

Udai Singh and Others Vs State of Madhya Pradesh

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: July 27, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 157, 313
Penal Code, 1860 (IPC) â€” Section 302, 326, 396

Citation: (2007) 4 MPHT 85

Hon'ble Judges: Subhash Samvatsar, J; P.K. Jaiswal, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Subhash Samvatsar, J.

This appeal is filed by the appellants challenging judgment dated 9-11-1998 passed by the 5th Additional Sessions

Judge, Bhind in Sessions Trial No. 68/1986, whereby the appellants are convicted for commission of offence u/s 396 of IPC and sentenced them

to undergo life imprisonment with fine of Rs. 2000/- each, in default of payment of fine further to undergo two months rigorous imprisonment.

2. As per prosecution story, on 10-11-1985 at about 8:00 AM Shivsingh and his son Chhuttallu alias Rammohan were going to their field for

sowing gram crop. Chhuttallu alias Rammohan had a gun in his hand. When they reached near the houses of Kaptansingh and Chhutkansingh, the

accused persons Brahamsingh, Govindsingh, Ramrajsingh, Virendrasingh, Indalsingh and Udaisingh surrounded them and snatched the gun from

Chhuttallu alias Rammohan, and accused Ramraj fired gun shot on Chhuttallu, which caused injuries in his stomach and back. At that time accused

Govindsingh and Udaisingh had also fired gun shots at Shivsingh, who was standing on the platform of the house of Chhutkansingh. Shivsingh fell

down on the spot and died.

3. Saket Suman who saw the incident went to the house of Chhuttallu and narrated about the incident to his wife, who went on the spot to save her

husband Chhuttallu, but accused Ramraj fired at her, which caused injury to her thigh. At that time accused Brahamsingh, Indalsingh and

Virendrasingh having lathis in their hands had also caused injuries to Chhuttallu alias Rammohan, due to which Chhuttallu died on the spot.

Accused Ramrajsingh ran away from the spot with the gun of Chhuttallu and his cartridge belt. This incident was seen by Parwati (P.W. 12) wife

of deceased Chhuttallu, Aruna Kumari (P.W. 8), Ramswaroop (P.W. 9) and Kedarsingh (P.W. 10).

4. Report of the said incident was lodged at 12:00 noon by Parvati. On her complaint Dehati Nalishi (Exh. P-18) was recorded by M.P. Singh

Yadav, T.I. Umri (P.W. 17) and on the basis of Dehati Nalishi (Exh. P-18) FIR was registered. The police after investigation filed challan against

the accused for commission of offence u/s 396 of IPC and u/s 29B of the Arms Act. The matter was committed to the Sessions Court and the

Sessions Court after recording of evidence and appreciating the same convicted the accused persons. Hence, this appeal.

5. The first contention raised by Shri L.S Chouhan, learned Counsel for the appellants is that the FIR in the present case is delayed. He further

submitted that the prosecution has completely changed the scenario of the incident. According to him, Chhuttallu, Shivsingh and one Ramvir have

committed murder of Kalyansingh. They have also committed murder of Kaptansingh and therefore, the accused had snatched the gun from

Chhuttallu and caused injuries to him and his father Shivsingh in their self-defence. It is further alleged that the prosecution has suppressed the

genesis of the incident and fabricated the false story. He further submitted that compliance of Section 157, Cr.PC is not made out. He further

submitted that the interested witnesses are not examined by the prosecution and the witnesses, who have supported the story are interested

witnesses.

6. Learned Counsel for the appellants has urged that as per prosecution story, Brahamsingh, Indalsingh and Virendra Singh had lathis in their hands

caused injuries to the deceased by lathis, but as per the medical report there is no injury by lathi on the body of the deceased. He further submitted

that as per prosecution story, Ramraj has caused firearm injuries in the stomach and back of the deceased Chhuttallu, but the medical report shows

that firearm injuries on the body of the deceased are on his face and not in the stomach or back. Thus, the said injuries are not medically

corroborated, hence the Sessions Court has committed an error in convicting the accused. He further submitted that there was no intention on the

part of the accused to commit dacoity. The gun was snatched only for self-defence by the accused.

7. Learned Counsel for the appellants in support of his argument has invited attention of this Court to Dehati Nalishi (Exh. P-18) and has submitted

that allegation against Brahamsingh, Indalsingh and Virendra Singh had lathis in their hands caused injuries to the deceased by lathis, but said

injuries are not medically corroborated. He further submitted that firearm injuries show that injuries were caused from very short distance, i.e.,

around 6 ft., when as per witnesses the injuries were caused from the distance of nearly 20-30 steps. Learned Counsel for the appellants has also

pointed out that the accused in the present case have filed their written statements u/s 313, Cr.PC, in which they have specifically stated that first

deceased Shivsingh, Chhuttallu and Ramvir had attacked Kalyansingh and Kaptansingh. There was a long dispute between the parties over the

ownership of land. The deceased and Ramvir had caused injuries by firearm to Kalyansingh who was ad-batidar of Kaptansingh and thereafter

they came to the house of Kaptansingh, where they fired gun shot and caused death of Kaptansingh. Hence, Indalsingh, who had alleged having a

lathi in his hand has fired gun shot in his self-defence, which resulted in death of Chhuttallu and Shivsingh. Thus, the accused have exercised their

right of self-defence. It is further alleged that the prosecution has not at all offered for explanation for death of injuries to Kalyansingh and

Kaptansingh, who died due to firearm injuries in the same incident. Therefore, the impugned judgment imposing conviction cannot be sustained in

the eyes of law.

8. From perusal of the written statement submitted by Indalsingh and other accused, it appears that in Para 3 he has stated that at the time of

incident the complainant party has come to the house of Kaptansingh and started firing. Ramraj escaped from the gun shot, but the said gun shot

caused injuries to camel, who died on the spot and Kaptansingh fell down and died in the said incident. He further states that there are 8-10 gun

shot marks in the wall of the house of Kaptansingh, therefore, Indalsingh in his self-defence has fired gun shot at Chhuttallu and Shivsingh, who

died in the said incident. Similar interested witnesses are submitted by other co-accused in the case. It is also stated that some criminal cases were

pending between the parties.

9. Now the question whether the prosecution has suppressed the material fact and has failed to explain the injuries caused to Kalyansingh and

Kaptansingh and whether these persons were injured in the same incident. After perusing the entire judgment, we find that the Sessions Court has

not at all applied its mind to this aspect.

10. In the present case the prosecution has examined four eyewitnesses, Le., Aruna Kumari (P.W. 8), who is an injured witness, Ramswaroop

(P.W. 9), Kedarsingh (P.W. 10) and Parwati (P.W. 12).

11. Aruna Kumari is P.W. 8. She states that at about 7:00 in the morning she was at her home and her father-in-law and brother-in-law had gone

to the field for sowing gram crop. When they came out of the house, she heard cry, at that time her husband has returned and told Parwati that

Ramraj, Govindsingh etc. are causing injuries to her husband Rammohan. Thereafter, Parvati, Kedar, Ramswaroop reached on the spot. She

states that she saw Brahamsingh, Govind, Indal, Ramraj, Virendra and Udaisingh present on the spot and were trying to snatch the gun from

Rammohan. Her father-in-law was standing on some distance on the platform of Chhutkan and accused Ramraj succeeded in snatching the gun

from Rammohan and fired gun shot in the stomach and back of Rammohan. He also snatched the cartridge belt from Rammohan and started firing

on him. Accused Udaisingh and Govindsingh had also fired gun shot from their licensed gun on her father-in-law. Her father-in-law was Master

and injuries were caused on his face by the gun shot. He died on the spot. She further stated that Parwati in an attempt to save Rammohan fell

down on his body and accused Ramraj fired gun shot at her with an intention to kill her and the said injuries were caused in her thigh. She further

states that Virma, Virendra and third accused had lathis in their hands and were causing injuries to her brother-in-law. She submits that her

husband was not present on the spot and if he would present on the spot, then he would have been killed by them. She further states that there was

enmity between the parties.

12. In Para 5 in the cross-examination a question was asked to her whether her husband is also facing trial in the same incident for causing injuries

to camel and committed murder of Kalyansingh and Kaptansingh. She denied the suggestion. She also denied that Kalyansingh and Kaptansingh

died in the same incident. In Para 7 she admits that the incident has taken place in front of house of Kaptansingh. She further states in Para 7 that

the police reached on the spot after one hour. She states that Ramswaroop and Kedarsingh are real brothers and are her relatives. She states that

her statement was recorded by the police after 10 days from the date of incident. In Para 8 of her statement, she states that her husband has not

told that in trial for committing murder of Kaptansingh, he is on bail and case is pending against him. In Para 18 she has denied that her husband,

father-in-law, brother-in-law attacked the house of Kaptansingh and fired gun shot, in which a camel, Kaptansingh and Indalsingh were injured in

the said incident. She has denied the suggestion that at the time of incident only accused Ramraj and Indal were present from the accused side. She

has also denied the allegations that Indalsingh has fired gun shot to save himself in self-defence.

13. Ramswaroop is P.W. 9. He states that he knows the accused persons. According to him, the incident has taken place on "Dhanteras" in the

morning at about 7:00 AM. He was in the house of Shivsingh and at the time of incident his brother Kedar was also there. Ramvir alias Saket

Suman came running in the house of Shivsingh and told that Govind and Ramraj are killing Chhuttallu. He also told this fact to Parwati. On hearing

this, this witness, his brother Kedar, Parwati and Aruna Kumari went on the spot. They saw that Govind, Ramraj, Udaisingh, Brahamsingh, Indal,

Virendra were tried to snatch the gun from Chhuttallu and Ramraj snatched his gun and cartridge belt and fired gun shot, which caused injuries in

his stomach and back. Govind and Udaisingh also fired gun shot on Shivsingh, who was standing on the platform of Chhutkansingh. He fell down

and died. Ramraj has also caused injury on the left thigh of Parwati. Brahamsingh, Virendra and Indalsingh caused injuries by lathi on the head of

Chhuttallu. The gun and cartridge belt of Chhuttallu were taken by accused Ramraj. In Para 3 he admits that criminal cases between Brahamsingh

and Shivsingh were pending for last 2 and 3 years before the incident. In Para 5 he states that Saket Suman asked Parwati to save Chhuttallu. At

that time Saket Suman were bare handed. He further states that he has not asked the neighbourer to save Chhuttallu. In Para 6 he states that the

distance between the house of Chhuttallu and Chhutkan is 200 ft., i.e., one furlong.

14. In Para 11a question was put on him about Kaptansingh. He states that at the time of incident he has not seen Kaptansingh and his camel.

Kaptansingh and his camel died on the same day. He denied that he has seen the dead body of Kaptansingh lying near the dead body of camel. He

states that he has not seen how Kaptansingh died. He has not seen Indalsingh firing gun shot or Indalsingh injured with the gun shot. He has not

seen any injury on the body of Ramraj. He admits that Kaptansingh lying dead and blood was oozing from his body. He denied the allegation that

Indalsingh fired gun shot in his self-defence. He denied that Saket is facing trial for committing murder of Kalyansingh, Kaptansingh and camel.

15. Next witness is Kedarsingh (P.W. 10). His statement is nearly identical to that of Ramswaroop (P.W. 9). He was also put a question how

Kaptansingh and his camel died in the incident, but he denied that he has knowledge of their death.

16. Parmalsingh is P.W. 11, who has recorded the Dehati Nalishi. It is alleged by the defence that he is in relation with the complainant party. Till

the statement of Aruna Kumari (P.W. 8) he has reached the spot within one hour. FIR in the case was registered at 12:00 noon, i.e., after four

hours after the incident. As per defence, this witness has fabricated the facts and has falsely implicated the present appellants.

17. Parwati is P.W. 12, who is an injured witness and has lodged the FIR. According to her, her husband used to take his gun to the filed every

day. On the date of incident, her husband and father-in-law left the house at about 7:00 AM. After 15-20 minutes she heard the noise and gun

shot. Her brother-in-law Saket Suman came running in the house and told her that Ramraj, Govind etc. are committing murder of Chhuttallu. She

ran towards the spot. She was accompanied with Aruna Kumari. When they reached near the house of Vishwanath, she saw that Govind, Ramraj,

Udaisingh, Brahamsingh, Indal, Virendra were tried to snatch the gun from her husband Rammohan and Ramraj snatched his gun and cartridge belt

and fired gun shot, which caused injuries in his stomach and back. She further states that Govind and Udaisingh also fired gun shot at her father-in-

law Shivsingh, who was standing on the platform of Chhutkan Singh. He fell down and died due to injuries. Ramraj has also fired gun shot towards

her, which caused injury on her left thigh. Brahamsingh, Virendra and Indalsingh caused injuries by lathis on her husband and father-in-law. After

death of her husband, Ramraj ran away after taking the gun and cartridge belt of her husband. In Para 4, she states that she has received gun shot

injuries and gone to Bhind Hospital for treatment. She states that there was enmity between the two families. In Para 6 of her statement, she states

that she has not seen Chhutkan and Vishwanath on the spot. She has only seen the accused persons. She denied that she has seen the dead body

of Kaptansingh lying on the spot. She has also denied that she has seen injured camel on the spot. However, she admits that dead bodies of her

husband and father-in-law were taken in the same tractor on the date of incident. She has denied that she has seen any injury on the body of

Indalsingh. She denied that Parmalsingh Tomar is in her relation. In Para 9, there was improvement in her statement.

18. Next witness is Dr. Rakesh Sharma (P.W. 6), who has performed the post-mortem of Shivsingh and found two gun shot injuries on his body,

which has resulted in death of Shivsingh. He has also performed the post-mortem of Rammohan alias Chhuttallu and found three gun shot injuries

and all the injuries were on the eyes of the deceased. As per his opinion both are died due to gun shot injuries. In Paras 14 and 15, in his cross-

examination, he states that he has performed the post-mortem of Kalyansingh and Kaptansingh. On the same day, he has also examined Indalsingh

and found four injuries on his body, which were in chest, wrist, thigh.

19. M.P. Singh (P.W. 17) is the Investigating Officer. He states that the report was lodged in the police station at 12:10 PM on the same day. He

states that in the morning of the incident, Head Constable Nathuram had informed that there is firing between Shivsingh and Brahamsingh.

Thereafter, he reached the spot and investigated in the matter. In Para 22 of his statement, he admits that the houses of Vishwanath and

Kaptansingh are opposite to each other. He denied that Ramraj is grandson of Kaptansingh. However, he admits that Kaptansingh died in the

same incident and his camel was also injured by gun shot. He does not know whether camel was sent for medical examination or not. In Para 25

he admits that Kalyansingh and Kaptansingh died in the same incident and their dead bodies were sent for post-mortem together. In Para 26 of his

statement, he states that Kalyansingh was working on the field of accused Brahamsingh. The house of Shivsingh is not situated near the house of

Kaptansingh, but the way passes from the house of Kaptansingh.

20. Thus, it is clear that in the same incident two persons from the complainant side Kalyansingh and Kaptansingh died and a camel was also died

due to gun shot injury and accused Indalsingh was injured by the gun shot. Now the question whether these injuries are explained by the

prosecution and whether it is always necessary for the prosecution to explain these injuries. From reading the entire evidence and judgment, we

find that there is no explanation whatsoever for the injuries sustained by deceased Kalyansingh, Kaptansingh and camel. Similarly, there is no

explanation about gun shot injury caused to Indalsingh, which is proved by medical evidence.

21. The Apex Court in the case of Lakshmi Singh and Others Vs. State of Bihar, , has laid down three conditions, which makes the prosecution

story unreliable, These conditions are as under:

(i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore

their evidence is unreliable;

(iii) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on

the prosecution case.

The Apex Court has held that if the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true

version, then accused are entitled for acquittal.

22. In the case of State of Rajasthan Vs. Madho and another, , the Apex Court has held that the injuries sustained by the accused persons in the

same incident, in which offences under Sections 302, 326 of IPC are alleged to have been committed by them and the prosecution witnesses are

failed to explain those injuries, then their testimony giving impression that they are suppressing some part of the incident. Therefore, the accused are

entitled to the benefit of doubt.

23. The Apex Court in the case of Padam Singh v. State of U.P. 2000 Cri.LJ 133, has held that it is well settled that when the prosecution does

not explain the injury sustained by the accused at about the time of the occurrence or in the course of occurrence, the Court can draw the inference

that the prosecution has suppressed the genesis and origin of the occurrence and has thus not presented the true version. It is also settled, where

the evidence consists of interested or inimical witnesses, then, non-explanation of the injury on the accused by the prosecution assumes greater

importance. It is further held that omissions and non-explanation of the injuries to the accused amounts to serious lacuna in the investigation,

therefore, conviction cannot sustained.

24. There are number of judgments of the Apex Court to the effect that in each and every case, it is not necessary for the prosecution to explain

the injuries, when the injuries in those cases were superficial in nature or were in simple nature.

25. In the case of Bhagwan Swaroop Vs. State of Madhya Pradesh, , father of the accused was given lathi blows by the complainant party, hence

the complainant party has fired gun shot to the accused, and the injuries on the body of father were though simple in nature. In such circumstances

the the Apex Court has held that the accused has exercised their right to self-defence.

26. In the present case after going through the entire evidence we find that two persons from the complainant side died in the same incident and

one camel was also died, and accused Indalsingh was injured by gunshot. Thus, it cannot be said in the present case that injuries were so

superficial in nature, which were not necessary for the prosecution to explain the evidence. From the entire evidence, we find that the prosecution

has not afforded any explanation for the injuries sustained by the deceased and accused Indalsingh.

27. On the other hand the accused from the very beginning filed their written statement u/s 313, Cr.PC raising a plea of self-defence. They have

also put the defence version to all the eye-witnesses examined by the prosecution. Not only that the defence has examined all the eye-witnesses

and the Investigating Officer, they have also examined Vasudevsingh (D.W. 2). This witness is agricultural labour. On the date of incident he was in

his house. He states that Ramvir, Chhuttallu, Shivsingh and one more person had come there to kill Kalyansingh. Shivsingh armed with lathi,

Ramvir and Chhuttallu armed with gun. When Ramraj was coming from the house of Kaptansingh, Ramvir fired gun shot, which caused injuries on

left side of Kaptansingh. Ramvir also fired gun shot to Ramraj, which caused injury to camel. Ramvir had also fired gun shot to Indalsingh, which

caused injury on his leg, then Indalsingh fired gun shot, which caused death of Shivsingh and Chhuttallu. Thus, from this witness, it is clear that the

injuries were caused to Kalyansingh, Kaptansingh, Indalsingh and camel in the same incident and these injuries are not at all explained.

28. So far as question of dacoity is concerned, it is alleged that gun was seized from the possession of Ramvir. However, we find that all the

witnesses to the seizure have turned hostile and have not supported the prosecution story. Thus, the seizure of gun also become doubtful in the

present case. In view of the original scenario of the case, we find that conviction of the accused cannot be sustained for the reasons as indicated

above, particularly non-explanation of the injuries to Kalyansingh, Kaptansingh, Indalsingh and camel.

29. In the result, appeal succeeds and is allowed. The impugned judgment convicting the present appellants is hereby set aside and the appellants

are acquitted of all the offences.

30. The appellants Udaisingh, Govindsingh and Ramraj are in jail, hence they are directed to be released forthwith, of not required in any other

case. The appellants Virendrasingh, Brahamsingh and Indalsingh are on bail. They need not surrender. Their bail bonds and sureties stand

discharged.