
(1988) 06 MP CK 0006

Madhya Pradesh High Court (Indore Bench)

Case No: None

Ambaram

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: June 30, 1988

Acts Referred:

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

Citation: (1989) CriLJ 199 : (1989) MPLJ 583

Hon'ble Judges: V.D. Gyani, J; A.G. Qureshi, J

Bench: Division Bench

Judgement

V.D. Gyani, J.

The appellant has been convicted u/s 302 IPC and sentenced to undergo life imprisonment. He was charged and tried along with three others (since acquitted) for an offence punishable u/s 302/34 IPC, but convicted u/s 302 I.P.C. vide judgment dated 6-2-1985 passed by the Third Additional Sessions Judge, Ujjain in Sessions Trial No. 162 of 1985.

Short facts of the case are; that on 4-8-1984 around 7 p.m., the appellant along with co-accused committed murder of one Gangaram. According to the prosecution case certain portion of pasture land in village Kukri was encroached upon by the accused. The villagers had, therefore, assembled on the ota of the temple around 12 a.m. to prepare a petition for removal of said encroachment. When Gangaram and Bhagirath, who are brothers, were signing the petition, the accused abused them and threatened them with dire consequences in case any one signed it. It was for this reason that Bhagirath, who was also the Sarpanch of village, did not sign the petition. Gangaram, however, signed it, which resulted in a quarrel between him and the accused. However, on an intervention by other villagers, the accused returned. On the same day, the villagers collectively signed a report, Ex. P-1 which was brought to the Police Station by Bhagirath and Gangaram. Bhagirath also

lodged an oral report, Ex.P-14, at the Police Station. According to the case, the accused has also come to Mahidpur. In order to reach village Kukni from river Kshipra, it is required to be crossed. As it was a rainy season both brothers Gangaram and Bhagirath while returning to their village Kukni were crossing the river in a boat. The accused were also in the same boat, armed with Dhariya and Lathis, When the boat reached the opposite bank towards village Parvatkheda, the accused alighted from the boat and proceeded ahead. Bhagirath and Gangaram along with others were following them. No sooner Gangaram and Bhagirath crossed the steep ghat and reached the even ground, Gangaram was waylaid by the accused, who started assaulting him. Bhagirath rushed back to the Ghat crying for help, where he found that boat man Maqsoodali(PW-9) and Usman were present. He narrated them the incident He again came back to scene of occurrence, but by that time the accused had run away. Gangaram died due to the injuries suffered by him. Bhagirath again came back to Mahidpur after crossing the river, where he lodged the First Information Report, Ex.P-2. Investigation proceeded on this report. The accused were arrested during the course of investigation and weapons were recovered at their instance. On completion of investigation, the accused were prosecuted for the above offence and as noted above, the appellant has been convicted u/s 302 I.P.C. and sentenced to life imprisonment hence this appeal. Shri Bhargava, learned Counsel appearing for the appellant has raised the following points:

1. Prosecution evidence which has been disbelieved so far as the other co-accused since acquitted should not have been relied upon for convicting the appellant.

The plea of self-defence as taken by the appellant cannot be split-up either it should be accepted as a whole or rejected as a whole.

The appellant having been charged u/s 302/34 I.P.C. could not have been legally convicted u/s 302 I.P.C. more so when there was no charge framed under this substantive head.

Taking up the first point, there is no warrant for the proposition that evidence found to be unreliable in respect of some of the accused cannot be acted upon for convicting another accused even if it is found to be reliable against him who stands convicted on the basis of such evidence.

Counsel for the appellant referred to the evidence of Maqsoodali (PW-9) who had deposed that it was accused Mohan who was having a Dhariya and submitted that the appellant could not have assaulted with Dharia when Mohan was having it. The submission cannot be accepted for the simple reason that Maqsood Ali (PW-9) is not an eye-witness, he has merely referred to the time when the accused boarded his boat, it was at that time that Mohan was having a Dharia. He has further stated, that Bhagirath came running and informed that all the four accused has killed his brother Gangaram and they would also hit him. Thereafter he accompanied

Bhagirath along with Usman another boatman to the place of incident : it is thus abundantly clear that he is not a witness to the occurrence. Bhagirath (PW-1) has also stated that after his brother was done to death, by the accused he rushed to the, "Ghat" crying for help and found witness Maqsoodali (PW-9), Usman and Usmankhan at the Ghat to whom he narrated the incident.

There is overwhelming prosecution evidence on record to hold that it was the appellant who dealt Dharia blows. Bhagirath (PW-1), Lalu (PW-3) and Pyarji (PW-8) all eye witnesses have with one voice stated that, it was appellant Ambaram who assaulted the deceased with Dhariya.

It was contended by Shri Bhargava, learned Counsel for the appellant that deceased Gangaram fell down as a result of first lathi-blow given by accused Jujharsingh. As stated by Pyarji (PW-8), there was no occasion for the appellant to wield the Dhariya which according to Maqsoodali (PW-9) was possessed by accused Mohan. The submission is illconceived and based on taking a distorted view of prosecution evidence. The evidence of Maqsoodali (PW 9) has already been dealt with in the foregoing para. He is not an eyewitness. He saw accused Mohan with a dhariya when the accused were crossing the river Kshipra in his boat, Dhariya is not such an article which could not have passed hands. No doubt, Pyarji (PW-8) has stated that accused Jujharsingh first hit the deceased with a lathi but this statement by itself is not sufficient. There are as many as three other eye-witnesses who have categorically stated that it was Gangaram, who was having a Dhariya and who dealt a Dhariya blow, hitting the deceased in his head. Bhagirath (PW-1) in paras 4 and 5 of his statement and Lalu (PW 3) in para 2 of his statement have deposed to this effect and their testimony has remained unshaken despite lengthy cross-examination. Both these witnesses have also deposed about Jujharasingh having dealt a lathi blow.

Medical evidence fully corroborates the eye-witness account, as per post-mortem report, Ex.P-8, and the evidence of Dr. Murlidhar (PW-5) shows an incised wound 6" X 3" X 1/2" over right parital region, 1" above the right ear with brain matter protruding out from the incised wound was found and the right parital bone was also fractured There was another incised wound 2 1/2" X 1/2" X 1/2" on lower l/3rd of the left leg over lateral surface. Bhagirath (PW-1) has stated that no sooner Jujharsingh gave a lathi blow, hitting the deceased Gangaram on his back, he ran for about 8-10 paces and Ambaram the appellant hit him with a Dhariya on his head. After he had fallen down the accused has assaulted him with lathies and Dhariya and that explains the incised wound found on the left leg of Gangaram. Lalu(PW-3) has also deposed to this effect.

In face of this evidence, the submission made by the learned Counsel for the appellants cannot be accepted, as it would be nothing short of taking microscopic view of the incident, wherein four persons, armed with Lathis, and one of them with Dhariya, sorrouned the deceased and attacked him.

While appreciating the evidence of a witness, the approach must be, whether the evidence of the witness read as a whole, has a ring of truth. There is no such infirmity pointed out by the learned Counsel so as to discard the eye-witness account in this case. Minor discrepancies on trivial matters, not touching the core of the case, and that too based on taking a hipertechnical view, by taking sentences torn out of context here or there from the evidence of witnesses, would not mitigate against the reliability of such evidence.

Coming now to the question of self-defence, as raised by the learned Counsel the fact that was he having a Dhariya and wielded the same, is amply established independent of the plea of self-defence taken by the accused-appellant, It is not because of the suggestion thrown to the prosecution witnesses, with a view to establish a right of self defence that it is held that the appellant was having a Dhariya and attacked the deceased with it. The finding is based on the positive statement of the eye-witnesses without seeking support from the plea of self-defence as suggested to these witnesses in cross-examination. Thus there is no question of splitting up the plea of right of self defence. We are not basing our conclusion as regards the appellant having assaulted the deceased with a Dhariya, on the basis of the plea of self-defence taken by him, but our conclusion is entirely and exclusively based on the evidence of eye-witnesses, independent of plea of self-defence.

The last point which remains to be considered is about the appellant's conviction u/s 302 I.P.C. although he was also charged u/s 302 read with Section 34 IPC. The contention has been advanced by the learned Counsel that as three of the co-accused similarly charged u/s 302 IPC have been acquitted by the trial Court, the overt act of assaulting, the deceased with a Dhariya has not been attributed to the appellant in the charge as has been framed against him by the trial Court.

Section 34 IPC does not create an offence, it merely enunciates a principle of joint liability for criminal acts done in furtherance of common act of the offender. The accused-appellant has not at all been prejudiced in his defence, as is evident from the fact that he has put forth right of self-defence to the eye-witnesses. The specific overt act attributed to him in commission of the offence, has been fully sought to be met with, and notwithstanding the acquittal of other accused of charges u/s 302/34 I.P.C, the trial Court rightly found him to be guilty u/s 302 I.P.C. and convicted him accordingly. The appellant has been proved to be the author of fatal blow.

The object of a charge is to warn the accused person of the case he has to answer. The basic requirement in every criminal trial is that the charge must be so framed as to give the accused person a fairly reasonable idea as to the case which he has to face. However, in the instant case, the charge as framed against the appellant was not as clear as it might have been, inasmuch as Section 302 IPC., as a substantive offence, has not been mentioned in the charge. But no prejudice can be said to have been caused to the appellant by reason of the defect in the charge as to the intent

of the appellant. He was fully aware of the case made by the prosecution and has full opportunity of rebutting the evidence given against him. The appellant knew that the case against him was that he, along with three others, was one of those, who on 4-8-1984 around 7.00 p.m. in village Parvatkheda, near Navghat, committed the murder of one Gangaram. He is proved to have struck the fatal blow. Witnesses, who deposed to this effect have been fully cross-examined and have in fact been confronted with the appellant's right of self-defence. He was fully informed of the date, time and place of murder of Gangaram. He was charged with murder and nothing short of it. Although it was stated in the charge that the offence was committed by him in furtherance of a common intention, shared by three others (since acquitted), if the evidence failed to prove that the offence committed by him was in furtherance of a common intention, it would be nonetheless his offence, namely, murder, if his act in law amounted to murder. The law does not require in such a case that a separate charge for murder should be framed, because the charge of murder, though in furtherance of common intention, was already on record. The contention advanced by the appellant's counsel cannot be accepted in view of the foregoing discussion.

For the foregoing reasons, this appeal fails and is accordingly dismissed.