Khalil Khan vs State Of Madhya Pradesh on 8 October, 2003

Equivalent citations: AIR 2003 SUPREME COURT 4501, 2004 (1) SCC 55, 2003 AIR SCW 5205, 2003 ALL. L. J. 2565, 2004 (2) SRJ 275, 2003 (6) SLT 753, (2003) 11 ALLINDCAS 7 (SC), (2004) 1 EFR 12, (2004) 54 ALL LR 164, (2003) 2 WLC(SC)CVL 679, (2003) 12 INDLD 148, (2003) 2 FAC 182, (2004) 1 ALL WC 18, (2003) 8 SCALE 584, (2003) 7 SUPREME 606, AIR 2003 SUPREME COURT 4670, 2003 (11) SCC 19, 2003 AIR SCW 5104, 2004 SCC(CRI) 1052, 2003 ALL MR(CRI) 2382, 2003 (6) SLT 290, 2003 (8) SCALE 337, 2003 (4) LRI 465, 2003 CRIAPPR(SC) 584, (2003) 12 ALLINDCAS 771 (SC), (2003) 4 CURCRIR 202, (2004) SC CR R 704, 2004 CHANDLR(CIV&CRI) 729, 2004 CRILR(SC MAH GUJ) 42, 2004 CRILR(SC&MP) 42, (2003) 3 EASTCRIC 155, (2004) 27 OCR 66, (2004) 1 RAJ CRI C 247, (2003) 7 SUPREME 276, (2004) 1 ALLCRIR 580, (2003) 8 SCALE 337, (2003) 12 INDLD 96, (2003) 47 ALLCRIC 1121, (2003) 3 CHANDCRIC 177, (2003) 4 ALLCRILR 698, (2003) 4 CRIMES 293, AIR 2004 SUPREME COURT 124, 2005 SCC (CRI) 870 (2004) 1 ALLCRIR 393, (2004) 1 ALLCRIR 393, 2003 AIR SCW 5713, (2003) 12 ALLINDCAS 54 (SC), 2004 CRI. L. J. 828, (2004) 2 RECCRIR 940, (2003) 8 SUPREME 21, (2004) 13 ALLINDCAS 258 (SC), (2003) 9 SCALE 234, (2003) 4 CURCRIR 304, (2003) 8 SUPREME 206, (2004) 13 INDLD 633, 2004 ALLMR(CRI) 534, (2004) 1 EASTCRIC 105, (2003) 3 CHANDCRIC 292, (2003) 4 CRIMES 517, 2004 CHANDLR(CIV&CRI) 462, (2004) 27 OCR 232, 2003 (12) SCC 758, (2004) 13 INDLD 691, (2003) 3 CHANDCRIC 235, (2004) 1 ALLCRILR 384, (2003) 4 CRIMES 446, (2003) 8 JT 514 (SC)

Bench: N.Santosh Hegde, B.P. Singh

CASE NO.:
Appeal (crl.) 693 of 2003

PETITIONER:
KHALIL KHAN

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 08/10/2003

BENCH:
N.SANTOSH HEGDE & B.P. SINGH.

JUDGMENT:

J U D G M E N T SANTOSH HEGDE,J.

The appellant in this Appeal was convicted by the learned Sessions Judge, Shiv Puri in Sessions Case No. 65 of 1986 for an offence punishable under Section 302 IPC and was sentenced to undergo imprisonment for life and was further imposed a fine of Rs. 1,000/- in default to undergo further rigorous imprisonment for a period of six months. His appeal to the High Court of Judicature of Madhya Pradesh, Gwalior Bench, having failed , he is before us in this appeal.

Brief facts necessary for the disposal of this case are that on 6th April, 1986 at about 11 P.M., in view of certain prior enmity, the appellant stabbed and killed one Wahid Khan, son of Bashir Khan. According to the prosecution there were no eye witnesses as such witnessing the incident but Rashid Khan (PW-3), Munshi Sani Mohammad (PW-4) and Nasir Khan (PW-6) and Imami (PW-9) had seen the appellant running away with the knife in his hand. It is the further case of the prosecution. PWs. 2, 3, 5, 6 & 8 heard the deceased say that it was appellant who stabbed him. The prosecution further states that when the deceased was taken to police station- Shiv Puri by PWs. 1,2,5 and 6 he again told the head constable Ram Singh (PW8) that the appellant had stabbed him. Hence a FIR (Exhibit P-6) was lodged at about 11.40 P.M. in the same night. That FIR does mention the fact that the deceased had made a dying declaration naming the appellant as the accused. Originally the FIR registered was for an offence under Section 307 IPC. Subsequently on 7th April, 1986, the deceased having died, the FIR was altered to include an offence punishable under Section 302 IPC.

The prosecution relied on the said dying declaration as well as the evidence of PWs. 2, 5 and 8 as also on the recovery of a blood stained knife and blood stained personal clothes of the appellant. The trial court as well as the High Court have accepted this evidence to base a conviction as against the appellant. Shri Rishi Malhotra, learned counsel for the appellant contended that the prosecution has failed to establish that the deceased could have been in a fit condition to make a dying declaration or for that matter he did make a dying declaration. He also contended that the evidence of PWs. 2, 5 & 8 who stated before the Court that they had heard the deceased, naming the appellant, cannot be believed because these witnesses have made improvements in their evidence as to the dying declaration because in their first statement recorded by the investigating officer under Section 161 of the Crl. P.C. they did not make any such statement regarding they having heard the dying declaration made by the deceased. He also contended that the so called recovery of the knife as also the clothes which were found to be stained with human blood cannot be relied upon because one of the prosecution witnesses who had witnessed the said recovery had specifically stated that these articles were found in the police station and the same was recovered from there and not at the instance of the appellant.

Ms. Vibha Dutta Makhija, learned counsel appearing for the State however, contended that the fact, that PWs. 2,5 & 8 were present when the deceased made the dying declaration, is corroborated by the contents of the FIR. Therefore assuming that this fact was not mentioned in the previous statement, it would not make any difference to the prosecution case. She also contended while one of the witnesses of recovery has turned hostile, the other witness having supported the prosecution, his evidence is sufficient proof of the recoveries made by the investigating agencies.

We have heard the learned counsel for the parties and perused the records as noted above. The prosecution case rests mainly on the fact that the deceased had make a dying declaration. This fact assumes all importance because there was no eye witness to the incident. Apart from all other discrepancies in the evidence of PWs. 1,2,5 & 8 , we notice that this important fact, namely, that the deceased did make a statement implicating the appellant as the assailant, was not made to the investigating officer when their statements were first recorded and their saying for the first time before the court this fact raises some doubts as to the veracity of said fact. Taking into consideration the nature of injuries suffered and the prosecution evidence itself that the deceased while being taking to the hospital had become unconscious, we think it is not safe to rely upon the evidence of these witnesses who have made this important statement as to the dying declaration for the first time before the Court. While holding so, we have borne in mind the fact that all these witnesses are very closely related to the deceased.

If this part of the evidence of the prosecution is to be excluded then, in our opinion, there is no sufficient material to hold the appellant guilty. Be that as it may, we may refer to the recovery part relied upon by the courts below. We notice that one of the witnesses to the recovery has not supported the prosecution case. That apart the incident in question had taken place on 6th April, 1986 and the accused was arrested only on 11th April, 1986, nearly four days thereafter. We find it extremely difficult to believe that a person who is involved in such a serious crime like murder would still be wearing clothes which are blood stained even four days after the murder which fact we find is opposed to normal human conduct. In this background, the evidence of the hostile witness that the recoveries were made at the police station assumes importance. We think it is not safe to place reliance on this part of the prosecution case also.

Since, in our opinion, the prosecution case in regard to the dying declaration and also the recovery is not beyond reasonable doubt, hence, the benefit of the same must go to the appellant. For the reasons stated above this appeal succeeds. The judgment and conviction made by the courts below are set aside. The appellant shall be released forthwith (if in custody), if not wanted in any other case.

Appeal allowed.