

CASE NO.:
Appeal (crl.) 782 of 2000

PETITIONER:
MEHARBAN SINGH AND ORS.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 05/12/2001

BENCH:
U.C. Banerjee & K.G. Balakrishnan

JUDGMENT:

K.G. Balakrishnan, J.

The appellants herein have challenged their conviction and sentence under Section 302 read with Section 149, I.P.C. and also under Sections 147 and 148, I.P.C. These appellants, along with four others, were tried by the Court of Sessions Judge, Guna, Madhya Pradesh alleging that they had caused the death of one Halkiya. On 13.3.1984, at about 80 clock while PW-1 Hari Singh, nephew of deceased Halkiya was working in his field, PW-2 Harnam Singh came and told that his uncle Halkiya was lying injured near the field of Udham Singh. PW-1 rushed to the place and saw Halkiya lying injured. On the way he had informed Patel Pritam Singh(PW-6) and also Chowkidar Munni Lal (PW-5). Brother of PW-1 brought a bullock cart to take the injured Halkiya to hospital, but on the way Halkiya died and the bullock cart was diverted to the police station, which was about 8 Kms. away from the place of incident. PW-1 lodged the F.I. statement before the Station Officer. According to PW-1, injured Halkiya had told PW-1 that he was assaulted by nine persons. The names of all these persons were given by PW-1 in the F.I. statement.

On the basis of statement given by PW-1, a case was registered against these nine persons and the body of Halkiya was sent for post-mortem examination. PW-4 conducted the post-mortem examination and found that there was an incise wound on the right side of the skull of the deceased, possibly caused by a hard and blunt object. There were two other incised wounds, alleged to have been caused by hard and sharp cutting object on the right hand. In addition, there were 8 contusions on the various parts of the body. The Doctor was of the opinion that after sustaining these injuries, Halkiya must have been alive for 2-4 hours.

The initial investigation was conducted by the Chief Inspector Narayan Prasad Srivastava and thereafter by R.B.Dubey. He prepared the site plan and obtained some blood-stained sand from the scene of occurrence. He interrogated the accused persons and on 14.3.1984, one farsa from accused Meharban Singh and one bamboo stick each from accused Jagannath Singh and Bhiya Lal were recovered.

Though two eyewitnesses were examined in this case, their evidence was not believed by the Sessions Court. The appellants were found guilty mainly on the evidence of PW-1 Hari Singh, PW-2 Harnam Singh and PW-3 Kalyan Singh. These three witnesses deposed that when they saw deceased Halkiya, he was alive and gave statement to them that he was attacked by these appellants. The counsel for the appellants contended before us that the statement given by these witnesses could not have been relied upon by the Sessions Court as well as High Court, as the deceased Halkiya was not in a fit condition to give the statement. PW-1 Hari Singh gave the evidence to the effect that when he reached the place of incident and found that Halkiya was lying injured in the pathway leading from Rusia to Aron, he enquired as to who had assaulted and then Halkiya told the names of all the persons. PW-1 also deposed that he had gone to PW-5 Munni Lal and PW-6 Pritam Singh on his way to the place of incident. He further stated that PW-5 Munni Lal reached the place of incident and the condition of Halkiya was bad and he could give only the names of four persons and then his brother Kallu reached there with the bullock cart and the injured was taken to Aron.

PW-2 Harnam Singh deposed that on the date of incident at about 7 o'clock in the morning he went to the house of Patel Hartoom Singh to get a loan application. While he was coming back, he saw Halkiya lying on the pathway near the field of Udham Singh. He went near the injured Halkiya who told him that nine persons including these appellants had attacked him with lathis and farsas. PW-3 also deposed that Halkiya gave out the names of persons who had attacked him. The Sessions Court as well as the High Court mainly relied on the evidence of PW-2 Harnam Singh, who had seen the injured in the first instance. According to PW-2 Harnam Singh, the injured Halkiya disclosed the names of Meharban Singh, Halke Bhaya, Bhagwat Singh, Bhayalal, Jagannath, Udham Singh and Ram Swaroop. The High Court, after careful consideration of the evidence on record, came to the conclusion that these appellants had caused injuries to the deceased Halkiya.

The main argument advanced by the appellants counsel is that the deceased might not have given the names of assailants and taking into consideration the serious nature of the injury caused to his skull, the deceased must have been either dead or unconscious, and that there is no evidence to show that the deceased was in a fit state of mind to give the dying declaration. It was argued that the evidence of PW-1 to 3 should not have been accepted by the Court. It was also pointed out by the appellants counsel that PW-5 and PW-6, who were present at the time when injured was taken in the bullock cart, failed to support the prosecution and this fact also would show that the dying declaration was false and unreliable.

It is important to note that the witnesses not only reached the place of incident but also took steps to take the deceased in a bullock cart to the nearby hospital and this shows that deceased Halkiya must have been alive at that time. While the injured was being taken in the bullock cart, on the way he died and thereafter the dead body was directly taken to the Police Station. There, the First Information Report was lodged and in the FIR, it is mentioned that dead body of Halkiya was in the Police Station. The evidence of PW1 to PW3, coupled with the medical evidence and other surrounding circumstances convincingly proved that the dying declaration given by the deceased, must have been true and the Sessions Court as well as the High Court was very careful in accepting this dying declaration and wherever there was any doubt as to the involvement of some of the accused, the court granted the benefit thereof and acquitted those accused. The names of the appellants were disclosed by the deceased to three witnesses who gave their evidence before the court

and the two courts accepted that evidence and did not find any infirmity or miscarriage of justice in this case. The appeal is without any merits

and is dismissed accordingly.

.J
(U.C. Banerjee)

.J
(K.G. Balakrishnan)

December 5, 2001.

JUDIS