

PETITIONER:
SHANKAR LAL AND OTHERS

Vs.

RESPONDENT:
THE STATE OF M.P.

DATE OF JUDGMENT: 26/04/1996

BENCH:
KURDUKAR S.P. (J)
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KURDUKAR S.P. (J)
MUKHERJEE M.K. (J)

CITATION:
JT 1996 (5) 523 1996 SCALE (3)780

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T .

S.P. KURDUKAR, J.

This criminal appeal is filed by six appellants challenging the legality and correctness of the judgment and order of conviction date 24th July, 1986 passed by the High Court of Madhya Pradesh at Jabalpur. Under the impugned orders the High Court set aside the order of acquittal passed in favour of appellants on 7-12-1982 by the Addl, Sessions Judge, Hoshangabad.

2. The appellants were put up for trial for the offences punishable under sections 148, 302 and 324 read with section 149 of the Indian Penal Code for committee murders of Lakhan Pal and Ramvati and also causing injuries to Girdhari Lal (PW2), Omkar (PW3), Satish Kumar (PW4) and Rajender Kumar (PW6).

3. One Gopi Lal had two sons namely Lakhan(deceased) and Girdhari Lal(PW2). They were living jointly. Ramvati(deceased) was the wife of Lakhan(deceased). Mayabai(PW1) is the wife of Girdhari Lal(PW2). Satish Kumar (PW4) and Rajender Kumar (PW6) are the sons of Lakhan while Omkar (PW3) is brother-in-law of Girdhari Lal.

4. Appellants 1 to 3 and 6 namely Shanker Lal, Girdhari Lal, Lakhan and Chhote Lal are the sons of one Manbodh Singh. Appellant Nos. 4 and 5 are their nephews. It is alleged by the prosecution that Gopi Lal had mortgaged his field with Suman Bai wife of appellant No.4 Kalu Ram and it was agreed that the loan would be repaid within two years and thereupon the said field would be returned to Gopi Lal. However, the said Kalu Ram instead of keeping his word got the said field mutated in the name of Suman Bai, It is this act of Kalu Ram, the appellant No.4, had led to ill-feeling between the parties and it is stated that on report of Gopi Lal proceedings against the mutation were initiated and Lakhan (deceased) was looking after the said litigation.

5. It is alleged by the prosecution that on 14-11-1981, the women folk from both the sides had some quarrel. At

about 5,00 p.m., Ramvati (deceased), Maya Bai (PW1) and their mother-in-law Dipya Bai were sitting in their court yard in front of their house. All of a sudden, the appellants who were armed with deadly weapons, came to their court yard. It is the case of the prosecution that Shanker Lal, appellant No.1 was armed with Farsa, Kalu Ram appellant No.4 was armed with an axe and rest of the appellants were carrying lathis. At about the same time, Lakhan(deceased) was in the court yard and he was unloading his bullock cart in Khalian. Seeing all the appellants in the court yard, Lakhan(deceased) went to them. He was then surrounded by the appellants and suddenly the appellant No.1 Shanker Lal gave a blow of Farsa on his head. Kalu Ram the appellant No.4 gave an axe blow on the waist of Lakhan. Lakhan fell down on the ground and all the accused thereafter started beating with lathis. Seeing this ghastly assault on Lakhan, Ramvati, the wife of Lakhan rushed towards him to save him from the said assault. She was also assaulted by the appellants with lathis. In the mean-times Girdhari Lal(PW2), Omkar (FW3), Satish Kumar (PW4) and Rajender Kumar (PW6) also rushed to the scene of incident to save Lakhan and Ramvati from the said assault. It is the case of the prosecution that the appellants have also assaulted these witnesses with weapons in their hands.

6. At about the same time, a Bus was passing by the said road and the conductor of the said bus Faquir Mohd.(PW13) seeing a crowd rushed to the Police Station Piparia which is about two and half kilometers away from the place of incident and gave a sanaha report Ex.14 at about 5.15 p.m, He only referred to the quarrel but no details were given. P.S.I. Pateria (PW17) on receipt of the said sanaha report reached the place of incident with his staff and recorded the Dehati Nalishi(Ex.P1) on the information given by Maya Bai (PW1). P.S I. Pateria (PW 17) during investigation recorded the statements of some witnesses On 15-11-1981, P.S.I. Pateria (PW17) prepared an inquest Panchnama on the dead bodies of Lakhan and Ramvati and sent them for post mortem examination, During investigation, PSI Pateria (PW17) recovered some incriminating articles pursuant to the statements made by the accused. After completing the investigation, all the appellants were put up for trial for the offence of committing murders of Lakhan (deceased) and Ramvati (deceased) and causing injuries to the prosecution witnesses punishable under sections 148, 302 and 324 read with sections 149 of Indian Penal Code.

7. The prosecution in support of its case examined as many as seventeen witnesses out of which Maya Bai (PW1), Girdhari Lal (PW2), Omkar (PW3), Satish Kumar (PW4) and Rajender Kumar (PW 6) were the eye witnesses. The prosecution in order to prove various Panchanamas including recovery of weapons examined five witnesses. Dr. Devender Kumar Jain (PW15) was also examined to prove the post mortem examination report Ex.P22, on the dead body of Lakhan. Dr. R.O. Maheshwari (PW14) held post mortem examination on the dead body of Ramvati and the said report is Ex.P-20.

8. The defence of the appellants(accused) was of total denial. According to them, they were falsely implicated in the case. The evidence of the eye witness is totally false and they have implicated them (accused) out of enmity. They also denied to have caused any injury to the prosecution witnesses, The appellant, therefore, prayed that they are innocent and they be acquitted .

9. The learned Addl, Sessions judge on appraisal of the evidence on record disbelieved all the eye witnesses principally on the ground that they are close relatives of

the deceased and are on inimical terms with the appellants (accused). The medical evidence adduced by the prosecution does not lend support to the evidence of the eye witnesses in as much as there are various discrepancies in their evidence. The learned Addl. Sessions Judge has enumerated as many as 13 circumstances which in his opinion go against the prosecution case and consistent with these findings, the Addl. Sessions Judge acquitted all the appellants.

10. The State of Madhya Pradesh aggrieved by the order of acquittal preferred an appeal to the High Court under Section 378(1) and (3) of the Criminal Procedure Codes challenging the legality and correctness of the order of acquittal. The High Court in its judgment dated July 24, 1986 on re-appraisal of the evidence on record did not agree with the reasons given by the learned Addl. Sessions Judge for the order of acquittal. The High Court held that the view taken by the Addl. Sessions Judge is perverse and cannot be sustained. The High Court consequently set aside the order of acquittal and convicted the appellants Shanker Lal and Kalu Ram for the offence punishable under section 302 or in the alternative 302 read with section 149 of the Indian Penal Code for committing the murder Lalhan (deceased) and Ramvati (deceased). The High Court also convicted Girdhari Lal the appellant No.2, Lakhan Pal-appellant No.3 and appellant No.5 Phool Chand for offence punishable under section 302 read with section 149 of the Indian Penal Code and sentenced each of them to life imprisonment. The appellants were also convicted under section 323 read with section 149 of the Indian Penal Code and each one of them was sentenced to rigorous imprisonment for six months. All sentences were directed to run concurrently. It is against this judgment and order of conviction passed by the High Court on 24-7-1986, the appellants have preferred this appeal.

11. Sh. S.K. Mehta, the learned counsel appearing in support of this appeal assailed the impugned judgment and order on various grounds. He firstly urged that the High Court has committed an illegality while interfering with the reasoned order of acquittal passed by the trial Court. Counsel urged that the trial court has assigned as many as thirteen good reasons for acquitting all the appellants and each one of them is supported by evidence on record. The High Court on reappraisal of the evidence on record was not justified in reversing the order of acquittal. Learned counsel contended that it is well settled that the High Court although got the power to re-appreciate the evidence on record but unless there are 'compelling reasons' to differ with order of acquittal, the High Court ought not to have interfered with the order of acquittal. Counsel further urged that if two views are possible and the one which is in favour of the accused is taken by the trial court the High Court had committed an error while taking contrary view and consequently setting aside the order of acquittal. Learned counsel for the appellants then contended that the trial court had refused to believe the evidence given by the eye witnesses principally on the ground that they are close relatives of the deceased and the prosecution has not examined any independent eye witness who were said to be present at the time of incident. Supplementing this argument, learned counsel for the appellants urged that the evidence of the eye witnesses is full of discrepancies and material omissions and the High Court has totally overlooked this lacuna in the prosecution case. Learned counsel for the appellant then urged that the medical evidence totally belies the prosecution story narrated by the eye

witnesses and therefore, the High Court has committed an error in setting aside the order of acquittal.

12. Sh. T.C. Sharma, learned counsel for the respondent/State of Madhya Pradesh supported the impugned judgment and order,

13. We have carefully gone through the evidence of the eye witnesses and have perused the judgment of the trial court as also the judgment of the High Court we have also considered the above submissions of learned counsel for the appellants with reference to the evidence on record.

14. It is well settled proposition that the High Court while interfering with the order of acquittal must bear in mind the reasons given by the trial court for acquittal. It is also well settled that if two views are possible and the one in favour of the acquittal if taken by the trial court, the High Court will not interfere in such order of acquittal. There is catena of judgments of this Court on the aforesaid proposition and it is not necessary to make reference to these decisions. From the judgment of the High Court, it is clear that the High Court was very much aware of this settled position of law and had also referred to all these decisions. The High Court has given reasons as how the order of acquittal passed by the trial court unsustainable.

15. He is in agreement with the reasons given by the High Court while setting aside the order of acquittal passed by the trial court.

16. Coming to the next submission of the learned counsel for the appellants that the evidence of the eye witnesses be discarded on the ground that they are close relatives of the deceased and the prosecution has failed to examine the independent witnesses although they were available, here again, we are unable to agree with this contention. It is a well settled proposition that evidence of the eye witnesses who are said to be close relatives, cannot be discarded only on the ground that they are the close relatives of the deceased. This Court has time and again held that in such a situation all that is needed is that the Court must put itself on guard and the evidence of such eye witnesses be appreciated with close scrutiny. The High Court has considered this aspect in its judgment and has come to the conclusion that the evidence of the eye witnesses namely Maya Bai (PW1), Girdhari Lal (PW2), Satish Kumar (PW4) and Rajender Kumar (PW6) suffer from no infirmity. We have also carefully gone through the evidence of four eye witnesses and we find that the evidence of these four witnesses can safely be relied upon despite the fact that they are the close relatives of deceased Lakhan and Ramvati. Maya Bai (PW.1) in her evidence before the Court has given all details of the incident. According to this witness, on 14-11-1981 at about 4,00 p.m., she was sitting in the court yard alongwith Ramvati (deceased) and their mother-in-law Dipya Bai. They were chit-chatting. At that time Shanker Lal armed with Farsa, Kalu Ram armed with an axe and rest of the appellants armed with lathis came to their court-yard. At that time, deceased Lakhan was unloading his bullock-cart in the Khalian, Seeing all these appellants around the women-folk, Lakhan (deceased) rushed to the court yard and thereupon all the appellants surrounded him. The witness has further stated that Shanker Lal gave a blow with his Farsa on the head of Lakhan and then Kalu Ram gave an axe blow on his waist Lakhan fell down and then rest of the appellants started assaulting him with lathis. The witness then stated that, Ramvati, who was the wife of Lakhan immediately went to him and in order to save him from the assault fell on his body. The appellants thereafter started assaulting

Ramvati(since deceased). When hue and cry was raised, Girdhari Lal (PW2), Satish Kumar (PW4), Rajender Kumar (PW6) and other persons came at the scene of offence and thereafter the appellants fled away. This is the substratum of the prosecution case deposed to by Maya Bai (PW1). The appellants have cross-examined this witness at great length but there is nothing in the cross-examination which would make her evidence unreliable. Having regard to the time and place of the incident, it would be quite natural to believe that the witness was present at the time of incident at her house. There are some minor contradictions which have been brought on record by the appellants but these contradictions have been rightly ignored by the High Court. The evidence of Maya Bai (PW1) finds corroboration in all material particulars from the evidence of other eye witnesses, namely, Girdhari Lal (PW2), Satish Kumar (PW4), and Rajender Kumar (PW6). We have carefully gone through the evidence of all these eye witnesses and in our opinion, the High Court has committed no error in accepting the evidence of these eye witnesses. High Court has rightly held that the evidence of these eye witnesses cannot be discounted on the ground that they are close relatives of Lakhan deceased and Ramvati.

17. There is also evidence on record to show that the appellants bore a grudge against the family of complainant and in particular Lakhan(since deceased) who was looking after the litigation pending against Suman Bai, the wife of Kalu Ram (appellant No.4) who had managed to get the land mutated in the name of his wife(Suman Bai). It is come on record that the appellants who are closely related to each other and had an ill-feeling against the family of the deceased Lakhan on that count. The High Court in our opinion was right in accepting the evidence of the prosecution witnesses as regards the enmity held out by the appellants against Lakhan(deceased).

18. Coming to the arguments raised on behalf of the appellants as regards the discrepancy in the medical evidence and the evidence of eye witnesses, we have perused the evidence of Dr. Jain (PW15) and Dr. Maheshwari (PW14) and the post mortem reports Ex.P-22 and Ex.P-20 of Lakhan and Ramvati respectively. There are number of injuries caused by sharp edged weapons like Farsa and Kulhari as well as by lathis. There is, therefore, no substance in the contentions raised on behalf of the appellants that the medical evidence does not support the evidence given by the prosecution witnesses.

19. After hearing arguments of both the parties and after going through the record of the case, we are satisfied that there is no substance in the appeal. The impugned order of the High Court does not suffer from any illegality or infirmity. The appeal, thus, stands dismissed. Appellants, who are on bail shall surrender to their bailbonds forthwith to serve out the remainder of the respective sentences awarded to each one of them under the impugned order passed by the High Court.