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**(2008) 01 MP CK 0073**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** None

Nan Singh and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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**Date of Decision:** Jan. 21, 2008

**Acts Referred:**

- Arms Act, 1959 - Section 27
- Evidence Act, 1872 - Section 60
- Penal Code, 1860 (IPC) - Section 396, 397, 436

**Citation:** (2008) CriLJ 1795

**Hon'ble Judges:** S.L. Kochar, J; Manjusha P. Namjoshi, J

**Bench:** Division Bench

**Final Decision:** Allowed

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**Judgement**

S.L. Kochar, J.

This appeal has been directed against the impugned judgment dated 9-11-1998, passed by learned II Additional Sessions Judge, Alirajpur, (M.P.) in S.T. No. 258/90 whereby convicted the appellants No. 1 to 6 u/s 396 of the IPC and sentence to R.I. for life and also appellant Nos. 2 and 3 u/s 27(6) of the Arms Act and sentence to R.I. for seven years.

2. Briefly stated the prosecution case as unfolded before the Trial Court is that on 24-4-1989, at 8.30 p.m. complainant Kilan (P.W. 3), his son Ramsingh (P.W. 7) Versingh, daughter deceased Hajari and wife Noorlibai were sitting inside their hut after taking night meal. They overheard sound of firing, because of which, they came out from the hut and saw that the huts of inhabitants of that locality named Jugadiya, Kalia, Kishaniya, Dursingh, Nayakada, Bhangada, Kutriya, and Ditaliya Chamar were burning and 8 to 10 persons were coming towards their hut. They had seen in the light of fire those 8 to 10 persons. The complainant Kilan (P.W. 3) went inside his hut, suddenly he heard a sound of firing coming from his courtyard.

Thereafter, all the accused persons total eight in number, having guns, bows and arrows, forcibly entered inside his hut. The appellant No. 1 Nansingh was having bows and arrows as well as burning torch (Mashaal) and was trying to set fire to the hut which was objected by the complainant. At that moment, appellant No. 4 Banadiya raised gun to fire, but the barrel of the gun was pushed aside by the complainant, because of which, the bullet did not hit him and hit to the wooden log of the hut. The daughter of complainant Kilan deceased Hajari and wife Noorlibai requested the appellants not to set fire their hut and also not to assault them, at which, appellant No. 3 Munatiya demanded Rs. 10,000/-for not doing so. Deceased Hajari because of fear gave them a silver ring (Tagli) after taking out from her neck to Munatiya, Appellant Munatiya exhorted appellant Nandla for shooting arrow and Nandla shot an arrow causing injury on the chest of deceased Hajari, who died after sometime on the spot. The appellant Vagoo also shot an arrow causing injury to Ramsingh on his back. Appellant Vestiya fired gun but same did not hit to anybody. After commission of "loot" with murder, the appellants fled away. On the next day, that is. 25-4-1989, ASI Shyamlalsingh Chouhan (P.W. 5) recorded "Dehati Nalishi" (Ex. P/2) at the instance of complainant Kilan (P.W. 3) in village Sumaniyawat. The Investigating Officer prepared the spot map as well as the inquest report of the dead body of deceased Hajari and sent the same for post-mortem examination, which was conducted by Dr. K.C. Gupta (P.W. 9). The post-mortem report is Ex. P/15. The deceased suffered only one injury caused by an arrow shot and one simple contusion. Ramsingh (P.W. 7) was also medically examined, his M.L.C. report is (Ex. P/14). He sustained one injury on his back side caused by an arrow shot. Though during the course of investigation, memorandum statements of the accused persons were recorded, but in pursuance thereof, property of the dacoity silver ring (Tagli) was not seized. From the possession of appellant Munatiya, a twelve bore gun without licence and from Vestiya, a muzzle loading gun was seized. On completion of investigation, charge-sheet was filed against the appellants for commission of offence under Sections 436, 396 and 397 of the IPC and also u/s 27 of the Arms Act.

3. The appellants denied the charges and submitted in their defence that they were falsely implicated because of enmity. In cross-examination of the eye-witnesses, suggestion was given that on the same day of the incident, "Nathu" a village member was murdered by the complainant party, in which, Desiya son of complainant Kilan was arrested and the accused persons appeared as witness against Desiya, they have concocted a false case against him.

4. During the course of trial, one of the accused named Raila has died. The learned trial Court, while acquitting co-accused Valsingh convicted the appellants six in number as indicated hereinabove.

5. We have heard learned Counsel for the parties and also perused the entire record carefully. It emerged from the record that conviction of the appellants is based

mainly on the testimonies of Kilan (P.W. 3), Noorlibai (P.W. 4) and Ramsingh (P.W. 7), the father, mother and brother of the deceased Hajari.

6. The core question for us to decide is that whether these three eye-witnesses including injured witness Ramsingh (P.W. 7) are dependable or not, specially when they are interested and partisan witnesses. These witnesses have admitted about prosecution of Desiya (P.W. 2) for commission of murder of Nathu, the person belonging to the group of the appellants and appellants were witnesses in the said case. This incident occurred on the same day in the same village and for investigation of that incident, A.S.I. Shyamlalsingh Chouhan (P.W. 5) reached in the village. According to Shyamlalsingh Chouhan (P.W. 5) A.S.I., Dehati Nalishi (Ex. P/2) was recorded by him as disclosed to him by complainant eye-witness Kilan (P.W. 3), but Kilan has nowhere stated in his statement that he had lodged any report/Dehati Nalishi (Ex. P/2) in the village as stated and proved by Shyamlalsingh, A.S.I. (P.W. 5). On the contrary, Kilan (P.W. 3) has stated in paragraph 4 of examination-in-chief that in his absence, his wife Noorlibai (P.W. 4) lodged the report to police and after lodging report, police party reached in the village to whom he shown the place of incident and spot map was prepared. The further say of this witness is that after preparation of map along with wooden log, they went to Outpost Umralli where also police prepared the documents. This witness Kilan (P.W. 3) has further stated in his cross-examination (sic) paragraph 7 that after admitting his injured son Ramsingh (P.W. 7), he went to Outpost Umralli and lodged the report of the incident. The further say of this witness is that after lodging report in Umralli Outpost, his son was admitted in the Umralli hospital. He has also specifically stated that after lodging the report in Outpost, his thumb impression was taken, he did not return to his village and remained in the hospital. His this version finds support from MLC report of Ramsingh (P.W. 7) Exhibit-P/14 wherein it is mentioned that Ramsingh was brought by Constable Kunwar Singh and Outpost Umralli. The prosecution has not got proved Dehati Nalishi (Ex. P/2) from its author Kilan (P.W. 3) and this witness has also nowhere stated that he gave Dehati Nalishi (Ex. P/2) in the village recorded by Shyamlalsingh Chouhan, A.S.I. (P.W. 5). The report lodged by this witness in Police Outpost has not been filed along with the charge-sheet. The report lodged by Noorlibai, wife of Kilan (P.W. 3) as stated by him has also not been filed along with the charge-sheet. In view of the statement of Kilan (P.W. 3) there were three reports, but only one report (Ex-P/2) Dehati Nalishi was filed along with the charge-sheet and that too, was not got proved from Kilan (P.W. 3). This report has been proved by its scribe Shyamlalsingh Chouhan, A.S.I. (P.W. 5). Therefore, this report cannot be considered in evidence being hit by law of hearsay evidence as per provision of Section 60 of the Evidence Act.

7. It is a clear case of suppression of real report lodged by Kilan (P.W. 3) when he reached to the Police Outpost with his injured son Ramsingh (P.W. 7) and lodged the report. There is also suppression of report lodged by Noorlibai (P.W. 4). This report has recorded in the village as stated by Kilan (P.W. 3). Under these situations, it can

be easily said that the report, earlier in point of time, was suppressed with an ulterior motive and that could be because the names of the assailants might not be mentioned in those reports or report.

8. The Supreme Court in case of [Marudanal Augusti Vs. State of Kerala](#), has observed while considering the prosecution evidence regarding fabrication of the FIR as under:

The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence.

9. In the instant case, it is evident that Dehati Nalishi (Ex. P/2) on the basis of which FIR was recorded in the Police Station was not proved and also not admissible in evidence and it is also established that real report was suppressed Under these circumstances, there is no other material available on the record to establish the authenticity of the statement of interested and partisan eye-witnesses. The prosecution case is further suffering from major deficiency, that is, from inside the hut no bullets were seized. There is no FSL report regarding any material collected from inside the hut to prove that fires were made inside the hut and same hit to the wooden log or any part of the hut. The prosecution has also not laid any evidence about bullets and seizure of both the guns from appellant Vestiya and Muna alias Munatiya has also not been proved by examination of independent panch witnesses. No reason has been assigned by the prosecution as to why both the panch witnesses were not examined. Under the factual backdrop of this case, we are of the considered view that solitary testimony of the Police Officer cannot be relied upon for seizure of both the guns.

10. Head Constable Mahesh Kumar (P.W. 8) has given report (Ex. P/13) regarding condition of the Muzzle Loading gun and his report and statement are disclosing that gun was in working condition, but nowhere it is stated that the seized empty cartridges were used by these seized guns. The second twelve bore gun and empty cartridges said to have been seized from the possession of one of the appellants were not sent for examination by the expert and seized empty cartridges were also not sent to Ballistic Ex-pert or even to Arm Moharir P.W. 8 Mahesh Kumar for examination.

11. Under all these circumstances, it would be very difficult to place reliance on the testimonies of interested and partisan eye-witnesses for causing of solitary arrow shot injury to deceased Hajari and the trial Court has rightly disbelieved the prosecution case for causing injury to eye-witness Ramsingh (P.W. 7).

12. Resultantly, this appeal is allowed. The conviction and sentence of the appellants as imposed by the trial Court are hereby set aside. Appellants No. 1 to 5 are on bail and their bail bonds and surety bonds stands discharged. The learned trial Court is

directed to release the appellant No. 6 Nanala alias Nandla forthwith, if not required in any other criminal case.

13. Office is directed to send a copy of the judgment to the trial Court immediately along with the record.