

(2009) 02 MP CK 0044

Madhya Pradesh High Court

Case No: None

Wazir Singh and
Others

APPELLANT

Vs

State of Madhya
Pradesh

RESPONDENT

Date of Decision: Feb. 9, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 105, 147, 149, 302, 304

Citation: (2009) CriLJ 2916 : (2010) 6 RCR(Criminal) 2783

Hon'ble Judges: Rakesh Chandra Mishra, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.C. Mishra, J.

This appeal has been preferred against the judgment dated 1-10-1994 passed by the Sessions Judge, Khandwa in S.T. No. 104/94 whereby each one of the appellants was convicted and sentenced as under:

Convicted u/s

Sentenced to

342 read with Section 34 of the IPC

undergo RI for six months

147 of IPC

undergo RI six months.

304 Part II read with Section 149
of IPC

undergo RI for three years.

with the direction that the jail sentences shall run concurrently

2. The prosecution story, in short, may be narrated as under:

(a) At the relevant point of time, Motiram (since deceased) was residing in a house situated at the distance of only one furlong from the house of appellant No. 2-Ishwar Singh (for brevity "A2") at village Gondwadi. Residence of Hariram (P.W. 1), the Kotwar (village watchman), was also located in the same village.

(b) On 5-3-1994 at about 11 p.m. appellant No. 1 Wazir Singh (hereinafter referred to as "Al") came to the residence of Hariram (P.W. 1) and informed that a thief namely Motiram had been apprehended in his house. Thereupon, Hariram accompanied Al upto the spot where Motiram, with bleeding injuries on right side of his head and tied hands behind the back, was further fastened to a pillar with a rope. The other appellants were also present there. Hariram further noticed irregular blood marks. On being questioned, Motiram stated that after assaulting him with a piece of wood, all the appellants had curtailed his movements by tying him to the pillar. After a while, Village Sarpanch Dagulal (P.W. 7) and Up-Sarpanch Abhay Singh (P.W. 3) also arrived at the place of occurrence but they were asked by the appellants to leave the place.

(c) At about 1 in the night, Motiram started loosing consciousness and, at the instance of Hariram, the ropes were untied. Ultimately, in the morning at about 8, Motiram breathed his last.

(d). It was upon the FIR (Ex. P-1) lodged by Hariram that a case, under Sections 302 and 342 read with Section 34 of the IPC, was registered. After inquest proceedings, dead body of Motiram was sent to the hospital for postmortem. Autopsy Surgeon Dr. Atul Kumar (P.W. 6) opined that cause of Motiram's death was coma due to brain injury. However, he also preserved viscera and bloodstained clothes of Motiram for forensic examination.

(e) During investigation, ordinary soil, bloodstained soil, vomit mixed soil, 3 ropes and other bloodstained articles including a brick, a stone, a piece of wood and an axe were seized from the spot. Al's shirt having bloodstains on the left sleeve was also seized. These articles along with viscera and bloodstained clothes of Motiram were forwarded to FSL Sagar for forensic examination.

(f) After completing the investigation, charge-sheet was submitted in the Court of JMFC, Khandwa who committed the case to the Court of Session for trial.

3. On being charged with the offences punishable under Sections 147, 342 read with 34 and 302 read with 149 of the IPC, the appellants abjured the guilt and pleaded false implication due to prevailing animosity. It was also suggested that in an unsuccessful bid to escape after committing rape on A2's wife Durga Bai in the room where she was sleeping. Motiram received injuries and was apprehended. In pursuance of the defence, all the appellants, in the examination, u/s 313 of the Code

of Criminal Procedure, admitted that Kotwar Hariram had come to the spot only after being informed by AI about the arrest of Motiram. No witness was called in defence.

4. The prosecution examined as many as 8 witnesses including Hariram (P.W. 1), Dagulal (P.W. 7), Abhay Singh (P.W. 3) and Durga Bai (P.W. 2), who came forward to substantiate the plea of right of private defence. Learned trial Judge, for the reasons recorded in the impugned judgment, proceeded to reject the defence plea and came to the conclusion that the guilt of all the appellants in subjecting Motiram to assault as well as to wrongful confinement were established beyond a reasonable doubt. However, he was of the opinion that as none of them had any intention to kill Motiram, it was not possible to record conviction of the offence of murder. He, accordingly, convicted the appellants for the offence u/s 304, Part II of the IPC as well as for the other offences charged with and sentenced them as indicated hereinabove.

5. Legality and propriety of the impugned convictions have been assailed inter alia on the following grounds:

(i) There was no evidence to prove involvement of any appellant in causing injuries to Motiram.

(ii) The existence of right of private defence of person as well as property was clearly established from the evidence of Durga Bai (P.W. 2).

(iii) The medical evidence did not support the prosecution version.

However, the learned Panel Lawyer, by making reference to the incriminating pieces of evidence on record, submitted that the impugned convictions were fully justified.

6. Before proceeding to enter into the merits of the rival contentions, it would be necessary to advert to evidence of the autopsy surgeon Dr. Atul Kumar (P.W. 6). He proved the existence of following injuries on the body of Motiram:

(i) incised wound with clear cut margins, size 2" x 1/2" into bone deep over scalp temporal region 3 1/2" above the right ear.

(ii) lacerated wound, size 1" x 1/2" into bone deep over above right eye-brow.

(iii) incised wound, size 1" x 1/4" into partial skin deep on the scalp behind injury No. (ii).

(iv) lacerated wound semicircular in shape, size 1" x 1/2" into bone deep over occipital region.

(v) fracture starting from middle of right orbital and going up to temporal region and ending at 3Vi" above the right ear and in the internal examination clotted blood was found in the brain that was also swollen.

The medical expert categorically opined that cause of Motiram's death was the in-jury to brain as a result of head injury. In the cross-examination, he completely ruled out the suggested possibilities that the injuries could be caused due to fall face-long on the ground or consequent to a collision with doorframe in view of the fact that the injuries on head, in the form of incised wounds, were clearly visible.

7. Kotwar Hariram (P.W. 1) reiterated the prosecution version as recorded in the FIR (Ex. P.1) at his instance by SHO Rajaram Patidar (P.W. 8). He further deposed that, on being informed by A1 that Motiram was found inside the house of A2, he at once presumed that the matter related to illicit relationship between Motiram and Durga Bai (P.W. 2).

8. Hariram vividly described the circumstances available at the place of alleged occurrence. According to him, hands of Motiram were tied with a rope that was further fastened to a pillar and blood was coming out of the injury located on the right side of Motiram's head. The other witnesses named in the FIR viz., Dagulal (P.W. 7) and Abhay Singh (P.W. 3) duly corroborated the testimony of Hariram. Dagulal further stated that at the request of Motiram, he had provided a Bidi for smoking whereas Hariram and Abjay Singh clearly admitted that upon his insistence, Motiram was allowed to go out of the house to answer call of nature. These witnesses cross-examined at length but no material inconsistency could be elicited. Their evidence also drew support from the statement of Narayan (P.W. 5) that he had seen his brother-in-law Motiram tied to a pillar and surrounded by all the appellants. Even otherwise, the confinement of Motiram in an injured condition at the spot was not in a serious dispute.

9. This apart, Jamna Bai (P.W. 4), widow of Motiram, categorically alleged that it was A2 only who had taken her husband from their residence at about 9 in the fateful night and, after an hour, she was informed by Mangal that Motiram was being beaten by the appellants with a piece of wood, stones and axe. The only discrepancy that could be gleaned in her cross-examination with reference to her police statement (Ex. P.9) pertained to name of the informant only. However, her residual testimony in substance was fully in consonance with the prosecution story. According to her, despite the fact that there was an illicit relationship between Motiram and Durga, A2 used to take Motiram to his house.

10. The key witness Durga Bai (P.W. 2) candidly admitted that she was subjected to sexual intercourse by Motiram in a room where she was sleeping. According to her, initially, deeming Motiram to be her husband she did not raise any objection in performance of the copulation but raised alarm immediately after realizing the reality. As per her explanation, Motiram had sustained the injuries consequent to collision of his head against frame of the door while running away. However, she also admitted that her brothers-in-law Dashrath (appellant No. 3) and Hansraj (appellant No. 4) were able to apprehend Motiram and, thereafter, she had pelted stones at him. After being declared hostile, she was cross-examined not only by the

prosecutor but also by the defence counsel but there was no legal bar in placing reliance on part of her evidence consistent with the prosecution case that Motiram was confined in her house in an injured condition. Copy of the FIR (Ex. D-4) as to the alleged rape also indicated that it was lodged only after the death of Motiram. Her admission that, at the time of the sexual, assault she was carrying pregnancy also assumed significance. Above all, the medical evidence rendered no support to her statement as to the cause of injuries sustained by Motiram.

11. It is well settled that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence (See [Salim Zia Vs. State of Uttar Pradesh](#), .

12. Turning to the case on hand, it can be safely concluded that no right of private defence of person was available to Durga Bai in view of a long standing extra marital relationship between Durga Bai and Motiram, well-within the knowledge of A2, was established from the evidence on record. For this, reference may be made to the statements of Hariram (P.W. 1), Abhay Singh (P.W. 3) and Dagulal (P.W. 7) that nearly 3 years prior to the incident in question, the prosecution of Motiram at the instance of A2 for alleged house trespass in order to commit theft, had ended into an acquittal in the wake of compromise arrived at between them. Motiram's wife Jamuna Bai also substantiated the factum of an illicit relationship between him and Durga Bai. Further, her assertion that Motiram was taken to the spot by A2 only was sufficient to demolish the right of private defence of property as claimed by the appellants. Even if it is assumed that Motiram had committed house trespass, the right of private defence exercisable by the appellants did not extend to causing his death as there was no apprehension of death or grievous hurt as contemplated u/s 105 of the IPC. Therefore, as rightly concluded by learned trial Judge, the appellants were liable to be convicted for the offence of culpable homicide not amounting to murder punishable u/s 304, Part II along with the offences under Sections 147 and 342 of the IPC.

13. Thus, viewed from any angle, none of the convictions under challenge calls for any interference. They are, accordingly, upheld as well merited on facts as well as on law. In the facts and circumstances of the case, the consequent sentences also deserve to be maintained.

14. In the result, the appeal is dismissed and impugned convictions of the appellants and consequent sentences are hereby affirmed.

15. The appellants are on bail. They are directed to surrender to their bail bonds for undergoing remaining part of sentence.