
Mukesh S/O Kanhaiyalal & Anr Vs State Of Madhya Pradesh

Criminal Appeal No. 220 OF 2007

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: May 22, 2018

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 161, 374#Indian Evidence Act, 1872 " Section 27#Indian Penal Code " Section 148, 149, 302#Public Gambling Act, 1867 " Section 4A, 13#Madhya Pradesh Excise Act, 1915 " Section 34

Hon'ble Judges: SANJAY YADAV, J; ASHOK KUMAR JOSHI, J

Bench: Division Bench

Advocate: S.S.Rajput, Devendra Choubey

Final Decision: Dismissed

Judgement

ASHOK KUMAR JOSHI, J

By this appeal filed under Section 374 of the Code of Criminal Procedure the appellants have assailed their conviction and sentence recorded by First

Additional Sessions Judge, Vidisha vide judgment dated 31.1.2007 passed in Sessions Trial No. 201/2005, whereby each of appellants No.1Mukesh,

No.2-Rakesh, No.3-Manoj, No.4-Bhura, No.5-Babulal and No.6-Amarchandra has been convicted and sentenced under Section 148 of the IPC to

undergo one year RI with a fine of Rs.500/with default stipulation; under Section 302/149 of the IPC to undergo life imprisonment with fine of

Rs.2000/- with default stipulation and it is also directed that both main jail sentences of each appellant to run concurrently.

2. Undisputedly appellants Mukesh and Rakesh are real brothers and appellants Bhura and Babulal are sons of appellant Amarchandra.

ComplainantSantosh Ahirwar (PW-3), Arti (PW-7) and Bharti (PW14) are children of deceased Hukumchand and Babulal (PW-6) is younger brother

of deceased.

3. Prosecution's case in brief is that in the intervening night of 8th and 9th October, 2005 in Vidisha town at 24=00 hours, near Police Outpost

Mohangiri where an exhibition (Jhanki) was installed during 'Nav-Durga'. Appellants Bhura and Mukesh in drunken state made a rowdyism, then

deceased Hukumchand pacified them, thereafter both the appellants have threatened the deceased to see him in next morning. On 9th October, 2005

at 12=00 pm when Hukumchand was going from his house towards Baraipura square in the way reached, in front the house of appellant Bhura,

appellants Mukesh, Rakesh, Manoj and Bhura caused fatal injuries to Hukumchand by their knives on his abdomen and back etc. and at same time

appellants Babulal and Amarchandra joined the other appellants and Babulal and Amarchandra also caused injury by their separate knife to

Hukumchand to kill him. The incident was witnessed by complainant Santosh (PW-3), Arti, Bharti, Lucky Ahirwar (PW-8), Babulal (PW-6),

Devendra, Santosh Painter and Anil Malviya. After the incident, seriously injured Hukumchand was taken to District Hospital, Vidisha by complainant

Santosh and his Uncle Babulal where Dr. Anup Verma (PW-9) declared him dead. Dr. Anup Verma (PW-9) at 12=35 pm recorded written intimation

(Ex.P/9) regarding bringing of Hukumchand in dead condition at Vidisha Hospital. Above mentioned intimation was sent through Ward Boy Chimanlal

(PW-5) to Police Station Kotwali, Vidisha. Complainant Santosh reach at Police Station Kotwali, Vidisha with written complaint (Ex.P/4) at 12=50 pm

and on the basis of Ex.P/4 at Kotwali Vidisha, FIR (Ex.P/5) was recorded by SHO Mahendra Singh (PW-15) and crime was registered. On the basis

of Ex.P/9 sent by Dr. Anup Verma, merg report (Ex.P/10) was recorded at 12=55 pm by Head Constable Badam Singh (PW12). From relating police

station, J.A.S.I. G.P.Dubey (PW-1) reached to District Hospital Vidisha and after issuing notice (Safina) (Ex.P/1), in presence of panch witnesses

prepared Inquest Memo (Ex.P/2) after inspecting dead body and presented application (Ex.P/3) for post-mortem of the dead body.Ã, Ã, Ã,

4. Dr. R.S.Sharma (PW-2) on 9th October, 2005 at 5=00 pm started autopsy of dead body and found in total 25 anti-mortem stab wounds each of

spindle shape and opined that Hukumchand died due to excessive hemorrhage and shock caused by multiple stab wounds affecting the vital organs

including heart and lungs and recorded post-mortem report (Ex.P/3-A). The clothes found on dead body were sealed in a packet by Dr. R.S.Sharma

(PW-2) and sent to Kotwali, Vidisha through relating Constable Prayag Narayan, which were seized by G.P.Dubey (PW-1) vide seizure memo

(Ex.P/4).Ã, Ã, Ã,

5. During investigation all appellants were arrested on 11th October, 2005 by separate arrest memos. On each appellant's separate disclosure, a

separate knife was seized from each appellant which was taken out by each appellant from his house and separate seizure memos were prepared.

Seized material of relating crime was sent to FSL Gwalior along with a letter (Ex.P/32) dated 16.11.2005 sent by Superintendent of Police Vidisha.

According to examination report (Ex.P-33) of FSL Gwalior blood was found on each article except plain soil or concrete. According to report

(Ex.P/34) of Serologist, human blood was found on deceased's clothes and two knives recovered from appellant Rakesh and Babulal and human blood

of blood-group 'B' was found on deceased's pant and knife recovered from appellant Rakesh. After completing formalities of investigation, charge

sheet was filed before CJM Vidisha, who committed the arisen criminal case to the Court of Sessions Judge, Vidisha. The Sessions Judge transferred

relating Sessions Trial to above mentioned trial Court.Ã, Ã,

6. The appellants abjured the charged offences framed by trial Court and it was the defence of appellants that deceased Hukumchand was a man of

criminal antecedents and involved in business of illegal liquor and gambling and the deceased was caught red-handed several times by police after

raiding his house and deceased and his family members were having suspicion that the police raided their houses on secret information made by family

members of the appellants, hence the appellants have been falsely implicated. The defence witness SI Uma Shankar Tiwari (DW-1) was produced to

prove the criminal record (Ex.D/4) of deceased Hukumchand and Amitabh Khare (DW-2) was examined to prove that the deceased was involved in

business of illegal liquor and gambling. After hearing the trial Court convicted and sentenced each appellant for charged offences as aforesaid.Ã,

7. Learned counsel for the appellants vehemently contended that alleged independent eye-witnesses Lucky Ahirwar (PW-8) and Rammi Prajapati

(PW-4) have not supported the prosecution's version and other alleged independent witnesses were not examined by the prosecution and the trial

Court has placed reliance on eye-witness account given by Santosh (PW-1), Babulal (PW-6), Arti (PW-7) and Bharti (PW-14), who all are family

members of the deceased. It is further argued that there were material contradictions and omissions in evidence of these family members in

comparison to their relating police statements and all these eyewitnesses introduced new facts in their Court evidence that wife of deceased Suman

and his daughters Arti and Bharti were at the house of Babulal (PW-6) at the time of incident because the deceased's house was comparatively far

away. The conduct of these alleged eye-witnesses, close relatives of deceased, is totally unnatural and unbelievable as they deposed that on the scene

of occurrence they even did not try to save Hukumchand. Halku Ram Choudhary, who allegedly wrote the complaint (Ex.P/4) presented by

complainant Santosh at Police Station, was not examined. It is also argued that Dr. Anup Verma (PW-9) mentioned in his written intimation (Ex.P/9)

that dead body of Hukumchand was brought to Vidisha Hospital by Rammi Prajapati and Pappu Ahirwar and in Ex.P/9 names of complainant, his

uncle Babulal and other family members are missing and similarly complainant, his uncle Babulal, Arti, Bharti are not panch witnesses of Inquest

Memo. Hence, the alleged eye-witnesses account given by complainant and above mentioned other eyewitnesses is totally suspicious and their

presence on scene of occurrence is also doubtful. Therefore, it is prayed that the appeal be allowed and each appellant be acquitted from the relating

offences.

8. Per contra, appearing Public Prosecutor, on behalf of respondent/State contends that the trial Court has minutely analysed and appreciated the

evidence available on record in the light of so many referred citations and as the incident had occurred in a residential area of Vidisha City at about

12=00 pm, then presence of eye-witnesses could not be doubted, as their houses were situated nearby the scene of occurrence and the examined

panch witness relating to disclosure and seizure of a knife from each appellant has totally supported the evidence of Investigating Officer Mahendra

Singh (PW-15) and even human blood is found on two knives and on appellant Rakesh's knife human blood of deceased's blood-group was found.

Therefore, it is prayed that appeal be dismissed.

9. It is clear from the evidence of Dr. Anup Verma (PW-9) and his written intimation (Ex.P/9), which was sent to Police Station Kotwali, Vidisha that

at District Hospital Vidisha at 12=35 pm on the date of incident Hukumchand was brought by Rammi Prajapati (PW-4) and Pappu Ahirwar. Though

Rammi Prajapati (PW-4) has not supported the prosecution's version and deposed that he was not acquainted with the deceased and he was declared

hostile, but there is no reason to disbelieve the evidence and written intimation (Ex.P/9) of Dr. Anup Verma (PW9).

10. It is clear from the evidence of Dr. R.S. Sharma (PW-2) and his post-mortem report (Ex.P/3-A) that he found following 25 anti-mortem stab

wounds on the dead body of Hukumchand :-

Ã¢â¬(1) Stab wound, size 1Ã¢â¬x1/2Ã¢â¬x1/2Ã¢â¬ over second left rib near left side of sternum;

Ã¢â¬ (2) Stab wound 1Ã¢â¬x1/2Ã¢â¬x2-1/2Ã¢â¬ in fourth I.C. space on left side, piercing chest wall and thoracic cavity and left side of left ventricle of heart 1Ã¢â¬x

above apex of left ventricle;

(3) Stab wound 1-1/2Ã¢â¬x1/2Ã¢â¬x2Ã¢â¬ in left auxiliary region of chest and going towards chest wall piercing the chest wall pleura and left lung.

(4) Stab wound 1Ã¢â¬x1/2Ã¢â¬x1/2Ã¢â¬ in left side of chest, about 2Ã¢â¬ below injury No.(3).

(5) Stab wound 1-1/2Ã¢â¬x1/2Ã¢â¬x going into the abdominal cavity in left auxiliary line of upper abdomen, Omentum coming out of the wound from inside

the abdominal cavity.

(6) Stab wound 1Ã¢â¬x3/4Ã¢â¬x1Ã¢â¬ in left auxiliary region against coastal margin.

(7) Stab wound 1-1/2Ã¢â¬x1/2Ã¢â¬x2Ã¢â¬ in epigastric region against left coastal margin going towards left side of thoracic cavity.

(8) Stab wound 1-1/2Ã¢â¬x1/2Ã¢â¬x5Ã¢â¬ in right intraclavicular area near shoulder and going towards left thoracic cavity piercing the anterior chest wall,

right pleura and right lung.

(9) Stab wound 1-1/2Ã¢â¬x1/2Ã¢â¬x1/2Ã¢â¬ on right side chest near coastal border.

(10) Stab wound 1-1/2" x 1/2" deep on right side chest, medial to injury No.(9).

(11) Stab wound of peanut size x 1/2" deep in right auxiliary region of chest wall.

(12) Stab wound 1" x 1/2" deep over upper part of sternum bone.

(13) Stab wound 1-1/2" x 1/2" x 3" over right scapular region of back going towards thoracic cavity piercing pleura and right lung.

(14) & (15)- Two Stab wounds of 1" x 1/2" x 4" in left upper auxiliary, 1" apart from each other piercing chest wall, pleura and left lung.

(16) Stab wound 1-1/2" x 1/2" over mid dorsal spine area.

(17) Stab wound 1" x 1/2" x 1/2" over left side of back, 3-1/2" below injury No. (16).

(18) Stab wounds 3" x 1" x 1" over left lumbar area of back.

(19) Stab wound 1" x 1/2" x 3/4" over lower thoracic area of back. Air bubbles coming out of this wound.

(20) Stab wound 1" x 1/2" x 3/4" over left side of lower back.

(21) Stab wound 1" x 1/2" x 1/2" over left side of lower back, just medial to injury No.(20).

(22) Stab wound 1" x 1/2" x 1" over left side of back.

(23) Stab wound 1" x 1/2" x 1" over lower back.

(24) Stab wound 1" x 1/2" x 1" over lower back.

(25) Stab wound 1" x 1/2" x 1/2" over lower back. A, A, A, A,

11. Dr. R.S.Sharma (PW-2) deposed that each stab wound was spindle shaped means having gap in between margins and blood was at margins of

each stab wound and even extensive blood was spread on post-mortem table. He found on dissection of dead body a very large blood-clot in lower

right side of chest and on chest wall and injury No.(2) had cut the thoracic cavity and right lung was having cut. Hence, blood was filled in right plural

cavity and left lung was also having a cut and membrane over heart was also having a cut and left ventricle of heart was having a cut and diaphragm

of abdominal cavity was ruptured on left side and intestine was also perforated and left kidney was having a cut and abdominal cavity was also filled

with blood. Dr. Sharma opined that reason of deceased's death was arisen shock due to extensive hemorrhage and internal damage to vital organs like

heart and lungs due to multiple anti-mortem stab wounds. Dr. Sharma attached extra papers in post-mortem report showing position of different stab

wounds on ventral and dorsal side of the dead body. There appears no reason to disbelieve his opinion that the deceased met with a homicidal

death. A, A, A, A, A,

12. Dr. R.S.Sharma (PW-2) opined that deceased has died within 6 to 24 hours from starting of his post-mortem. This opinion was given by Dr.

R.S.Sharma in his cross-examination on the basis of presence of rigor mortis over dead body, it is argued by appellant's counsel that generally rigor

mortis occur within six hours, and Dr. R.S.Sharma (PW-2) admitted the suggestion given by defence counsel that it is quite possible that deceased

died prior to 11=00 am on the date of incident, whereas according to eye-witness account, the incident occurred at 12=00 pm on 9.10.2005 but Dr.

Sharma has also deposed in cross-examination (para 7) that occurring of rigor mortis depends on the season and it is not necessary in the month of

October that rigor mortis would occur after six hours. It is well settled that doctor's opinion regarding timing of death is only an opinion and it is not a

fact observed by him like size of the injuries.

13. It is clear from Dr. Anup Verma's (PW-9) evidence and intimation (Ex.P/9) that the deceased was brought at 12=35 pm at District Hospital and

complainant Santosh (PW-3), his uncle Babul and even the hostile declared witness Lucky Ahirwar (PW-8) deposed that just after the incident he

saw that injured Hukumchand was lying in front the house of appellant Bhura and thereafter he was taken to hospital after arranging a handcart and

auto. Lucky also deposed that just after incident, 20-25 persons have gathered at the scene of occurrence including the deceased's family members,

Babulal (PW-6), Santosh (PW-1), Arti (PW7), Devendra and Bharti (PW-14), who were taking injured to hospital. Lucky deposed in para 6 that from

Baraipura square injured Hukumchand was taken to hospital by an auto and he also went firstly to hospital and thereafter he accompanied

complainant Santosh, his brother Devendra and Babulal for lodging the report at Kotwali, Vidisha, where complainant Santosh lodged a report. Hence,

in view of above mentioned evidence given by hostile declared prosecution witnesses Lucky Ahirwar (PW-8), timing of the incident could not be

doubted.Ã, Ã, Ã, Ã,

14. Complainant Santosh (PW-3), Babulal (PW-6), Arti (PW-7) and Bharti (PW-14) deposed before the trial Court that they saw at the scene of

occurrence, in front the house of appellant Bhura, each appellant inflicting injury by his knife on Hukumchand. Babulal (PW-6), Arti (PW-7) and

Bharti (PW-14) deposed that they have reached on scene of occurrence after receiving information regarding the incident occurred in front of the

house of appellant-Bhura from some children and others whereas complainant Santosh (PW-3) deposed that on 9th October, 2005 at 12=00 pm he

saw that while his father was going from his house towards Baraipura square reached in front the house of appellant Bhura, then appellants Mukesh,

Rakesh, Bhura and Manoj each having a knife started inflicting injuries on his father and at the same time other appellants Amarchandra and Babulal

each having a separate knife came on spot and they also inflicted injuries by their knives to his father, then his father fell down and was encircled by

appellants on spot and thereafter appellants fled away. The complainant deposed that firstly he reached on spot and within few second his sisters Arti

and Bharti, uncle Babulal, brother Devendra, Santosh Painter, Anil Malviya and Lucky Ahirwar came on spot but he or any other witness did not

intervene.

15. Arti (PW-7) and Bharti (PW-14) deposed that on the date of incident they with their mother Sumanbai had come to the house of their uncle

Babulal (PW-6) as that was their ancestral house, wherefrom they have reached to scene of occurrence. It is clear from the spot map (Ex.P/6)

prepared by Investigating Officer Mahendra Singh (PW-15) that by side of appellant Bhura's house on western side a lane is situated, the direction of

which is shown towards the house of Babulal and in front the house of appellant Bhura a road having a width of 15-1/2 feet is situated and on

southern side of this road just opposite to Bhura's house another lane is situated going towards the Police out post. Babulal (PW-6) in cross-

examination deposed that scene of occurrence is not visible from his house and deceased Hukumchand's house was situated 10 feet away from his

house. Complainant Santosh (PW-3) deposed in cross-examination (para 8) that his house is about 800 mtrs away from the scene of occurrence.

Complainant deposed that as his Jwares of 'Nav Durga' for worshipping were kept at the house of Ganesh Ram and Ganesh Ram's house is situated in

the line of appellant Bhura's house and is shown in the spot map which is on western side of appellant Bhura's house, though in between their houses a

lane is situated. It is true that the fact regarding keeping of complainant Santosh's Jwares for worshipping at Ganesh Ram's house is not mentioned in

FIR and complainant's police statement and similarly in police statements of Arti and Bharti this fact is missing that prior to the time of incident since

the morning of that day they had reached to their Uncle's house wherefrom they reached on spot. Ā, Ā,

16. Much emphasis has been given by the learned counsel for the appellants that Babulal (PW-6) in cross-examination (para 12) though deposed that

appellant Bhura inflicted injuries on deceased from back side, but he also deposed that 'today he could not speak that how many blows were given by

each appellant on which organs of the body of the deceased' but it is also clear from the total evidence of Babulal (PW-6), Arti (PW-7) and Bharti

(PW-14) that they have reached on scene of occurrence after receiving intimation regarding incident from other persons and it is clear from the

evidence of Lucky that a crowd gathered at the scene of occurrence. Similarly, in the light of the case of Masalti and others vs. State of UP (AIR

1965 SC 202), it is clear that when six persons were inflicting injuries by their separate weapons after encircling the injured, then it is not possible for

any eye-witness to exactly depose on the point that which accused caused how many injuries and on which organs of the deceased. Ā, Ā, Ā,

17. Rammi Prajapati (PW-4) though did not support the prosecution's case and even deposed that deceased was not acquainted with him and he was

declared hostile, but from his police statement (Ex.P/8) it is clear that he was not eye-witness to the incident but had reached on spot when injured

Hukumchand was being taken from spot to the hospital and there Santosh intimated him about the incident. Even the hostile declared Lucky Ahirwar

deposed some material facts in his evidence which provide substantial corroboration to complainant's evidence.

18. Lucky (PW-8) though deposed that he did not see any one inflicting injuries to Hukumchand, but he clearly deposed that on the date of incident, at

about 11=30 am or 12=00 pm when he was returning from Galla Mandi to his house, in the way in front the house of appellant Bhura, injured

Hukumchand was lying having several injuries and his family members Babulal, Santosh, Arti, Bharti and Devendra (another son of deceased) were

present, who were arranging for taking injured to hospital. He also deposed that he saw the injuries on the chest, abdomen and back of Hukumchand

wherefrom blood was oozing and from Baraipura square injured Hukumchand was taken to Vidisha Hospital by an auto and he had also gone to

hospital at that time and in his presence Hukumchand was declared dead by doctor in hospital; thereafter he accompanied complainant Santosh,

Devendra and Babulal to Police Station Kotwali where Santosh lodged report. In cross-examination (para 9) he clearly deposed that a crowd of many

persons was there at the scene of occurrence and thereafter Hukumchand was taken to hospital and just after their reaching to hospital within few

minutes some police employees have come to hospital. He also deposed that in his presence police inspected the scene of occurrence on same day

and seized bloodstained concrete and simple concrete and bloodstained chappals of deceased vide seizure memo (Ex.P/7), which is signed by him. It is

clear from the evidence of Lucky that just after the incident he saw complainant Santosh, his brother Devendra, Arti, Bharti and Babulal (PW-6) at

the scene of occurrence. In view of Lucky's evidence, the evidence of family members of deceased could not be discarded.

19. It is true that there are some contradictions and omissions in police statements of these witnesses, but such trivial contradictions and omissions do

not influence the evidence of these eye-witnesses, which is substantially corroborated even by hostile declared witness Lucky Ahirwar (PW-

8).
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20. Much emphasis has been given by appellants' counsel on the fact that Dr. Anup Verma (PW-9) did not mention the name of any family member

of deceased regarding bringing dead body to hospital in his written intimation (Ex.P/9) but even it is clear from the evidence of Lucky that complainant

Santosh, Babulal and Devendra reached to hospital with him. Deceased's another son Devendra is a panch witness of Safina form (Ex.P/1) and

Inquest Memo (Ex.P/2), prepared by Junior A.S.I. G.P.Dubey (PW-1). Santosh (PW-3) is a signatory of spot map (Ex.P/6) prepared by Investigating

Officer Mahendra Singh at 2=00 pm on the date of incident. Hence, absence of complainant's name in Safina form and inquest memo appears to be

meaningless, whereas his real brother Devendra is a witness of Safina form and inquest memo. Therefore, the argument advanced on this point on

behalf of appellants appears to be totally futile.
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21. Much emphasis has been given by the appellants' learned counsel on the point that the conduct of family members of deceased at the time of

incident appears to be totally unnatural and unbelievable making their presence doubtful, as they deposed that they did not try to save the deceased.

Complainant Santosh (PW-3) and Babulal (PW-6) deposed in cross-examination that they made verbal request to appellants for not inflicting injuries

to Hukumchand, but they have deposed that at that time appellants have threatened them that if they intervene, they will also be injured. Where on

spot six persons each having a knife were brutally inflicting various injuries to injured, then such behaviour or conduct of not intervening could not be

termed as unnatural or unbelievable.

22. In the light of cases of State of UP vs. Devendra Singh [AIR 2004 SCW 3656]; Rana Pratap vs. State of Haryana [AIR 1983 SC 680], it is clear

that reaction of each eye-witness at the time of incident remains different depending on nature of relating witness and in same circumstances the

behaviour or conduct of different persons may be different and the evidence of any witness could not be discarded only on the ground that he did not

behave in a specific manner. It is clear that at the scene of occurrence six persons were inflicting so many injuries by knives after encircling the

deceased, in such facts and circumstances, the conduct of Santosh (PW-3) and Babulal (PW-6) regarding making oral request to the appellants could

not be termed as impossible conduct.

23. Santosh (PW-3) and Babulal (PW-6) deposed that in lifting of injured Hukumchand and keeping him firstly on handcart and thereafter in an auto

from Baraipura square their clothes were stained by blood of Hukumchand, but during investigation blood-stained clothes of these witnesses were not

seized. Similarly much emphasis has been given on the fact by the appellants' counsel that Halku Ram Choudhary, who allegedly wrote the written

complaint or application on behalf of complainant Santosh (PW-3) in hospital, was not interrogated by Investigating Officer and he was not produced

before the trial Court as a witness. No one has deposed that Halku Ram Choudhary was an eyewitness to the incident, hence his non-examination by

Investigating Officer or his non-production as a witness before the Court does not appear fatal for the prosecution, as the FIR (Ex.P/5) recorded on

the basis of written complaint (Ex.P/4) is also signed by complainant Santosh. It is well established in the light of cases of State of Punjab vs. Gurmit

Singh and others [AIR 1996 SC 1393]; Krishnegowda vs. State of Karnataka (AIR 2017 SC 1657), and Sudha Renukaiah vs. State of A.P. (AIR

2017 SC 2124), that the evidence of eye-witnesses or complainant could not be discarded due to alleged negligence or lapses on the part of the

Investigating Officer.

24. Similarly much emphasis has been given on the fact that alleged other eye-witnesses Sumanbai (wife of deceased) and Devendra (son of

deceased) and independent witnesses mentioned in the FIR, namely, Santosh Painter and Anil Malviya were not examined before the trial Court. As

pointed out earlier, even the evidence of hostile declared eyewitness Lucky Ahirwar (PW-8) materially corroborates the presence of complainant

Santosh (PW-3), his uncle Babulal (PW-6), Arti (PW-7) and Bharti (PW-14) at the time of incident on scene of occurrence and he also corroborates

the evidence of other eye-witnesses regarding taking of injured Hukumchand to District Hospital, Vidisha and thereafter complainant's reaching to

Police Station Kotwali Vidisha for lodging the report. Turning of alleged independent eye-witnesses or even the injured complainant during trial of the

criminal case is not an abnormal phenomena before the trial Courts. As observed earlier, Rammi Priapati (PW-4), whose name is mentioned by Dr.

Anup Verma (PW-9) in his written intimation (Ex.P/9) regarding bringing of injured Hukumchand to District Hospital became totally hostile, who even

denied from knowing Hukumchand. In the light of the cases of Seeman @ Veeranam vs. State through Inspector of Police [(2005) 11 SCC 142], and

Pohlu vs. State of Haryana [(2005) 10 SCC 196, it is clear that it is not necessary in criminal trial to examine all the mentioned eye-witnesses before

the trial Court and only on this ground, the prosecution's case could not be discarded.

25. Much emphasis has also been given on the fact deposed by Investigating Officer Mahendra Singh (PW-15) that he recorded police statements

under Section 161 of the CrPC of eye-witnesses Arti and Bharti, daughters of deceased on 7.11.2005, i.e., about 28 days after the incident, but

Investigating Officer Mahendra Singh (PW-15) has given the explanation in his cross-examination to the effect that after death of Hukumchand,

various customary programmes were occurring at the deceased's house and deceased's family members were in state of bereavement and they have

stated that they will give their statements later on, therefore the statements of these witnesses were recorded belatedly. Such offered explanation

could not be termed as unnatural or unbelievable and it is to be remembered that police statements of complainant Santosh (PW-3), Babulal (PW-6)

and Lucky Ahirwar (PW-8) were recorded by the same Investigating Officer on the date of incident itself. The names of Arti and Bharti as eye-

witnesses have been clearly mentioned in promptly lodged FIR after the incident and even hostile declared Lucky (PW-8) has deposed about presence

of Arti and Bharti on the scene of occurrence at the time of incident. Hence, above mentioned raised argument does not appear to be substantial.

26. We are of the considered opinion that in the light of referred citations, the trial Court did not commit any error in placing reliance on eye-witness

account given by Santosh (PW-3), Babulal (PW-6), Arti (PW-7) and Bharti (PW-14), which was substantially corroborated by even hostile declared

witness Lucky Ahirwar (PW-8).

27. Regarding circumstantial evidence of the case, on the point of recovery of a knife from each appellant during investigation after his disclosure

recorded under Section 27 of the Evidence Act, on record the evidence of Investigating Officer Mahendra Singh (PW-15) is totally corroborated by

panch witness Dalchand @ Kallu (PW-13) of relating exhibited disclosures and seizure memos in evidence. All appellants were arrested only two

days after incident and the seized articles were sent to FSL Gwalior with covering letter (Ex. P/32) dated 16.11.2005 sent by Superintendent of Police,

Vidisha. According to FSL Gwalior's report (Ex.P/33), blood was found on seized blood-stained concrete, chappals of the deceased, pant, t-shirt and

underwear of the deceased and on each knife seized from each appellant and according to the report of Serologist (Ex.P/34) of Regional F.S.L.

Gwalior, human blood was found on all the clothes of deceased and knife seized from appellant Rakesh and a knife seized from appellant Mukesh and

according to same report (Ex.P/34) human blood of blood-group 'B' was found on pant of deceased Hukumchand and similarly on knife, seized from

appellant Rakesh. Therefore, it is established that the human blood of blood group 'B' of deceased was found on the knife seized from appellant

Rakesh and human blood was found on knife seized from appellant Babulal. Appellants Rakesh and Babulal have not offered any explanation

regarding presence of human blood on their separate knives seized from them during investigation. Therefore, it is clear that the above mentioned

circumstantial evidence regarding seizure of above mentioned articles also independently and separately provides corroboration to eye-witness account

given by above mentioned prosecution witnesses.

28. Sub-Inspector Uma Shankar Tiwari (DW-1) proved the list (Ex.D/4) relating to various crimes registered against the deceased Hukumchand and

deposed that in total 25 crimes were registered against Hukumchand but it is clear that entries No.14, 15 and 16 of this list are relating to reports of

non-cognizable offences lodged against Hukumchand and entries No.1 to 20 of the list (Ex.D/4) were relating to period from the year 1985 to 2000

and only entry No.21 is relating to solitary crime registered against Hukumchand as Crime No. 115/2000 for offence punishable under Section 34 of

the MP Excise Act and only three other crimes bearing Crime No. 383/1991 (entry No.5), Crime No.77/2004 (entry No.22) and Crime No. 78/2004

(entry No.23), were relating to offences punishable under Section 13 of the Public Gambling Act and Section 4-A of the Gambling Act, respectively

and other offences were relating to causing injuries. It would be significant to mention here that only 4 crimes were registered against Hukumchand

between 2001 to 2004. It is clear from the facts came in evidence (para 13) of complainant Santosh (PW-3) that his father Hukumchand was posted

as Peon in Baraipura School and date of incident was Sunday and Santosh also admitted in para 33 that after death of his father Hukumchand, he got

compassionate appointment in relating school, in place of his deceased father.

29. Even if it is presumed that deceased was a hardened criminal then this fact does not provide licence to police official or other persons to kill

him. Amitabh Khare (DW-2) deposed that he knew deceased Hukumchand and his sons Santosh and Devendra and in his life time Hukumchand was

selling liquor and at his house gambling was being played by people and he was on talking terms with complainant Santosh, who oftenly used to tell him

that neighbours including appellants gave secret information to police regarding his father's involvement in liquor and gambling activities and Santosh

used to tell him that appellants will be implicated in any case for preventing them from supplying secret information to police and when he visited

deceased's house just next day after the incident, then Santosh, Devendra and Babulal told him that appellants are absconding and they have been

implicated, but Amitabh Khare in crossexamination deposed that on the date of incident he had gone to Salkanpur and came back to Vidisha in the

night. He deposed in cross-examination that he had not intimated to the police regarding facts told him by Santosh prior to the incident.

30. It is significant to mention here that no suggestion by defence counsel was given to Babulal (PW-6) and complainant Santosh (PW-3) in their

cross-examination to the effect that on 10.10.2005 they told before Amitabh Khare (DW-2) that the appellants have been implicated by them.

Therefore, it is clear that the evidence given by Amitabh Khare regarding the facts intimated to him by the complainant prior to the date of incident is

afterthought and unbelievable. It is clear that the above mentioned defence evidence of defence witnesses is not able to disturb the veracity of the

evidence of relating prosecution's eye-witnesses.

31. We are of the considered opinion that the trial Court has considered the entire evidence available on record and on a proper and legal appreciation

of evidence and after assigning detailed and cogent reasons has convicted the appellants and the findings recorded by the trial Court do not suffer

from illegality, manifest error or perversity. The appeal filed on behalf of appellants is having no merit, therefore, no interference by this Court with the

impugned judgment is warranted.

32. Consequently, the appeal filed by appellants is dismissed and the conviction and sentence of each appellant as recorded by the trial Court is

affirmed. Appellants are suffering their jail sentences. They be informed about the result of their appeal through relating Jail Superintendent.

A copy of the judgment along with the record be immediately sent back to the trial Court for information and compliance.