
Ramchandra Vs State of M.P.

Criminal A. No. 538 of 1993

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: June 28, 1997

Acts Referred:

Evidence Act, 1872 " Section 118

Citation: (1998) 1 MPLJ 228

Hon'ble Judges: Shambhoo Singh, J; R.D. Shukla, J

Bench: Division Bench

Advocate: S.S. Swami, for the Appellant; G. Desai, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Shambhoosingh, J.

This appeal has been preferred by the accused Ramchandra against the judgment and order dated 24th September, 1993 passed by Vth

Additional Sessions Judge, Ujjain in S.T. No. 71/93 whereby the appellant was convicted u/s 302 of the Indian Penal Code and sentenced to life

imprisonment.

The prosecution case, in brief, is that the appellant was residing on the first floor of his house in a room with his second wife Nanubai, the

deceased, and his son Dinesh @ Jagdish (PW 3). In the adjacent room his brother Babulal (PW 6) was living with his wife Mangubai (PW 5) and

his son Ashok (PW 4). While their father Nandram (PW 1) was living in a separate house. In the night of 6th October, 1992 the appellant

demanding some money for purchasing "Bidi" which was not accepted by the deceased Nanubai, the wife of the appellant and some quarrel took

place on this matter. On the next day (7th October, 1992) at 6-7 a.m. the appellant took out an axe and gave axe-blows on the neck and head of

his wife Nanubai near the hearth where she was sitting to prepare food. The son of the appellant Dinesh @ Jagdish (PW 3) aged about 8 years,

shouted not to kill his mother. Mangubai (PW 5), the wife of Babulal, hearing the shouts of Dinesh @ Jagdish, rushed to the room of the appellant.

She saw the appellant armed with axe. He seeing her, threw axe and fled away from his house. She saw that Nanubai was injured and she was

profusely bleeding. She sent her son Ashok (PW 4) to call her father-in-law Nandram and also called her husband Babulal. Nandram and Babulal

came on the spot. They saw the dead body of the deceased Nanubai. Immediately Nandram and Ramlal (PW 7) went to P. S. Unhail where

Nandram lodged F.I.R. Ex. P/1 which was recorded by Eshwarya Shastri (PW 11), S. H. O. Unhail. He registered crime No. 119/92 u/s 302 of

the Indian Penal Code and started investigation. He reached the spot and summoned witnesses and conducted inquest of the dead body of

Nanubai and prepared report Ex. P/10 and sent the same to Primary Health Centre, Unhail for post mortem examination. He prepared spot-map

Ex. P/10 and seized stained and unstained earth from the place of incident vide seizure memo Ex. P/5. He also seized axe from the room of the

appellant vide seizure memo Ex. P/4. Eshwarya Shastri on that very day arrested the appellant vide arrest memo Ex. P/10 and seized his shirt,

baniyan and dhoti from his body vide seizure memo Ex. P/7. Dr. R. C. P. Sisodiya (PW 2) performed autopsy and found the following injuries on

the dead body of Nanubai:

1. Abrasion over forehead 2" x 1 1/2".

Incised wound over left cheek and Maxilla 3" x 1/2" x 1/2".

Incised wound on base of neck 5" x 2" x 2". Muscles, vessels, nerves and cervical vertebra 4th, 5th and 6th were cut.

Dr. Sisodiya opined that the injuries were ante mortem. Injury No. 1 was caused by hard and blunt object while injuries Nos. 2 and 3 were caused

by hard and sharp edged weapon. Dr. opined that the cause of death was haemorrhage and shock due to injuries found on vital organ-spinal cord.

The certified copy of the judgment dated 29th September, 1978 of Cr. Case No. 623/75 passed by J.M.F.C. Khachrod whereby the appellant

was convicted under sections 324 and 325 for having caused injuries to his first wife Ramibai (P.W. 10). After completion of investigation, challan

was filed. The appellant pleaded not guilty and false implication. The learned Sessions Judge convicted and sentenced the appellant as stated

earlier, hence this appeal.

Shri Swami, learned counsel for the appellant, submitted that the learned Sessions Judge committed error in putting reliance on the testimony of

child witness Dinesh @ Jagdish aged about 8 years and Ashok aged about 10 years. He contended that these witnesses have not fully supported

the prosecution case, therefore, the appellant deserves acquitted. Repelling these arguments, Shri Desai, learned Government Advocate, argued

that the evidence of child witness Dinesh @ Jagdish and Ashok is reliable. Their testimony has been corroborated by other evidence.

We were taken through the evidence on record.

The fact of homicidal death of Nanubai has not been disputed before us and rightly so as it is amply proved from the inquest report Ex. P/10 and

medical evidence of Dr. Sisodiya (PW 2) and other evidence on record.

Now the question that arises for determination is whether the appellant caused the death of his wife Nanubai?

Admittedly, there is only one eye-witness Dinesh @ Jagdish, the son of the appellant and he is a child witness aged about 8 years. It is settled that

while assessing the evidence of child witnesses, care and caution have to be exercised because there is likelihood of their being tutored by others

and under these circumstances, such witnesses can be relied upon provided the same is corroborated by other reliable evidence on material

particulars. The evidence of Dinesh cannot be thrown out merely on the ground that he happens to be a child witness, if his evidence is

corroborated from other reliable evidence and is found to be probable and reliable.

Now we would examine the evidence of Dinesh (a) Jagdish in the light of above observations. The learned trial Judge tested the capacity of this

witness before his deposition was recorded and was satisfied that this witness is capable of giving evidence and has power of understanding.

Dinesh @ Jagdish in examination-in-chief deposed that he was sleeping in his house. He awoke when somebody assaulted his mother. He did not

see the assailant. He went to his grand-father and told him that his mother had died. He was declared hostile and cross-examined by prosecution.

He initially tried to save his father, the appellant but he admitted in cross-examination that in the previous night the appellant demanded some

money for purchasing "Bidi" which was not accepted by his mother. On this, quarrel took place between them and in the morning when his mother

was sitting near hearth, the appellant gave her axe-blow. He went to his grand-father and told him that his father had killed his mother. This incident

took place in the house of the appellant where he was residing with his wife, the deceased Nanubai and this witness, therefore, the presence of

Dinesh (a) Jagdish was natural on the place of incident. The evidence of this child witness gets corroboration from the evidence of Mangubai (PW

5), the wife of the appellant's brother Babulal (PW 6). The room of Mangubai is adjacent to the room of appellant, therefore, the presence of

Mangubai and her son Ashok was also natural. Mangubai has testified that the children of Nanubai were shouting ""Bhaiji (father) do not kill"".

Hearing this, she came to the room of the appellant. She saw that the appellant coming out of his room having axe in his hand. He threw the axe on

the ground and ran away from the spot. She went into the room of the appellant and saw her sister-in-law Nanubai lying dead. Her neck was cut.

She was in pool of blood. She sent her son Ashok (PW 10) to call his grand father Nandram. Ashok (PW 4) aged about 10 years, the son of

Mangubai stated that his mother told him that his ""Moti Maa"" his father's elder brother's wife has been killed by his ""Mote Bhai Ji"" his father's

elder brother. It has come in the statement of Mangubai and Dinesh that Dinesh @ Jagdish used to address his father, the appellant as "Bhaiji", and

Ashok used to address him as ""Mota Bhaiji"". Babulal (PW 6) came from outside after answering the call of nature. He saw that people had

assembled there and they told him that Ramchandra had killed his wife. These witnesses have been cross-examined but nothing could be brought in

their evidence which could render evidence unreliable.

It is true that Dinesh has been declared hostile. But it is settled that the evidence of hostile witness cannot be rejected outright. However, as a rule

of prudence, it should be examined carefully and if it is corroborated by other reliable evidence, reliance can be put on the part of the evidence

which is found truthful. The evidence of Dinesh has been corroborated from the evidence of Mangubai and Ashok. Mangubai is an independent

witness. She has no axe to grind against him. She is a truthful witness. Same is the case with Ashok. The evidence of Dinesh also gets

corroboration from medical evidence. Dr. R. C. P. Sisodiya (PW 2) found one incised wound on the neck and one incised wound on left cheek

and one abrasion on forehead of the deceased. Dr. Sisodiya opined that the incised wound could be caused by axe.

It is true that Nandram, the father of the appellant did not support the prosecution case. He stated that Dinesh did not tell him about the appellant

having killed his wife. He was declared hostile. He went to the extent of stating that he did not see that the neck of Nanubai was cut while all the

witnesses stated that the neck of the deceased was cut and she was profusely bleeding. Nandram, the father of the appellant, has lost his daughter-

in-law and now he does not want to lose his son, that is the reason why he is not supporting the prosecution case. He admitted that he lodged

F.I.R. Ex. P/1 which has been proved by PW 11 S.H.O. Eshwarya Shastri. In this report Nandram has mentioned that he was told by Ashok, the

son of Babulal that the appellant had killed his wife and he saw injury on the neck of Nanubai and axe was lying there. Ramlal (PW 7) had

accompanied Nandram, when he went to the P. S. Unhail for lodging F.I.R. This witness deposed that Nandram told him that the appellant had

killed his wife. This witness is an independent witness from the evidence of Ramlal (PW 7) and F.I.R. Ex. P/1. It is clear that Nandram is not telling

the truth. The learned trial Judge relied the evidence of Dinesh @ Jagdish which had been corroborated by the statement of Mangubai, Ashok,

medical evidence and other evidence. In our opinion, the learned trial Judge rightly put reliance on the testimony of Dinesh @ Jagdish and we see

no reason to disagree with that finding.

The appellant was residing with his wife, the deceased and son Dinesh in a room on first floor. This room has only one gate. The appellant slept

with his wife and son in this room. In the morning, he was seen by Mangubai coming out of the door of this room having axe in his hand. He threw

axe and ran away from his house. Mangubai entered his room. She found the wife of the appellant, Nanubai in pool of blood. She had died. No

other person was seen on the first floor of the house. There is no explanation as to how Nanubai was found in pool of blood, with injuries on neck

immediately after the accused came out of his room with axe in his hand. Therefore, the only irresistible conclusion that can be drawn is that it was

the accused and accused alone who caused the death of his wife.

We, therefore, hold that the learned trial Judge rightly held that the appellant caused the death of his wife Nanubai by causing injuries to her with

axe.

Now the question is as to what offence is made out against the appellant?

Shri Swami argued that the appellant caused only two incised wounds and one abrasion. It reveals that he had no intention to cause death of the

deceased. There was quarrel between husband and wife and at the spur of moment he caused injuries, therefore, the appellant at the most can be

convicted u/s 304 of the Indian Penal Code. Shri Desai submitted that the quarrel took place in the previous night and not in the morning. The

appellant used deadly weapon like axe and caused injuries on the vital part of the body. It clearly proves that the appellant intended to cause

death, therefore, he should be convicted u/s 302 of the Indian Penal Code. From the evidence of Dinesh, it is clear that the quarrel took place

between husband and wife on the previous night of the incident. There was no quarrel or exchange of hot words in the morning. Under these

circumstances, it cannot be accepted that the appellant caused injuries in a spur of moment. The appellant inflicted injury on the vital part of the

body of the deceased with a deadly weapon like axe. The injury on the neck was caused with such great force that it had not only cut the muscles,

vessels and nerves but also cervical vertebrae 4th, 5th and 6th. This proves his intention to cause death. It is imminently dangerous to the life of

human being.

We, therefore, hold that the appellant committed murder of his wife. The learned trial Judge rightly convicted him u/s 302 of the Indian Penal

Code. We, therefore, dismiss the appeal and confirm the conviction and sentence awarded by the learned Sessions Judge to the appellant. The

appellant is in jail. The period of incarceration during and after trial shall be given set off as per provisions of section 428 of Criminal Procedure

Code.