

CASE NO.:
Appeal (civil) 1690 of 1996

PETITIONER:
Jandel Singh

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 08/05/2003

BENCH:
N. Santosh Hegde, Ashok Bhan & B.P. Singh.

JUDGMENT:

J U D G M E N T

WITH

Criminal Appeal No. 1691 of 1996

BHAN, J.

Seven persons Meharbansingh, A1, Pratap Singh, A2, Mahendra Singh A3, Uday Bhan Singh, A4, Nawab Singh, A5, Nirpat Singh, A6, and Jandel Singh, A7, were named in the First Information Report No. 246 of 1979 recorded at Police Station Dabara on 30th september, 1979 at 8.45 P.M. for the murder of Prakash which took place at Village Kheri, which is at a distance of 3 Km. from the Police Station. The First Information Report was lodged by Ramgopal Chipa, PW1, who was present at the place of occurrence when the incident took place.

A3 died during trial AND A6, who is convicted, has not preferred any appeal. We are told at the hearing that he has also since died.

A1 Meharbansingh and A2 Pratap Singh absconded. Their trial was separated from the other three accused.

Uday Bhan Singh, A4, Nawab Singh, A5, Nirpat Singh, A6 (since deceased) and Jandel Singh, A7 were tried in Criminal Trial No. 54/1980. They were convicted under Section 120-B, 147, 302 read with Section 149 of IPC. They were sentenced to one year R.I. under Sections 120-B, 147 and for life under Section 302/149 I.P.C. by the judgment of Additional Sessions Judge, Gwalior dated 15.09.1980. Aggrieved against which these three appellants and another Nirpat Singh (since deceased) filed two separate appeals one by Jandel Singh, A7 and the other by the other three accused Udhay Bhan Singh A4 and Nawab Singh, A5 and Nirpat Singh A6. The appeals were partly accepted by the High Court. It was held that a case under Section 302 I.P.C. was not made out as there was no clear evidence on record as to which of these accused had caused fatal injury which could be sufficient in ordinary course of nature to cause death and instead they were convicted under Section 304 Part-I, I.P.C. They were sentenced to one year R.I. under Sections 120-B, 147 I.P.C. and seven years R.I. under Sections 304 Part-I read with section 149 I.P.C. A fine of Rs. 7,000/- (Rupees Seven thousand) was also imposed.

Jandel Singh, A7 has filed Criminal Appeal No. 1690 of 1996 and the other two accused Uday Bhan Singh, A4 and Nawab Singh, A5 have filed Criminal Appeal No. 1691 of 1996 in this Court which are being disposed of

by this common judgment.

The absconding accused A1 Meharban Singh and A2 Pratap Singh were tried in Session trial Case No. 73/1982. Both the accused were acquitted by the trial court. The order of acquittal was maintained by the High Court against which no further appeal was filed in this Court. The order of acquittal thus became final.

The prosecution story is that on 30th September, 1979 Meharban Singh, A1 invited Prakash(deceased), Ram Gopal, PW1 and Narayan, PW5 for dinner in connection with the last rite (thirteenth day) ceremony of his father. While Prakash and Ram Gopal, PW1 were on their way to the house of Meharban Singh, A1, they met Narayan, PW5 who was also going to the house of Meharban Singh, in the same connection. A2 to A7 had also come to the house of Meharbansingh to attend the thirteenth day ceremony. Meharban Singh, A1 introduced Prakash with the other accused persons. Thereafter Prakash(deceased), Ram Gopal, PW1 and Narayan, PW5 started eating the food served to them sitting in the Varandah(Paur) where a lantern was burning. The accused persons were sitting on a cot. They were smoking bidis and were whispering amongst themselves. When they had taken half of their meals, they heard gun fire from outside and in that process the lantern was extinguished. Realizing the danger Prakash(deceased), Ram Gopal, PW1 and Narayan, PW5 tried to run away. They heard the accused saying "pakdo pakdo". Prakash(deceased), Ram Gopal, PW1 and Narayan, PW5 somehow managed to come on the road and tried to escape through the Gali, which goes towards Ram Janki Temple. Prakash(deceased) was caught hold by the accused persons who pulled him down. Mahendra Singh, A3 fired at Prakash(deceased) with his country made pistol(Katta). Thereafter Meharban Singh, A1, Pratap Singh, A2 and Mahendra Singh, A3 threw stones aiming at the head of deceased and crushed his head. Hearing Prakash's cries, Uday Bhan Singh, A4, Nawab singh, A5, Nirpat Singh, A6 and Jandel Singh, A7 started throwing stones on Ram gopal, PW1 and Narayan, PW5. Although there were other houses in the Gali but none of the residents came to their rescue in spite of hue and cry raised by them.

Ram Gopal, PW1 went to the police station at Dabra and got the FIR recorded. Hukumsingh Yadav, SHO, Debra Police Station after recording the first information report came to the place of occurrence in the night itself. There is nothing on record to indicate that a copy of FIR was sent to the jurisdictional Magistrate as required under Section 157 of the Cr.P.C. Prosecution case is that the Investigating Officer could not carry on with the investigation at night due to darkness. Early in the morning the next day Panchnama of the dead body was prepared and dead body was sent for post-mortem. Dr. Dharampal katariya, PW3 conducted the post mortem at 9.00 O'clock the same day. In his opinion, Prakash died due to damage to the vital organ i.e. brain. That the injuries caused on the head of the deceased were sufficient to cause death in the ordinary course of nature.

Counsel for the parties have been heard at length. Prosecution has rested its case on the evidence of the two eye witnesses PW1 and PW5. There is no other evidence. We have gone through the testimony of the two eye witnesses and the Investigating Officer minutely with the help of the counsel for the parties.

Story put forth by the prosecution is highly improbable. It has come in the evidence that the only persons invited for the thirteenth day ceremony were the ones with whom the accused persons had long standing litigation both criminal and civil. Meharban singh, A1 had a dispute with the deceased regarding a piece of land. Similarly he had litigation with Narayan, PW5. The criminal litigation between them was also pending. According to PW5 no other person had been invited except the three of them. It is unlikely that a person would go and invite the persons with whom he is at logger heads for dinner to his house or for that matter the persons so invited would even

accept the invitation and come for dinner. Neither the deceased nor any of the eye witnesses had ever visited the house of any of the accused persons earlier. From the prosecution story put forth it is evident that the intention, if at all, was to kill Prakash(deceased) only. It is unlikely that the two eye witnesses would also be invited along with the deceased. The accused would not invite the other two persons to become eye witnesses of the occurrence.

Apart from the improbability of the prosecution story the testimony of eye witnesses does not inspire confidence being untrustworthy. Deceased belongs to village Dabra. PW1 belongs to village Jangipura and PW5 belongs to village Kheri. PW1 belongs to Chipa caste whereas PW5 belongs to kuchvadiya caste which deals the business of sale and purchase of hair and skins of cattles. To show their presence at the spot they had stated that they received injuries at the time of occurrence but this fact is not supported by the medical evidence. PW1 asserted that Jandel Singh, A7 was brother in law of Meharban Singh. PW5 in his deposition contradicted PW1 and stated that no sister of Meharban Singh was married to Jandel Singh, A7. PW1 in his deposition in the court stated that all the seven accused had caused injury to the deceased with stones whereas in his statement before the police he had mentioned that only A1 Meharban Singh, and A2 Pratap Singh, who had caused injuries on the head of the deceased. PW5 in the court stated that all the seven accused had caused injuries to the deceased with stones whereas in his statement before the police he had stated that A1 Meharban Singh alone had caused the said injuries. PW1 and PW5 were duly confronted with their statements made before the police. They were unable to satisfactorily explain this vital contradiction. They have made vital improvement in their statements in the court to implicate the other accused persons as well and in any case the possibility of their doing so cannot be ruled out because of their animosity towards the accused persons.

Investigating Officer reached the spot at about 10.00p.m. He did not carry the investigation further at night due to darkness. He did not make any effort to search for the accused though their houses were a few steps away from the place of occurrence. It is unbelievable that an Investigating Officer who is going for the investigation of a murder case at night would not carry a torch with him or try to procure some other source of light to carry on with the investigation. There were houses all around and could have easily arranged for some light. He had gone there in a jeep and if no other source of light was available he could have at least made search for the accused persons with the help of the headlights of the jeep. He did not send a copy of the first information report to the jurisdictional Magistrate. He kept silent as to what time the first information report was dispatched or received by the jurisdictional Magistrate. Defence tried to elicit this information by summoning Dak Book from the police station and examined Constable Satish Kumar Mishra as DW1 but the said witness did not bring the Dak Book and stated that the same was not traceable. In the requisition memo sent by the SHO to the hospital and in the post mortem, date and time of receipt of dead body has not been mentioned. Cumulatively all these facts put a doubt on the prosecution version and it leaves an impression that the prosecution has not come out with the truth. In all probability the commission of crime came to notice in the morning and thereafter the investigation started. If that be so, the presence of the eye witnesses becomes very much doubtful.

High Court has pointed out in its judgment that no specific injury which could cause death in the ordinary course of nature had been attributed to any of the appellants. The main accused with whom the deceased had litigation have already been acquitted in a subsequent trial. In the absence of any independent witness or any other corroborative evidence to support the version put forth by the two eye witnesses, which we find unsafe to rely upon, it would be unsafe to hold the appellants guilty of charges levelled against them.

For the reasons stated above both the appeals are allowed and the conviction and sentence imposed on the appellants is set aside. Appellants are on bail. Their bail bonds are ordered to be discharged.

JUDIS