

Madhya Pradesh High Court

Ramlakhan vs The State Of M.P. on 4 May, 2022

Author: Anil Verma

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Cr. A. No.1222/2000

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 04TH DAY OF MAY, 2022

CRIMINAL APPEAL No. 1222 of 2000

Between: -

RAMLAKHAN

S/O RAJARAM, AGED ABOUT 22 YEARS,
OCCUPATION AGRICULTURE,
R/O : TAKURANA, DISTRICT SHAJAPUR,
(MADHYA PRADESH)

.....APPELLANT

(BY SHRI RAJESH YADAV, ADVOCATE ON BEHALF OF
SHRI VIVEK SINGH, ADVOCATE)

AND

THE STATE OF M.P.,
P.S. SHAJAPUR,
DISTRICT SHAJAPUR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI HITENDRA TRIPATHI, PANEL LAWYER)

This appeal coming on this day, the court passed the
following:

J U D G M E N T

Appellant has preferred this present appeal under Section 374 of Code of Criminal Procedure, 1973 (in short Cr.P.C.) being

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Cr. A. No.1222/2000 aggrieved by judgment of conviction dated 19.10.2000, passed by the Additional Sessions Judge, Shajapur in S.T.No.23/2000 by which the appellant has been convicted for commission of offence punishable under Section 307 of IPC and sentenced to undergo 10 years R.I. with fine of Rs.1000/- and in default of payment of fine 3 months additional R.I.

02- Brief facts of the case are that on 24.08.1999 at about 5.30 PM co-accused Manohar put grass bundles on the stairs of Hanuman Temple. When complainant Inder Singh and his brother Balkrishna told Manohar to remove the same then Manohar refused to do so. At that time, appellant Ramlakhan along with his brothers Mukesh and Amrit also came there and told him that you are becoming a big gangster, today we will finish you. Then all four persons surrounded him and appellant with an intention to kill attacked on Balkrishna by using knife due to which Balkrishna sustained several injuries on his left side of the abdomen and right side of the forearm. Balkrishna fell down on the spot. After hearing hue and cry of complainant, Inder Singh, Arjun, Mahesh, Maan Singh and Ramprasad came there for intervention. Inder Singh lodged an FIR at police station Shajapur. Accordingly police station Shajapur, registered a case. Injured Balkrishna was brought to the hospital where his MLC was conducted by Dr. B.S. Meena (P.W.5). During investigation, investigating officer S.P.S Choudhary

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Cr. A. No.1222/2000 (P.W.14) prepared the spot map, seized sample of blood stained soil from the spot. On the basis of memorandum of appellant under Section 27 of the Evidence Act, police recovered a blood stained knife from his possession. Accused persons were arrested. After completion of the investigation, charge-sheet has been filed against the appellant and other co-accused persons before the Chief Judicial Magistrate, Shajapur, who committed the case to the Court of Sessions, which was transferred to the court of Additional Sessions Judge / Special Judge Shajapur for trial. 03- The trial Court on the basis of the allegation made in the charge-sheet framed the charges punishable under Section 307 of IPC upon the appellant and the learned trial Court also framed charges under Section 307 of IPC read with Section 341 of IPC against two other co-accused persons. The appellant and other co-accused persons abjured their guilt and pleaded complete innocence and took the plea that they have been falsely implicated in this matter.

04- In order to bring home the charges, the prosecution has examined as many as 15 witnesses and exhibited the documents from Exhibit-P/1 to Exhibit-P/22. No witness has been examined by the defence.

05- The trial Court after considering the submissions advanced by both the parties and scrutinizing the entire evidence available on

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Cr. A. No.1222/2000 record, convicted the appellant but other 3 co-accused persons have been acquitted. Being aggrieved by the said judgment and sentence the appellant has preferred this present appeal before this Court. 06- Learned counsel for the appellant has submitted that the impugned judgment of learned trial court is contrary to law and facts on record, the judgment of the trial court is neither legal nor proper and correct. The trial Court was wrong in believing prosecution witnesses and discarding the defence version and learned lower Court was wrong in drawing unwarranted inference. Learned trial Court was wrong in not considering the material omission and contradiction and the statements of the prosecution witnesses. Conviction is bad in law. Therefore,

it is prayed that present appeal be allowed and appellant be acquitted from the charges.

07- Per contra, learned Panel Lawyer for respondent / State has supported the impugned judgment of conviction by submitting that the learned trial Court, on proper appreciation of the evidence has recorded conviction of the appellant and same does not call for any interference.

08- Heard learned counsel for the parties and perused the record of the trial Court with due care.

09- In order to appreciate the merit of the rival contention in right perspective, it is necessary to first advert to the medical

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Cr. A. No.1222/2000 evidence on record. Dr. B.S. Meena (P.W.5), who conducted the MLC of the victim Balkrishna has proved the undermentioned injuries :-

(i) Cut wound on right forearm, size 12 cms x 11 cms. Blood was oozing out and both the corners were sharp.

(ii) Stab wound over the left side of the abdomen on iliac fossa, size 4 cm x 1 cm. Omentum was coming out and blood was also oozing, but it cannot be measured. Baniyan was also cut and blood stained which was handed over to the constable who brought the victim. X-ray has been advised.

10- As per his opinion both the injuries were caused by sharp cutting and hard object within 7 hours of the examination. His MLC report is Exhibit-P/4.

11- Dr. Rakesh Durukhure (RSO) (PW-15) who conducted the operation of the abdomen of the victim also stated that during the operation 4 wholes were found upon the small intestine and he repaired it. About half litre blood was found in the abdomen which was also removed. As per report Exhibit P/22, the injuries sustained by victim Balkrishna was dangerous to life and sufficient to cause death in the natural course. On the basis of the statements of both the doctors and their report, it is proved beyond any doubt that victim Balkrishna sustained grievous injuries over his abdomen received by sharp cutting weapon.

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Cr. A. No.1222/2000 12- Now the next question for consideration is whether the appellant is author of the injuries or not.

13- The victim Balkrishna (PW-2) has stated in his statement that at the time of incident about 5.30 PM when he told Ramlakhan and Manohar to remove grass bundles, they refused and started arguments with him then appellant Ramlakhan stabbed knife over his abdomen. Appellant also gave repeated blows of the knife due to which he sustained injuries over his abdomen and right forearm

and he fell down on the spot. Inder Singh, Arjun, Maan Singh, Mahesh and Mukesh came there for intervention otherwise accused and his brother would have killed him. His brother Inder Singh lodged FIR at police station Shajapur. He was sent to Shajapur hospital for MLC. Thereafter, the victim was referred to M.Y. Hospital Indore, where he was admitted about 23 to 24 days in a critical condition.

14- Brother of Balkrishna an eyewitnesses Inder Singh (P.W.1) also stated in his statement that at the time of incident appellant Ramlakhan gave the blow of knife to Ramkrishna due to which he sustained injuries over his abdomen and due to the repeated blows Balkrishna sustained injuries over his right forearm. Arjun Singh (PW-3), Mahesh Kumar (PW-12) and Maan Singh (PW-13) also deposed in a similar manner and supported the statement of victim Balkrishna.

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Cr. A. No.1222/2000 15- Although Vishnu (PW-6), Ramprasad (PW-7) who have been examined as eyewitnesses, but they have turned hostile and have not supported the case of the prosecution. Jagdish (PW-9) and Mahesh (PW-10) have also been examined as a seizure witnesses, but they bluntly denied for such seizure. They have also turned hostile and have not supported the case of the prosecution. 16- Learned counsel for the appellant submits that there are so many material contradictions and omissions in the statements of victim Balkrishna and other eyewitnesses therefore, their statements cannot be relied upon. Balkrishna (PW-2) stated in his statement that Ramlakhan and his all three brothers dragged him but the same was not deposed by the Inder Singh (PW-1), Arjun Singh (PW-3), Vishnu (PW-6), Ramprasad (PW-7) and Mahesh Kumar (PW-12). Mahesh Kumar (PW-12) stated that Manohar attacked with "farshi" to the Balkrishna due to which he sustained injuries on his right hand but Balkrishna did not supported his statement.

17- Maan Singh (PW-13) stated that at the time of incident, Manohar, Amrit and Ramlakhan pelted stones towards the Balkrishna but Balkrishna himself did not support the statement regarding incidence of stone pelting. Maan Singh stated that accused persons put a bundle of grass before the gate of Balkrishna but Balkrishna (PW-2) stated that accused persons put bundle of

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Cr. A. No.1222/2000 grass upon the ladders of his house. Although there are so many contradictions and omissions between the statement of victim and statement of Balkrishna and other witnesses but this Court finds that such contradictions and omissions are trivial in nature and neither material nor sufficient to wholly discard these witnesses. 18- In the case of State of A.P. Vs. Vs. Pullugummi Kasi Reddy Krishna Reddy reported in (2018) 7 SCC 623, the Supreme Court has held as under:-

"Discrepancies which do not shake the credibility of the witnesses and the basic version of the prosecution case to be discarded. If the evidence of the witnesses as a whole contains the ring of truth, the evidence cannot be doubted."

19- In the cases of State of M.P. Vs. Chhaakkilal and others and Ramveer and Chhaakki Lal and another reported in 2018 (4) Crimes 238 (SC), it has been observed that finding recorded by trial Court is entitled to great weight. The same cannot be interfered with unless vitiated by serious error. It is also observed that the evidence as a whole having a ring of truth cannot be discarded merely because the maker is a related witness. Conviction can be based on evidence of solitary eye witness. It is further observed that omissions or lapses in investigation cannot be a ground to discard the prosecution case which is otherwise credible and cogent. 20- Hon'ble Supreme Court in the case of Yunis @ Kariya Vs. State of M.P. reported in (2003) 1 SCC 425 again has held

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Cr. A. No.1222/2000 as under:-

"6. Coming to the alleged discrepancy between medical evidence and evidence of the eyewitnesses, it is to be noted that at least three injuries referred to by the autopsy surgeon and forming part of the medical evidence and as stated by the eyewitnesses are common. These three injuries are by themselves sufficient to cause death. The autopsy surgeon has not mentioned the knife injury on the back side of the buttock and another injury. The mere non mention of the two injuries by the autopsy surgeon does not and cannot lead to rejection of the prosecution case. The two injuries might have escaped the notice of the doctor. Both the courts below have found the prosecution case to be fully established and proved beyond any doubt whatsoever and we see no reason to take a different view."

21- Learned counsel further contended that Balkrishna (PW-2) and other eyewitnesses are the family members of victim, therefore, being interested witnesses their statements cannot be relied upon.

The Supreme Court in the case of Mahavir Singh Vs. State of M.P. reported in (2016) 10 SCC 220 has held as under:-

"18. The High court has attached a lot of weight to the evidence of the said Madho Singh (PW-9) as he is an independent witness. On perusal of the record, it appears that the said person already had deposed for the victim family on a number of previous occasions, that too against the same accused. This being the fact, it is important to analyse the jurisprudence on interested witness. It is a settled principle that the evidence of interested witness needs to be scrutinised with utmost care. It can only be relied upon if the evidence has a ring of truth to it, is cogent, credible and trustworthy. Here we may refer to chance witness also. It is to be seen that although the evidence of a chance

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Cr. A. No.1222/2000 witness is acceptable in India, yet the chance witness has to reasonably explain the presence at that particular point more so when his deposition is being assailed as being tainted.

19. A contradicted testimony of an interested witness cannot be usually treated as conclusive. The said Madho Singh (PW-9) has admitted that he has been a witness in another case against the accused for the deceased. Here it is to be seen that the said Madho Singh (PW-9) has been acting as a pocket witness for the family. Further, the credibility of this independent witness can be challenged on the fact that the commotion was only heard by the said Madho Singh (PW-9) whereas the rest of the members of the locality did not come for help. As Madho Singh(PW-9) is a chance witness as well as an interested witness herein, causes suspicion and does not inspire confidence. This admission by Madho Singh (PW-9) not only forces us to doubt the veracity of his own deposition but also has created doubts on the version of Gambhir Singh (PW-7)."

The Supreme court in the case of Harbeer Singh Vs. Sheeshpal & Ors., reported in (2016) 16 SCC 418 has held as under:

"18. Further, the High court has also concluded that these witnesses were interested witnesses and their testimony was not corroborated by independent witnesses. We are fully in agreement with the reasons recorded by the High Court in coming to this conclusion."

Therefore, in view of the above law laid down by the apex Court, this Court is not inclined to accept the defence of counsel for the appellant to disbelieve the testimony of the Balkrishna (PW-

2) along with other eyewitnesses Inder Singh (PW-1), Mahesh

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Cr. A. No.1222/2000 (PW-12), Maan Singh (PW-13) and Arjun Singh (PW-3). 22- It is true that Inder Singh is the brother of victim Balkrishna and Mahesh, Maan Singh and Arjun Singh are also the family members of the victim Balkrishna but their presence on the spot was quite natural and their versions are also trustworthy and reliable, which are duly corroborated by the medical evidence and the evidence of Inspector A.P.S.Choudhary (PW-14), who arrested the accused Ramlakhan, according to his memorandum under Section 27 of the Evidence Act (Exhibit-P/16) and also recovered a knife on production of the accused Ramlakhan through the seizure memo (Exhibit-P/10). This witness has also stated that the seized knife and the blood stained soil, which was recovered from the place of incidence was also sent to the FSL for the chemical examination and FSL report is Exhibit-P/21. As per the FSL report human blood was found on the clothes of the victim Balkrishna and a knife was also recovered from the appellant Ramlakhan. 23- Learned counsel for the appellant also contended that on the same day of incidence accused Ramlakhan launched an FIR against Inder, Balkrishna and Siyaram and an offence was registered at Crime

No.471/1999 against them. Therefore, the appellant has falsely been implicated in this matter but the appellant did not examine any defence witness in support of his contention. It is not clear that any criminal case is pending against victim persons or

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Cr. A. No.1222/2000 not. Therefore, on the basis of the aforesaid contention, the case of the prosecution cannot be doubted 24- Considering all the circumstances and facts of the case available on record, in the present case as referred above, it is clearly establish beyond reasonable doubt that the appellant / accused had started abusing to the victim Balkrishna and upon the objection of victim and his family members, he took out a knife and gave blow of knife on the abdomen of the right forearm of the victim. It came on record that the injuries on the body of the victim Balkrishna (PW-2) was caused by the appellant, who was armed with a knife. The statement of Balkrishna (PW-2) was well supported by the medical evidence as well as the statement of the eyewitnesses. On the basis of the statement of the eyewitnesses and the medical evidence, which has been assessed by the Doctor the injuries were grievous in nature and dangerous to life. It is established that the appellant had caused grievous injuries to the victim Balkrishna. The appellant used sharp edged weapon and the blow of weapon was aimed at the vital part of the body with sufficient force so as to injured was operated and his omentum was coming out and victim retain in hospital for treatment for about 22- 24 days. Hence, I do not find any infirmity insofar as the reasoning given by the trial Court and in view of the aforesaid, the offence under Section 307 of the IPC is attracted and trial Court has rightly

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Cr. A. No.1222/2000 convicting the appellant.

25- So far as the quantum of sentence is concerned, learned counsel for the appellant submitted that the appellant Ramlakhan was a young person of 23 years of age at the time of incident, he has no criminal past, he has suffered jail incarceration for some time and present case is 23 years old. Hence, he prayed that it will be appropriate to reduce his jail sentence. On perusal of the record it reveals that the appellant has suffered jail incarceration from 17/09/1999 to 29/09/1999 for about 13 days during the trial and after the trial he was in jail from 19/10/2000 and his jail sentence was suspended by this Court on 19/09/2001. Matter is already 23 years old, therefore, in the interest of justice, it would be appropriate to reduce the jail sentence of the appellant. 26- Accordingly, the appeal filed by the appellant is partly allowed by maintaining the conviction under Section 307 of the IPC and by reducing the jail sentence form 10 years to 03 years and fine of Rs.1,000/- is also maintained. The appellant Ramlakhan is on bail. His bail bonds be cancelled. The trial Court is directed to calculate the period of remaining jail sentence awarded to the appellant after deducting the incarceration period, which he has already suffered. Since today this Court has partly allowed the appeal directing the appellant to undergo the remaining part of jail sentence of 03 years, therefore, he is directed to surrender before

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Cr. A. No.1222/2000 the concerned trial Court on 25th of May, 2022 for completing the remaining part of the jail sentence as directed herein above. In case the appellant fails to surrender before the concerned trial Court then the trial Court shall take necessary action including issuance of warrant of arrest for securing his presence before the Court, so as to undergo the remaining jail sentence awarded to him. 27- With the aforesaid modifications, present appeal stands partly allowed.

28- Let a copy of this judgment be marked to the concerned trial Court for compliance of this order.

Certified copy as per rules.

(ANIL VERMA) JUDGE BDJ/Tej Digitally signed by TEJPRAKASH VYAS Date: 2022.05.04 18:21:41 +05'30'