

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Madan Lal @ Madan Mohan & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.901/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 24-5-2003 in Sessions Case No.118/2001 passed by Shri Udai Chand Barupal, RHJS, Sessions Judge Bundi.

Date of Judgment: June 01, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Arvind Kumar Gupta] for the appellants.

Mrs. Alka Bhtnagar]

Mr. Rinesh Gupta]

Mr. Vaibhav Gehlot]

Mr. Harsh Saini]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

This appeal owes its origin in the judgment dated May 24, 2003 of the learned Sessions Judge Bundi whereby the appellants, nine in number, were convicted and sentenced as under:-

Appellants Madan Lal @ Madan Mohan, Gokul, Durga Shankar, Dhanraj, Bhojraj, Jodhraj, Suresh Kumar, Mangi Lal and Latoor:
U/s.302/149 IPC:

Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer six months simple imprisonment.

U/s.148 IPC:

Each to suffer simple imprisonment for one year and fine of Rs.1000/-, in default to further suffer three months simple imprisonment.

The substantive sentences were ordered to run concurrently.

2. This case reveals strange prosecution story. On January 10, 2001 Madan Lal, a suspended police person and accused, surrendered himself at Police Chowki Khatkad (Bundi). After taking Madan Lal in custody, Incharge of Chowki directed Constable Heera Singh to take Madan Lal to the Court. Since only means of transport available was Motor Cycle of Madan Lal, Heera Singh along with Nand Kishore and Lokesh (son of Madan Lal) proceeded on the Motor Cycle which was driven by Madan Lal. On the way Madan Lal having seen Suresh, Latoor, Jodha, Bhojraj, Gokul and Madan s/o Bheru (appellants) sitting in the jeep No.RJ08P-0140 armed with Gandasis, Axes and Swords, made attempt to escape but he was belaboured and all of them mercilessly inflicted injuries on the person of Madan Lal, who died on the spot. Nand Kishore (Pw.1) thereafter submitted written report (Ex.P-3) at Police Station Gendoli. On that report a case under sections 147, 148 and 302/149 IPC and section 3 SC/ST (PA) Act was registered and investigation commenced. Dead body was subjected to autopsy, necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Sessions Judge Bundi. Charges under sections 148, 302 alternatively 302/149 IPC and section 3(2)(5) SC/ST (PA) Act,1989 were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 19 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Two witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard learned counsel for the appellants and learned Public Prosecutor and with their assistance scanned the material on record.

4. Death of Madan Lal was undeniably homicidal in nature. As per Post Mortem Report (Ex.P-23) following ante mortem injuries were found on dead body:-

1. Cut wound through & through from Rt. to left just below to both ears on the neck & small skin flap is seen attached on Lt. side. All organs skin fascias muscle Oesphagus, larynx, trachea, carotid, argerges, Hyoid bone caricoid cartilage, atlas vertibra, nerve fibres & vessels are covered with clotted blood of dark red coloured margin at cutting wound are everted.
2. Incised wound 8" x 2" x Bone deep at mid of skull.
3. Incised wound 8" x 6" x bone deep at Rt. shoulder
4. Incised wound 2" x 1/2" x 1" at latral side of Rt. shoulder.
5. Incised wound 3" x 2" x bone deep postral aspect of mid of Rt. arm
6. Incised wound 4" x 2" x bone deep at Rt.palm just below Rt. thumb
7. Incised wound 1" x 1" x Bone deep at proximal phalanx of Lt. ring finger.
8. Incised wound 3" x 1" x muscle deep at medial side of upper 1/3 of lt. fore arm.
9. Incised wound 1" x 1/2" x 1/4" at post aspect of mid of lt. fore armed
10. Abrasion 3" x 1/4" at ant. chest wall.

In the opinion of autopsy Surgeon the cause of death was syncope due to shock caused by sudden and excessive hemorrhage.

5. The case of prosecution is founded on the testimony of informant Nand Kishore (Pw.3) (brother of deceased), Constable Heera Singh (Pw.2) and Lokesh (Pw.14) (son of deceased). Before advertting to the rival submissions we proceed to scan the testimony of these witnesses.

6. Constable Heera Singh (Pw.2) deposed that on being asked by Head Constable Rajendra Singh to produce Madan Lal in the Court at Bundi

he proceeded around 11 AM on the Motor Cycle of Madan Lal along with Nand Kishore and Lokesh. When they reached near village Baldevpura they saw a jeep No.RJ08-140. Suresh, Dhanraj, Bhojraj, Jodhraj, Latoor, Mangi Lal, Madan, Durga and Gokul were sitting in the jeep. As soon as motor cycle reached near the jeep Madan shouted 'Are Mare Gaye' and in no time he got the Motor Cycle parked and started running but he was belaboured by the persons sitting in the jeep. First blow was inflicted by Madan Gujar on his neck as a result of which he fell down, thereafter Suresh gave another blow with axe on his neck and beheaded him. Other assailants then caused injuries on the person of Madan who died on the spot. Nand Kishore and Lokesh however saved them and somehow reached at Police Chowki Khatkad and informed police Station Gendoli through wireless. Testimony of Heera Singh gets corroboration from the statements of Nand Kishore (Pw.3). Lokesh (Pw.14), who was a boy of 8 years, however could not support the prosecution version properly.

7. It was contended by learned counsel for the appellants that the report (Ex.P-31) communicated through wireless was the FIR and the written report (Ex.P-3) submitted by Nand Kishore was not admissible in evidence since it was hit by Section 162 CrPC. In order to appreciate this contention we have scrutinised the report Ex.P-31. A look at the said report demonstrates that on receiving wireless message from Heera Singh, the information was incorporated in Rojnamcha at 11.30 AM. The report reads as under:-

"इस समय हीरासिंह FC 368 ने ओपी खटकड़ से जरिए वायरलेस सूचना दी कि मैं डाक व वारन्टी मदन लाल पुत्र मोती लाल मीणा निवासी अजेता को लेकर बूंदी जा रहा था कि बलदेवपुरा के पास आम रोड पर 5-6 हथियार बन्द लोगों ने जीप आडे लगाकर हमे रोकना चाहा व हथियार

बन्द लोगों ने वारन्टी मदन लाल पर हमला बोल दिया जिससे मदन लाल अपनी जान बचाकर रामपुरा की तरफ माल में भाग गया व हथियार बन्द लोग भी उसके पीछे भागे हैं।"

Evidently this report is cryptic in nature since it did not contain the names of the assailants. The written report (Ex.P-3) is not hit by Section 162 CrPC and we find no merit in the contention of learned counsel for the appellants.

8. Next contention of learned counsel was that from the report (Ex.P-31) one fact however appears that Nand Kishore and Lokesh were not present at the place of incident and this possibility cannot be ruled out that being the brother and son of the deceased they were introduced as the eye witnesses.

9. Criticising the testimony of Constable Heera Singh (Pw.2) learned counsel for the appellants canvassed that since deceased was police person, Heera Singh had interest in him. Heera Singh did not know the appellants and that is why their names did not find place in the report (Ex.P-31). Since Heera Singh had modulated his evidence for the purpose of securing a conviction, his testimony could not have been relied upon. Reliance was placed on Karunakaran V. State of Tamil Nadu (AIR 1976 SC 383), Badri Vs. state of Rajasthan (AIR 1976 SC 560), Joseph Vs. State of Kerala (2003)1 SCC 465, Sadhu Ram Vs. State of Rajasthan (JT 2003(4) SC 13), Lallu Manjhi Vs. State of Jharkhand (JT 2003(1) SC 1), Sohan Vs. State of Haryana (JT 2001(3) SC 262), Kalyan Das V. State of MP (1979 CrLR (SC) 15), Suresh Rai Vs. State of Bihar (JT 2000(4) SC 12), Mohd. Iqbal Vs. State of Maharashtra (1998)4 SCC 494, Miter Sen Vs. State of UP (AIR 1976 SC 1156) and Ram Kumar Pandey Vs. State of MP (AIR 1975 SC

1026).

10. Per contra, learned Public Prosecutor supported the impugned judgment and urged that presence of all the three witnesses at the time of incident was natural and cryptic information supplied over wireless could not be made basis to discard their testimony.

11. We have pondered over the rival submissions.

12. Fact situation that emerges in the case, is as under:-

(i) Deceased was a police person. Since he was involved in a criminal case he was suspended.

(ii) On the fateful day he surrendered himself at Police Chowki Khatkad where he was arrested by Chowki Incharge.

(iii) Constable Heera Singh (Pw.2) was directed by Incharge of police chowki to produce the deceased in the Court at Bundi. Since there was no source of transportation, Constable Heera Singh, Nand Kishore and Lokesh occupied the rear seat and deceased drove Motor Cycle. They left police chowki at 11 AM.

(iv) As soon as they reached near Baldevpura, a jeep obstructed their way. Deceased got the motor cycle halted and ran for his life but the assailants belaboured him and beheaded him by inflicting injuries on his person.

(v) Heera Singh transmitted wireless message at 11.30 AM from Police Chowki to Police Station Gaindoli. The message

got recorded in Rojnamcha (Ex.P-31). In the report (Ex.P-31) number of assailants were shown as 5 to 6 and their names were not disclosed. Even it was not stated that Nand Kishore and Lokesh were present at the time of incident.

(vi) Nand Kishore is the brother of deceased whereas Lokesh is his son.

(vii) In the written FIR (Ex.P-3) submitted by Nand Kishore, names of appellants Durga Shankar, Dhanraj and Mangi Lal were not mentioned.

(viii) Constable Heera Singh (Pw.2) could not identify appellant Jodhraj in the trial court.

13. It is no doubt true that Nand Kishore and Lokesh are interested witnesses and they have been ranked by the learned counsel for the appellants as chance witnesses but it is quite probable that they would not have allowed the deceased to go to police chowki alone and would have accompanied him on motor cycle.

14. At this juncture we deem it appropriate to analyse the legal position as to the relevancy to the evidence of chance witness. In Ismail Vs. Momin (AIR 1941 Privi Council 11) it was held that though the chance witness is not necessarily a false witness, is proverbially rash to act upon such evidence. In the case of a chance witness, if that witness gives sufficient reasons for his presence, that evidence can be accepted. In Baldev Singh Vs. State of MP (2003)⁹ SCC 45, the Apex Court, where chance witness failed to assign any convincing reason for being at the place of incident at that abnormal hour of the day in full summer, held that testimony

of such witnesses could not be relied upon.

15. The expression 'chance witness' is borrowed from the countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle.

16. In Thangaiya Vs. State of Tamil Nadu (2005 Cri.L.J. 684) the Apex Court indicated as under:-

"In a murder trial by describing the independent witnesses as 'chance witnesses' it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witness' is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence. In instant case, the plea of the accused that PW-3 was 'chance witness' who has not explained how he happened to be at the alleged place of occurrence, it has to be noted that the said witness was an independent witness. There was not even a suggestion to the witness that he had any animosity towards the accused. Therefore, there is no substance in the plea that evidence of independent witness which is clear and cogent is to be discarded."

17. Law does not insist on plurality of evidence. The evidence is to be weighed and not counted. Section 134 of the Evidence Act lays down in clear terms that no particular number of witnesses is necessary for the proof

of any fact. In the case on hand even if we ignore the evidence of Nand Kishore and Lokesh we find that Constable Heera Singh is a witness of sterling worth. His testimony could not be shattered in cross examination. Immediately after the incident he transmitted the information to Police Station Gaindoli. In the report (Ex.P-31), however the number of assailants was five to six. In the FIR (Ex.P-3) lodged by Nand Kishore appellants Durga Shankar, Dhanraj and Mangi Lal were not named. We therefore find that the prosecution failed to establish the charge against appellants Durga Shankar, Dhanraj and Mangi Lal beyond reasonable doubt. Evidence of Constable Heera Singh, who had named Madan, Gokul, Bhoj Raj, Suresh Kumar and Latoor as assailants and identified them in the court, is found consistent qua the said accused appellants. Heera Singh however could not identify appellant Jodh Raj at the trial. However possibility of over implication of appellants Durga Shanker, Dhanraj, Mangi Lal and Jodh Raj cannot be ruled out.

18. For these reasons, we dispose of the instant appeal in the following terms:-

- (i) We allow the appeal of appellants Durga Shanker, Dhanraj, Mangi Lal and Jodh Raj and acquit them of the charges under sections 302/149 and 148 IPC. Appellants Durga Shanker, Dhanraj and Mangi Lal are on bail, they need not surrender and their bail bonds stand discharged. Appellant Jodh Raj, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.
- (ii) The appeal of appellants Madan Lal, Gokul, Bhoj Raj,

Suresh Kumar and Latoor Lal being devoid of merit stands dismissed and their conviction and sentence under sections 302/149 and 148 IPC are maintained.

(iii) The impugned judgment of learned trial Judge stands modified, as indicated herein above.

(Guman Singh),J.

(Shiv Kumar Sharma)J.

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