

RAM KUMAR & ORS.

v.

STATE OF M.P.

(Criminal Appeal No.375 of 2010)

JULY 01, 2014

[DIPAK MISRA AND N.V. RAMANA, JJ.]

Penal Code, 1860 – ss. 302/34 – Conviction under – Prosecution case that five persons armed with weapons attacked the father of the complainant resulting in his death – Incident witnessed by complainant – Previous enmity between the parties – Conviction u/s. 302/149 and s. 148 and sentenced accordingly – High Court altered conviction from s. 302/149 to s. 302/34 and acquitted the accused of the charge u/s. 148 – On appeal, held: Ample evidence to prove that accused persons with common intention, inflicted fatal injuries on the deceased which resulted in his death – Medical evidence completely corroborates the evidence of prosecution witnesses – Corroborative statements of prosecution witnesses, especially ocular witness and another independent eyewitness – Thus, no infirmity in the judgment passed by the High Court – Evidence.

According to the prosecution case, five persons armed with weapons attacked the father of the complainant, resulting in his death. The complainant witnessed the incident. Four hours prior to the incident some quarrel took place between the complainant side and accused side. FIR was registered. Investigation was carried out. The trial court convicted all the accused u/s. 302/149 and s. 148 IPC and sentenced them accordingly for the offence committed. The High Court acquitted 'RS' giving benefit of doubt. As regards the other accused, the High Court altered the conviction from s. 302/149 to s.

- A 302/34 IPC and acquitting the accused of the charge u/s. 148 IPC. Hence, the instant appeal.

Dismissing the appeal, the Court

- B HELD: 1.1. There was enmity between the accused and the complainant party and it appears that a criminal case was also pending between them. It is found from the record that soon after registering complaint, the I.O.-PW 14 reached the place of occurrence and remained there till 1.00 p.m. on the next date for investigating the case and he also recorded statements of witnesses. At that point of time itself, complainant-PW 1 mentioned the name and role played by the appellant No. 3-‘S’ as recorded by the I.O. in the case diary. The same stand was affirmed by the complainant-PW 1 in his testimony that five persons attacked and caused injuries to his father and deposed that ‘S’, ‘RK’ and ‘SM’ wielded lathis on his father. Another independent eyewitness, PW-10 also affirmed the presence of appellant No. 3, ‘RK’, ‘RM’, ‘C’ at the scene of crime causing injuries to the victim. Therefore, it can be said without any shadow of doubt that the appellant No. 3 as well as other accused participated actively in the crime and caused severe beatings to the deceased with their respective weapons/sticks. [Para 9] [925-A-E]

- F 1.2. Considering the said injuries and fractures sustained by the victim, which are as dangerous as to cause death of a person, it is not necessary for the doctor to give a specific report to the effect that the injuries were sufficient in ordinary course to cause death. In the facts and circumstances, it can be said that the appellants in pursuit of their common intention caused serious injuries on the victim which resulted in his death. Therefore, the stand taken by the appellants that they should not be dealt with under Section 302/34, IPC cannot be accepted. [Para 11] [926-F-G]

1.3. The stand consistently taken by the appellants before the courts below and also before this Court that there are various discrepancies and contradictions in the statements of prosecution witnesses cannot be upheld in view of the corroborative statements of prosecution witnesses, especially ocular witness PW-1 and another independent eyewitness PW-10. [Para 12] [926-H; 927-A-B]

1.4. On going through the facts and circumstances of the case, there is ample evidence to prove that the accused had, with common intention, inflicted fatal injuries on the deceased which resulted in his death. The medical evidence completely corroborates the evidence of prosecution witnesses. Therefore, there is no infirmity in the judgment passed by the High Court convicting the accused for the offences committed by them. The instant appeal has no merit warranting our interference under Article 136 of the Constitution. [Para 13, 14] [927-C-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 375 of 2010.

From the Judgment and Order dated 04.12.2008 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 1467 of 2000.

C. L. Sahu, Hema Sahu, Rajendra Sahu, Rishab Sahu, Govind Ram Misra for the Appellant.

Naveen Sharma, Swati B. Sharma (for Mishra Saurabh) for the Respondent.

The Judgment of the Court was delivered by

N.V. RAMANA, J. 1. The appellants, who were convicted under Sections 302/149 and 148, IPC by the Trial Court and whose conviction was altered by the High Court to Section 302/34, IPC, have filed this appeal by way of special leave, having

A been dissatisfied with the judgment and order dated 4th December, 2008 of the High Court of Madhya Pradesh at Jabalpur passed in Criminal Appeal No. 1467 of 2000.

B 2. The facts in brief, as discerned from the prosecution story, are that on 8th November, 1999 at about 5.00 p.m., some quarrel took place between the complainant Hiralal (PW-1) on one side and appellant No. 2 (Sukha Manidas) and two other accused on the other side. The complainant then rushed to the Police Station, Amdara along with his father (Mohanlal Sahu) for lodging a report against the accused who quarreled with him. C While the complainant and his father (the deceased) were returning home from the police station about 9.00 p.m., in the midway, appellant No. 3 (Suresh) appeared suddenly from behind and attacked Mohanlal Sahu (father of the complainant) with a stick (lathi) giving severe blows, resultantly Mohanlal D Sahu fell down on the ground. Soon thereafter, the other accused, namely, Chintamani, armed with a sword, Sukha Manidas, carrying an iron rod and Suresh, Ramkumar and Ramesh with lathis in their hands appeared there and attacked Mohan Lal Sahu with their weapons/sticks giving continuous E beatings. The complainant shocked thereby and out of fear, took shelter behind some bushes and immediately after the accused left the scene of occurrence, the complainant along with a villager Ramkishore Sahu (PW 2) noticed that Mohan Sahu (deceased) was soaked in the blood and he succumbed to the F injuries caused by the accused. After informing about the incident to his brother and mother, the complainant went to the police station and lodged F.I.R. (Ext. P-1) against the accused persons.

G 3. The police, after registering the case, took up the investigation immediately. The Investigating Officer (PW-14) arrived at the spot, conducted inquest, recorded statements of witnesses and arrested the accused persons. At the instance of the accused, the I.O. recovered weapons used in the crime, prepared seizure memo and sent the body of the deceased for H postmortem. Charge Sheet was accordingly filed against all the

five accused under Sections 148 and 302/149, IPC and the matter was thereafter committed to the Court of Session. The appellants pleaded not guilty and claimed trial. A

4. At the trial, the prosecution, for establishing its case, examined as many as 15 witnesses and the accused in their defence examined three witnesses in order to rule out the charges against them. The Trial Court, on the basis of analysis of entire evidence in the light of facts and circumstances of the case, formed an opinion that the prosecution had been able to prove the guilt of the accused beyond any reasonable doubt. The Trial court eventually convicted all the accused and sentenced them for the crime committed under Section 302/149, IPC to suffer imprisonment for life and to pay a fine of Rs.500/-, in default, to further suffer imprisonment for two months. Whereas for the offence committed under Section 148, IPC they were sentenced to suffer imprisonment for one year. However, both the sentences were directed to run simultaneously. B C D

5. Having been aggrieved by the order of conviction and sentence passed by the Trial Court, all the accused approached the High Court in appeal. The High Court, after reconsidering the entire case on the basis of material on record and upon reappraisal of evidence including that of Doctor (PW 7) who performed postmortem on the body of the deceased, came to the conclusion that the evidence of the complainant can be found to be reliable against all the accused except one accused—Ramesh Sahu, The High Court, therefore, giving benefit of doubt, acquitted the said Ramesh Sahu from all the charges. Insofar as the conviction of other accused is concerned, the High Court altered their conviction from Section 302/149, IPC to Section 302/34, IPC and accordingly the accused were sentenced to undergo life imprisonment and to pay a fine of Rs.500/-, in default, to suffer further rigorous imprisonment of two months. As far as the conviction under E F G

- A Section 148, IPC is concerned, all the accused were acquitted of the charge.

B 6. In the present appeal, only three accused i.e. Ramkumar, Sukha Manidas and Suresh, have challenged the impugned order passed by the High Court.

C 7. The prime contention of the learned counsel for the appellants before us is that the appellants were falsely implicated in the case. More specifically it was argued that the name of appellant No. 3—Suresh was not mentioned in the FIR, and he was intentionally implicated in the case by an afterthought. The evidence of prosecution witnesses is not consistent and there are several contradictions and infirmities in each other's statement. The further argument advanced by the learned counsel is that the medical evidence does not corroborate the evidence of the complainant (eyewitness) to prove the charges levelled against the appellants. As the Doctor has not specified that the injuries on the body of the deceased were sufficient to cause the death, application of Section 302, IPC is not proper. Learned counsel, therefore, submitted that the orders of conviction and sentence passed by the Courts below are erroneous, illegal and have to be set aside.

F 8. Learned counsel for the State, on the other hand, vehemently contended that the finding of the learned Trial Judge that the appellants are guilty of the charged offences was based on a careful appreciation of entire material on record, supported by the ocular as well as medical evidence. The High Court also, after reappraisal of entire evidence found the accused guilty of the offences and accordingly affirmed their conviction. The appellants brutally killed the deceased for which they are justifiably punished and thus, the judgment of the High Court cannot be questioned. He finally submitted that there is no merit in this appeal so as to warrant interference of this Court and the same deserves to be dismissed.

H 9. We have heard learned counsel for both sides and also

carefully gone through the material on record. Undisputedly, there was enmity between the accused and the complainant party and it appears that a criminal case was also pending between them. We find from the record that soon after registering complaint, the I.O. (PW 14) reached the place of occurrence and remained there till 1.00 p.m. on the next date i.e. 9th November, 1999 for investigating the case and he also recorded statements of witnesses. At that point of time itself, complainant (PW 1) mentioned the name and role played by the appellant No. 3 (Suresh) as recorded by the I.O. in the case diary. The same stand has been further affirmed by the complainant (PW 1) in his testimony that five persons attacked and caused injuries to his father and deposed that Suresh, Ramkumar and Sukh Manidas wielded lathis on his father. It was specifically mentioned that Appellant No. 3 (Suresh) hit at the *kanpati* of the deceased with his lathi. Another independent eyewitness, PW-10, (Tukodilal) also affirmed the presence of Appellant No. 3 at the scene of crime causing injuries to the victim by stick (lathi). He stated that he saw Ramkumar, Suresh and Ramesh beating Mohan Sahu (deceased) with lathis and another accused Chintamani was hitting the deceased with sword. Therefore, it can be said without any shadow of doubt that the Appellant No. 3 as well as other accused have participated actively in the crime and caused severe beatings to the deceased with their respective weapons/sticks.

10. We find from the autopsy report (Ext. P-10) that Dr. Ganga Prasad (Pw-7), Block Medical Officer, PHC Amdara, District Satna who conducted the postmortem on the dead body of the deceased has recorded the following injuries on the body of the deceased:

- (i) Sharp injury on the head just 3 cm above the hair line of mid forehead. Size is 4 cm x 2 cm. Blood clot present. Direction of wound is vertical.
- (ii) A stab wound is present on the left side of the Temple, size is 1 cm x 1 cm x 2 cm.

- A (iii) Right side of the arm bone humerus is fractured at the level of upper 1/3 portion.
- (iv) Right side of the fibula bone is fractured at lower 1/3 portion.
- B (v) A lacerated wound present on the lateral aspect of the right leg at the lower 1/3 portion.
- (vi) 4 stab wound is present on the medial aspect of the left leg. Size of each wound is 2cm x 1 ½ cm x 2 cm. It is produced by 4 teeth like instrument.
- C (vii) Multiple contusions bruise reddish blue in colour is found on the both side of chest, on the abdomen as well as on the back side.
- D (viii) Fingers of the both hands are semi flexed, left arm is also semi flexed position.

The medical evidence also revealed that in the internal examination of the body it was found that skull, 10 ribs, right humerus and right tibia were fractured, Liver, spleen and left kidney were ruptured. The Doctor (PW 7) opined that the deceased had died due to traumatic shock and neurogenic shock and the death might have occurred within 14 to 18 hours.

- E 11. Considering the aforesaid injuries and fractures sustained by the victim, which are as dangerous as to cause death of a person, in our opinion, it is not necessary for the Doctor to give a specific report to the effect that the injuries were sufficient in ordinary course to cause death. In the facts and circumstances, it can be said that the appellants in pursuit of their common intention caused serious injuries on the victim which resulted in his death. Therefore, the stand taken by the appellants that they should not be dealt with under Section 302/34, IPC cannot be accepted.

- H 12. Another stand consistently taken by the appellants

before the Courts below and also before us that there are various discrepancies and contradictions in the statements of prosecution witnesses also cannot be upheld in view of the corroborative statements of prosecution witnesses, especially ocular witness PW-1 and another independent eyewitness PW-10.

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13. On going through the facts and circumstances of the case, we are of the view that there is ample evidence to prove that the accused have, with common intention, inflicted fatal injuries on the deceased which resulted in his death. The medical evidence completely corroborates the evidence of prosecution witnesses. We therefore find no infirmity in the impugned judgment passed by the High Court convicting the accused for the offences committed by them.

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14. For all the aforesaid reasons, we hold that this appeal has no merit warranting our interference under Article 136 of the Constitution, and the same hereby stands dismissed.

D

Nidhi Jain

Appeal dismissed.