

PETITIONER:
RAMKISHORE PATEL & OTHERS

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 03/10/1996

BENCH:
G.N. RAY, G.T. NANAVALI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI.J.

This is an appeal against the judgment and order of the High Court of Madhya Pradesh in Criminal Appeal No. 762 of 1983. The High Court set aside the judgment and order of acquittal passed by the Court of Sessions Judge, Sidhi in Criminal Case No. 113 of 1981.

On 12.7.81 at about 7.30 A.M. Thakurdin (deceased), His brother P.W.6 Brijwasi, son P.W.8 Bhaiyalal and their servant Budhi were working in their 'Bakura' field. Bhaiyalal and Budhi were sowing paddy and Thakurdin and Brijwasi were extracting grass in one corner of the field. It was the prosecution case that while these persons were working in their field, all the appellants, with three other accused, came there armed with lathis and a 'kudali'. They abused and assaulted Thakurdin, Brijwasi and Bhaiyalal as they were taking water, for irrigating their field, from the field of Ramsiya. Thakurdin was given a 'kudali' blow on his head and was also beaten by sticks. Brijwasi was given blows with sticks. As Bhaiyalal raised shouts for help he was hit on his head with a 'kudali' by Hubelal (Accused No.11). He became unconscious and fell down on the ground. Thereafter he was given stick blows by the other accused. This incident was seen by the neighbouring field owner P.W.1 Ram Milan. P.W. 7 Shiv Prasad who was passing through the field of Thakurdin at that time was also beaten by the accused with sticks. Hearing the shouts raised by Thakurdin, Brijwasi and Bhaiyalal some neighbouring field owners came there and, therefore, the accused went away from that place. P.W.1 Ram Milan and others then went near Thakurdin, Brijwasi and Bhaiyalal who had received injuries and had fallen down. They then took them to the village and from there to Churhat where P.W.1 Ram Milan lodged the first information report (Exh. P-1). The three injured were then taken to Churhat Hospital. There they were examined by P.W. 15 Dr. Padole. As he suspected that all the three had received fractures he referred them to the District Hospital at Sidhi. On the way Thakurdin died. At the District Hospital P.W. 17 Dr. Sharma examined them. He found Thakurdin dead. He admitted Bhaiyalal and Brijwasi in the hospital for treatment. P.W.

13 Dr. Tiwari performed the post mortem on the dead body of the deceased. P.W. 11 Dr. Mishra took X-rays of Bhaiyalal and Brijwasi. He found that the 4th and 5th fingers of right hand of Bhaiyalal were fractured. 5th metacarpal bone of right hand of Brijwasi was also found fractured. Therefore, for causing the death of Thakurdin and grievous injuries to Brijwasi and Bhaiyalal, the accused were tried for the offences punishable under Section 147 and Sections 323, 325 and 302 all read with Section 149 I.P.C.

In order to prove its case the prosecution relied upon the evidence of eye-witnesses P.W.1 Ram Milan, P.W.6 Brijwasi, P.W.7 Shiv Prasad, P.W.8 Bhaiyalal, P.W. 10 Ganesh Prasad and P.W. 12 Sidha Nath and also led other corroborative evidence. Except Ram Kishore, Appellant No.1 (Accused No.1), Ramdhari, Appellant No.5 (Accused No.5) and Jagdish (Accused No.12 - since deceased) all other accused denied their presence and involvement in the incident. Accused Jagdish, Ram Kishore and Ramdhari took up the defence that while Jagdish was irrigating his field by taking water from the field of Ramdhari he was attacked by Thakurdin, Brijwasi, Bhaiyalal, P.W.1 Ram Milan, P.W. 10 Ganesh Prasad and P.W. 12 Sidha Nath. On hearing his shouts Ram Kishore and Ramdhari ran to his rescue and that is how all three of them had received injuries. They denied to have caused injuries to Thakurdin and others.

The learned Sessions Judge believed the presence of the eye-witnesses but in view of their near relationship with the deceased and in view of the ongoing dispute regarding the Bakura field (Khasra NO.2106) between Thakurdin and Jagdish and the proceedings pending in that behalf in the Court of Tehsildar, Gopal Bans, thought it unsafe to place any reliance upon their evidence in absence of any independent corroboration. In view of the contradictions appearing in the evidence of the eye-witnesses the learned judge was of the view that probably the incident took place when Thakurdin and Brijwasi were trying to let the water come in their field from the field of Remsiya and Accused Jagdish obstructed them. He also held that the eye-witnesses had not given a correct version before the court as regards the manner and circumstances in which the incident had started. He also took note of the fact that two persons Shambhu and Avadhlal were falsely involved as accused by P.W.1. On the basis of the medical evidence the learned judge disbelieved the evidence of the eye-witnesses that Thakurdin, Brijwasi and Bhaiyalal had become unconscious as a result of the injuries received by them. As Dr. Padole, who had examined Thakurdin before he had died, did not find any fracture on his person the learned Sessions Judge was of the view that it was probable that the said injuries were caused to Thakurdin after the incident, while he was being taken to the hospital, either as a result of travelling in a tractor or by an accidental fall. He therefore, recorded a finding that the prosecution has failed to prove that Thakurdin died as a result of the injuries caused to him during the incident which was stated to have taken place in his field. As the prosecution witnesses did not explain the injuries on the person of the accused, on this ground also, the learned judge doubted correctness of the evidence of the eye-witnesses. Thus, disbelieving the prosecution evidence the learned trial judge acquitted all the accused of all the charges levelled against them.

The State filed an appeal against the acquittal of the accused. The High Court on re-appreciation of the evidence maintained acquittal of A-7 Shambhu and A-9 Avadhlal as there was no evidence to establish their involvement in the

incident. With respect to the other accused the High Court was no the view that the reasons given by the trial court for acquitting them were not sound and some of its conclusions were based more on assumptions and conjectures than on evidence. The High Court after appreciating that eye-witnesses P.W.1, P.W.6 and P.W.8 were closely related to the deceased scrutinised their evidence carefully and thought it fit to rely upon it as it was corroborated by the evidence of P.W.7 Shiv Prasad, P.W.12 Sidha nath, the F.I.R. and the medical evidence. The High Court held that the evidence clearly indicated that the incident took place in the field Of deceased Thakurdin and not in or near the field of Ramsiya. It also held that Thakurdin and his men were not armed with weapons and that the accused came there armed with weapons as they saw Thakurdin and Brijwasi irrigating their field with water from Ramsiya's field and as this was not liked by them, because Jagdish was claiming ownership over that field. Even after recording a finding that the three main eye-witnesses had suppressed the fact of taking water from Ramsiya's field while deposing before the court, the High Court found their evidence believable regarding the assault by the accused. As regards non-explanation of injuries found on the accused Ram Kishore, Ramdhari and Jagdish the High Court observed that there was no material to show that they were received by them during the incident and that they could have beer self inflicted as deposed by P.W.15 Dr. Padole. Even otherwise also the injuries were not such as could have been noticed easily particularly when the accused were many. The doubt raised by the trial court as the first information report was not lodged by an injured person was considered by the High Court as unwarranted and unreasonable. The High Court also held that the trial court was wrong in believing that the medical evidence was not consistent with ovidence of the eye-witnesses and in rejecting their evidence on that ground. The High Court also found that what the trial court considered as contradictions were more in the nature of omissions as regards the details of the incident and, therefore, they were not sufficient to justify rejection of the evidence of those witnesses on that ground. As regards the cause of death of Thakurdin the High Court found that the finding recorded by the trial court in this behalf was highly unreasonable as it was based only on the suggestions made by the defence. The High Court believing the eye witnesses and holding that Al the injuries to Thakurdin were caused by the accused and that he died as a result thereof set aside the Acquittal of all the accused except Shambhu Prasad and Avadhilal and convicted them for the offences punishable under Sections 147, 302/149, 325/149 and 323/149 I.P.C. For the offences punishable under Saction 302/149 the High Court sentenced them to suffer imprisonment for life. For the offences punishable under Sections 325/149, 323/149 and 147 the High court sentenced them to suffer rigorous imprisonment for two year, six months and one year respectively. ALL the sentences have been directed to run concurrently.

Accused Jagdish died before an appeal could be filed. Therefore, the remaining 10 convicted accused have filed this appeal. Mr Latil, learned counsel for the appellants contended that the High Court overlooked the admission made by P.W. 6 Brijwasi that they had no enmity with the accused and thus there waas no reason for the accused to go Thakurdin's field and attack Thakurdin and his son and brother. He also contended that there being no consistent and reliable evidence the High Court rightly doubted the evidence of eye-witnesses as regards the manner and

circumstances in which the incident began but committed a grave error in accepting it as regards the role alleged to have been played by the accused. He further contended that the High Court having found that probably accused Jagdish objected to the taking of water from Ramsiya's field by Thakurdin and Brijwasi ought to have considered the defence version that they attacked Jagdish and hearing his cries other accused went there running, as equally probable. In any case, no inference regarding the accused having formed an unlawful assembly with the common object of causing death of Thakurdin and beating others could have been drawn. The learned counsel also submitted that the findings recorded by the trial court as regards the scene of offence, veracity of the witnesses and the cause of death of Thakurdin were not so unreasonable as to justify interference in an acquittal appeal.

The contention raised by the learned counsel as regards the absence of any enmity or motive is really misconceived as it is based upon an assumption and not the evidence. What P.W. 6 has stated is that they had no enmity with the accused, meaning thereby that they did not have any grudge against the accused. The cross-examination of these witnesses and other witnesses clearly goes to show that not only a dispute but a litigation was going on between Thakurdin, Bhaiyalal and Brijwasi on the one hand and A-2 Harbans Patel, and Jagdish Patel on the other hand regarding the Bakura field itself. A-2 and A-12 were claiming that the field belonged to them and it was their case, as can be noticed from the suggestions made to the witnesses in cross-examination that they were in possession of that field and the deceased, Bhaiyalal, Brijwasi and their men had gone to that field on that day to take over possession. Therefore, it is not correct to say that there was no motive for Jagdish, Harbans and other accused who belonged to their party to attack Thakurdin and his son and brother.

The contention that the prosecution witnesses had tried to change the scene of offence is also misconceived. Neither in their evidence nor in their statement before the police the witnesses had stated that the incident had taken place in the field of Ramsiya. The learned counsel for the appellants, however, submitted that the earliest version of the witnesses regarding the incident was that the incident happened while Thakurdin and Brijwasi were irrigating their field with water from the field of Ramsiya, that a small breach was made in the raised boundary of the field of Ramsiya so that the collected water naturally flowed into the field of Thakurdin which was on a lower level. It was in this manner that Thakurdin and Brijwasi were taking water from the field of Ramsiya and not by going there and lifting or bringing water in any other manner. The evidence discloses that there was one field in between the field of Ramsiya and Thakurdin. The evidence is that the incident took place when Thakurdin, Brijwasi and Bhaiyalal were working in their own field and were irrigating it with the water coming from the field of Ramsiya. The incident, even otherwise, could not have happened in or near the field of Ramsiya because Ramsiya had no objection to Thakurdin and Brijwasi taking water in that manner and that becomes apparent from the evidence on record that Ramsiya's son was present in his field while the water was being taken by Thakurdin and Brijwasi. Accused Jagdish had no connection with that field of Ramsiya. Jagdish did not have any field nearby, except the Bakura field over which he was claiming ownership. Therefore, there was no reason for Jagdish to go to that field of Ramsiya and prevent Thakurdin and Brijwasi

from taking water from the field of Ramsiya. Jagdish and his brother Harbans were claiming ownership over the Bakura field and, therefore, it is more probable that when Jagdish and the persons supporting him saw Thakurdin, Brijwasi and Bhaiyalal ploughing and irrigating that field they went there to prevent them from carrying on any agricultural more probable. Though the erefore, what the eye-witnesses have deposed about the place of the incident appears to be more probable. Though the eye-witnesses in their examination-in-chief did not refer to this fact of taking water from Ramsiya's field, their evidence did not deserve to be discarded on that ground, as rightly held by the High Court.

As the High Court found that the reasons given by the trial court for disbelieving the evidence of the eye-witnesses were improper and unreasonable it was entitled to reappreciate the evidence and come to its own conclusion. After carefully going through the evidence of the eye-witnesses we do not find that the High Court committed any grave error in appreciating their evidence. Though the learned counsel for the appellants was right in submitting that P.W.1 Ram Milan had wrongly implicated Two innocent persons namely Shambhu and Avadhilal while lodging the complaint, in view of the explanation given by the witness, it cannot be said that it was a deliberate attempt to falseiy involve those two persons. This aspect was also considered by the High Court while appreciating the evidence of Ram Milan and other witnesses. As a matter of fact, no other witness had involved them as the assaitants of Thakurdin, Brijwasi and Bhaiyalal . Except drawing our attention to some contradictions which are in the nature of omissions the learned counsel could not point out any serious infirmity in the evidence of any of the eye witnesses. Those omissions would nave achieved some importance if it had become necessary to consider the role played by each accused to find out which offence was committed by him individually. All the accused have been convicted with the help of Section 149 and that conviction can be sustained in view of the clear and reliable evidence that they had all gone to the Bakura field where they had no reason to go and that they had gone there armed with weapons, leading to a reasonable inference they had formed an unlawful assembly before going to that field and nad assaulted Thakurdin, Brijwasi and Bhaiyala in prosecution of their common object of beating them.

It was, however, strenuously contended by the learned counsel that the evidence of the eye-witnesses should not have teen relied upon as the medical evidence did not support them. According to the eye-witnesses Thakurdin, Brijwasi and Bhaiyalal had become unconscious as a result of the Injuries caused to them but Dr. Padole of the Churhat Hospital who had examined them had found that their condtion was not serious and that they were in a fit condition to speak. It was not stated by the doctor that they could not have become unconscious considering the nature of injuries received by them. Thakurdin had received many injuding including a lacerated wound on his head and fractures of eight ribs. Brijwasi had also received seven injuries. Bhaiyalal had also received three injuries one of which was an Incise wound on the right side of his head. It is quite probable that they regained consciousness later when they reached the Churhat Hospital. Therefore, on this ground, the medical evicence cannot be saia to be inconsistent with the evidence of the eye-witnesses. It was next contenced that rupture of the spleen of Thakurdin was in all probability not as a result of any blow given by the

accused. This submission was made on the basis of the evidence of Dr. Padole who in reply to a hypothetical question had stated that if the spleen of a person is ruptured and blood comes out he would die immediately. Thakurdin had not died immediately and was alive till he was taken to the Churhat Hospital and examined by Dr. padole. Therefore according to the learned counsel rupture of the spleen of Thakurdin had taken place subsequent to the incident and while he was being taken in a tractor to Churhat. This contention of the learned counsel cannot be accepted because Dr. padole had explained in his evidence that whether a person would die immediately or not after rupture of his spleen would depend upon the extent of rupture. Dr. Tiwari who had performed the post mortem was not asked anything about the extent of rupture nor was an attempt made to ascertain from him as to how long Thakurdin would have survived as a result of rupture of his spleen. Therefore, on this ground also the medical evidence cannot be said to be inconsistent with the evidence of the eye witnesses. It was further contended that as Dr. Padole had not noticed fracture of any rib of Thakurdin or the rupture of his spleen and as Thakurdin himself had not complained about any injury on his chest or abdomen, it should have been held that the prosecution had failed to establish that those injuries were caused by the accused and therefore, they were responsible for causing his death. It was submitted that more probably those injuries were received by Thakurdin while he was taken in a tractor from the Village to Churhat or as a result of an accidental fall. It appears that Dr. Padole had only superficially examined Thakurdin and other injured witnesses as he wanted to see that they were immediately shifted to the District hospital at Sidhi for better treatment. Dr. Tiwari who had examined Thakurdin at the District Hospital, had found a contusion on the back with multiple crossings each of which was of the dimension of 6 * 1", 5 * 1" and 4 * 3" suggestive of three blows having been received by Thakurdin on his back. He had also noticed one more contusion on the back about 1-1/2" above that injury. Dr. Tiwari had also noticed one contusion on the abdomen of Thakurdin. Thus, his evidence leaves no doubt whatsoever that the serious internal injuries namely fractures on his eight ribs and rupture of his spleen were the result of forceful stick blows given to him. The submission Thakurdin might have fallen down accidentally from the tractor is sheer speculation and does not deserve any serious consideration. The evidence discloses that while Thakurdin was taken in a tractor he was placed on a cot. Not a single question was put to any of the witnesses who had accompanied him to suggest that Thakurdin had a fall from the tractor. Therefore, the contention that the medical evidence does not support the evidence of the eye-witnesses has no merit. We find that the High Court has not committed any error in appreciating the evidence of eye witnesses as would induce us to take a different view.

It was lastly contended that the High Court has not recorded a clear finding that the death of Thakurdin was caused in prosecution of the common object of the unlawful assembly and, therefore, the conviction of the accused under Section 302 read with Section 149 should be regarded as illegal. This contention is also without any substance. In paragraph 12 of the judgment the High Court has recorded its conclusion thus: we have no hesitation in holding the respondents except respondents Shambhu Prasad and Awadhilal, guilty of causing death of Thakurdin in furtherance of Their to do so."

As we do not find any merit in this appeal it is dismissed. The appellants were ordered to be released on bail by this Court. therefore, they are ordered to surrender immediately to serve out the remaining sentence.

JUDIS