

CASE NO.:
Appeal (crl.) 125 of 2000

PETITIONER:
MAJJU & ANR...

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH..

DATE OF JUDGMENT: 19/10/2001

BENCH:
U.C.Banerjee, K.G.Balakrishna

JUDGMENT:

K.G. BALAKRISHNAN, J.

The two appellants herein were tried by the Sessions Judge, Shajpur in Madhya Pradesh, along with nine others for the various offences punishable under Sections 302, 148, 323, 341 read with section 149 IPC. The learned Sessions Judge acquitted three of the accused and found others guilty of all the offences charged. The accused who were convicted by the Sessions Court filed an appeal and the Division Bench of the Madhya Pradesh High Court, Bench at Indore, acquitted six of the appellants and found guilty the present appellants for the offences under Section 302/34 IPC and they were sentenced to undergo imprisonment for life. The above conviction and sentence are challenged before us.

We heard the appellants learned counsel, Mr. Niraj Sharma. The learned counsel contended that the appellants have been wrongly convicted as the evidence adduced by the prosecution was highly interested and that there was a free fight between two factions and the appellants have not committed any criminal offence.

Briefly stated, the prosecution case is that on 20.7.1987 Ayyub Khan, the third accused before the Sessions Court, used some abusive words against Ganesh, son of deceased Bihari Lal, whereby Ganesh felt irritated and slapped Ayyub. People of the locality then persuaded the parties to compromise the matter and there was no further incident. But on 24.7.1987 at about 2.00 PM when deceased Bihari Lal and his brother Ramchandra along with their children were returning after performing some ceremony at the temple, the appellants and other accused, who were waiting for them on the way stopped Bihari Lal and others. Bihari Lal was carrying a gun with him and according to prosecution, accused Nawab snatched away that gun from Bihari Lal and thereafter all the accused started beating Bihari Lal. The accused were carrying Farsi and Sticks. The first appellant Majju alias Nasir hit deceased Bihari Lal with a Stick and the second appellant Irshad hit Bihari Lal with a Farsi on the head. Bihari Lal fell unconscious. He was taken to Shajpur hospital but as his

condition was serious he was immediately removed to M.Y. Hospital, Indore, where, while undergoing treatment, he died. Ramchandra, the brother of the deceased Bihari Lal also had sustained injuries. According to the prosecution, in the meanwhile, somebody had informed the police and pursuant thereto the police came to the place of occurrence and recorded the statement of Ganesh, son of Bihari Lal. PW-13 took over the investigation and the dead body of the deceased was sent for post mortem examination. PW-14, Dr. D.S. Mehta, examined the deceased and found that he had five incised wounds -- two on the head, one on the leg and two on arms, and these injuries were caused by a sharp cutting weapon. PW-8, Dr. Vijay Agrawal, who conducted the post-mortem, stated that injuries 4 and 5 were not caused by a cutting weapon but by some blunt weapon. He opined that death was caused due to head injury.

On the side of the prosecution, four eye-witnesses, namely, Ganesh [PW-1]; Laxminarayan [PW-2]; Ramchandra [PW-6] and Subhash [PW-7] were examined. All these witnesses gave evidence of identical nature with minor contradictions.

The counsel for the appellants contended that the evidence adduced by the prosecution was interested and therefore, it cannot be relied upon. It is important to note that the witnesses examined on the side of the prosecution were all injured in the incident. PW-6 Ramachandra sustained a grievous injury, in the sense that he lost one of his teeth. The other witnesses also sustained injuries. That is proved by the various medical certificates issued by the doctor who examined them. Therefore, the presence of these witnesses at the place of occurrence cannot be suspected. All these witnesses gave evidence to the effect that when they along with deceased Bihari Lal were coming from the temple after performing some ceremony, the accused surrounded and attacked them. We do not find any infirmity in the evidence of these witnesses.

The counsel for the appellants contended that the doctor, who conducted the post mortem examination deposed that there were no incised injuries as stated earlier by another doctor who first examined the deceased Bihari Lal. In our opinion, it is not a serious mistake as there are four eye-witnesses in this case who deposed that appellants Majju alias Nasir and Irshad were having Farsi with them and they inflicted cut injuries on Bihari Lal. PW-8 Dr. Vijay Agrawal conducted the post-mortem and described the injuries in a hap-hazard manner without proper description of the wounds as to whether these were incised injuries or lacerated injuries. But the doctor who examined the injured immediately after the occurrence of the incident, described the nature of injuries and that is fully in conformity with the oral evidence given by the witnesses. The Sessions Judge as well as the High Court has rightly relied on the evidence of the doctor who prepared the wound certificate of the deceased.

The counsel for the appellants further contended that there was a free fight between two groups and it is not possible to decide as to who caused the fatal injuries to the deceased and therefore, the appellants should have been found guilty of offence under Section 326 IPC alone. It is true that there was an attack by a group of persons against the deceased and others accompanying him. In view of some doubts regarding the complicity of some of the assailants, the Sessions Court as well as the High Court extended the benefit of doubt to those accused, but as regards the present appellants, there is strong and consistent evidence to the effect that they had given the blows by Farsi to the deceased Bihari Lal. Their acts were described even in the First Information Report and all

the eye-witnesses deposed that the appellants had caused the injuries to the deceased Bihari Lal. Therefore, we do not find any infirmity in the decision rendered by the High Court in finding these appellants guilty of the offence under Section 302 read with Section 34 IPC. There is no merit in the appeal and the same is dismissed accordingly.

JUDIS