

that First Information Report (Ex. P-7) recorded within fifteen minutes of the incident provides valuable support to the statements of eye-witnesses

Kiswar Jahan (P.W. 4), Khalikulnisha (P.W. 5) and Taufique (P.W. 9).

10. Learned Counsel for the appellant has argued that the accused was not known to the eye-witnesses and as such the identification of the

appellant in the Court by the eye-witnesses should not be relied upon. Eyewitnesses and the appellant are residents of the same vicinity, i.e.,

Kabitpura and not a single eye-witness stated that the appellant was not known to them before. Consequently, we hold that the defence of the

appellant that the appellant was not known to the eye-witnesses before the incident is not supported by the evidence on record and it is mere

figment of the imagination.

11. From the above discussion, we conclude that the learned Additional Sessions Judge has rightly believed the statements of the eye-witnesses

and has rightly concluded that the prosecution succeeded in proving beyond reasonable doubt that the appellant was the author of the fatal injury of

knife to the deceased. Learned Counsel for the appellant has argued that the appellant has given a single knife blow to the deceased and as such he

should not be convicted u/s 302 of the Indian Penal Code.

12. Dr. J.L. Soni (P.W. 2) has not stated that the injury in the body of Irfan was sufficient in the ordinary course of nature to cause his death. The

appellant has caused only one injury. There is no evidence that the incident was pre-planned or the appellant had previous enmity or reason to kill

the deceased. In the case of Ram Swarup Vs. The State of Haryana, , it was observed that where the murder was not pre-meditated but arose out

of mutual fight, the offence falls u/s 304, Part I of the IPC. The appellant had given blow with lethal weapon on vital part. It can be said that the

accused has done the act with intention of causing such bodily, injury which he knew that it is likely to cause death. In aforesaid circumstances, the

appellant is guilty for offence punishable u/s 304 (I) of the IPC.

13. In the circumstances of the present case, we come to the conclusion that the prosecution has failed to prove beyond reasonable doubt that the

appellant is guilty of murder. This fact is proved that the appellant has committed culpable homicide not amounting to murder which is punishable

under first part of Section 304 of the IPC. Consequently, we hold that the finding of the Additional Sessions Judge that the appellant has caused

the death of Irfan is based on proper appreciation of the statements of the eye-witnesses. That conviction of the appellant is not tenable u/s 302 of

the IPC and instead it is converted u/s 304, Part I of the IPC. The sentence of the appellant is reduced from life imprisonment to rigorous

imprisonment of ten years.

13. The appeal is partly allowed and the appellant is convicted u/s 304, Part I of the IPC and sentenced to undergo rigorous imprisonment of ten

years.