

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1163 OF 2006

Aniruddha Singh & Ors.

.....Appellant(s)

Versus

State of M.P.

....Respondent (s)

J U D G M E N T

HARJIT SINGH BEDI, J.

1. This appeal by special arises out of the following facts.
2. On 1st August, 1991 at about 6.00 p.m. Dharmendra Singh PW 2 and Rajendra Singh, Bhawar Singh, Ram Chandra Singh, Mandatar Singh, Mahendra Singh and Krishna Kunwar Bai and her husband Dhyanpal Singh deceased having taken their buffaloes for grazing were returning to the village. As they reached near the field

known as 'Goyrawali Beed', the accused armed with Dhariyas, Farsis, Swords, and lathies surrounded them. Anirudha Singh Patwari exhorted the other accused to kill Dhyanpal Singh and on his exhortation, Pradyumna Singh inflicted an injury with his sword on Dhyanpal Singh and Narendra Singh (since acquitted) caused a Dharia blow on his person whereas Anand Singh caused an injury with a Farsi whereas all the other accused Surendra Singh, Balram Singh, Manohar Singh, Pratap Singh, Krishna Singh caused injuries with lathies. Dhyanpal Singh fell on the ground bleeding profusely. At that moment his son, PW 2 Dharmendra Singh, and one PW 14 Poona Balai also reached the spot and on account of the noise raised by them PW 5 Mandatar Singh and Gopal Singh also rushed that side. Dhyanpal Singh was taken in a tractor belonging to PW 11 Mahendra Singh towards the hospital but he succumbed on the way. PW 1 Krishna Kunwar Bai, the wife of the deceased, thereupon went on to the Police Station along with her son Dharmendra Singh and lodged the First Information

Report at 8.45 p.m. The police then reached the place of occurrence and made the necessary inquiries. The Trial Court found that Anand Singh, one of the accused was a Juvenile and his case was accordingly transferred to the Juvenile Court whereas the other accused were brought to trial. The Trial Court examined the evidence in extenso and observed that both the parties i.e. accused as well as the victims were very close relations of each other, Dhyanpal Singh deceased being the real brother of accused Aniruddha Singh. The Trial Court then assessed the prosecution evidence and observed that there was no reason to disbelieve the four eye witnesses who had supported the prosecution version and that their evidence was also corroborated by the medical evidence inasmuch as the injuries found on the dead body could have been caused with the weapons allegedly used by the accused. The Trial Court further observed that as the enmity between the parties appeared to have been long festering as the dispute with regard to the two bighas of land which Dhayanpal Singh claimed as his own

but was disputed by his brother and nephew, it was appropriate that an assessment be made with regard to the involvement of each of the accused. The Trial Court, thereafter, on a minute examination, held that as the four eye witnesses were not unanimous with respect to the exact role of the some of the accused, they were entitled to the benefit of doubt and having so observed acquitted accused Balram Singh, Krishna Singh, Narendra Singh and Surindra Singh but convicted the present appellants for offences under Sections 302/149 IPC and sentenced them to undergo imprisonment for life and a fine of Rs.5000/- each and in default of payment of fine to undergo rigorous imprisonment for two years. The High Court in appeal confirmed the judgment of the trial court. It is in these circumstances that the present appeal has been filed.

3. Mr. S.K. Gambhir, the learned senior counsel for the accused - appellant has argued that the presence of PW 3 Bhagwan Singh and PW 4 Parkash Kunwar had to be ruled out as the prosecution case itself revealed that they

had been at a distance of about 220 meters when the incident had happened and as such they could not have seen the actual assault. He has in this case referred to the statement of PW9 the Patwari and PW17 the Investigating Officer. He has also submitted that PW3 had been identified as Bhagwan Singh but the person mentioned in the FIR was one Gopal and as such the presence of PW3 was also doubtful for this additional reason as well. He has also emphasized that a minute examination of the eye witnesses account revealed that Aniruddha Singh had been attributed only a Lalkara and had caused no injury and that the eye witnesses were discrepant with regard to the individual rolls of the other accused as well. He has also pointed out that the fatal injury with a Dharia on the head had been attributed to Narendra Singh and as he had been acquitted by the Trial Court, it was apparent that the vicarious liability under Sections 302/149 of the I.P.C was not made out as the accused had intended causing only hurt to the deceased. He has in support of the last argument cited

Ishwar Singh vs. The State of Uttar Pradesh AIR 1976 SC 2423, Nadodi Jayaraman & Ors. Vs. State of Tamil Nadu (1992) Supp 3 SCC 161, Tara Devi vs. State of U.P. (1990) 4 SCC 144, Jaspal Singh vs. State of Haryana (1976) 4 SCC 303.

4. Dr. N.M. Ghatate, the learned senior counsel has, however, pointed out that the Trial Court itself had separated the grain from the chaff and in that process had given the benefit of doubt to four of the accused and had held the present appellants guilty on account of the fact that the eye witnesses' account relating to their involvement was supportive of each other and was also corroborated by the medical evidence. He has also pointed out that the presence of PW1 and PW2, the wife and son of the deceased, could not be doubted under any circumstances and that in the background that a melee had occurred involving a large number of assailants it would be unreasonable to expect an accurate blow by blow account of the incident and that the Court was

therefore obliged to make an over all assessment of the evidence.

5. At the very outset, it must be remembered that the incident had taken place at about 6.00 P.M. leading to serious injuries to Dhyanpal Singh. An attempt had also been made to remove him to the hospital in a tractor belonging to PW Mahendra Singh but he had succumbed along the way whereafter PW 1 had gone to the Police Station 10 kms distant to lodge the First Information Report. It has also come in the evidence of Dr. Anoop Kumar Kamthan PW 13 that the dead body had been received in the hospital at 9.00 P.M. the same evening. It is therefore apparent that the very promptness of the FIR is a factor which must be kept in mind while evaluating the prosecution story. It is true that PW 3 and PW 4 were at a distance of 220 meters from the place of incident. PW 3 Bhagwan Singh is a relative of both the accused and the deceased whereas PW 4 Prakash Kunwar is the daughter of Dhyanpal Singh deceased. Both the witnesses, were unanimous in saying that

before the actual assault, they had heard Krishna Kunwar Bai PW 1 screaming in alarm and calling for help and on which they had run in that direction and seen the actual incident. Mr. Gambhir has, however, pointed out that Bhagwan Singh's name had not figured in the First Information Report and the story which had been projected was some what difficult to believe and it appeared that he had been prevailed upon to become a false witness. We find that Bhagwan Singh's presence may be some what doubtful as his statement Ex.D-3 had been recorded two days after the incident and that too in the Police Station and his name also did not figure in the First Information Report, but even assuming that Bhagwan Singh's presence could be doubted, there is no doubt whatsoever with regard to the presence of PW 1 Krishna Kunwar Bai, PW 2 Dharmendra Singh and PW 4 Prakash Kunwar. We are also of the opinion that the eye witnesses account is supported by the medical evidence which shows the presence of 12 injuries on the dead

body caused with several different types of weapons. The injuries are re-produced as below:

- “(1) Incised wound 3 cm x 1 x bone deep, right parietal region, clotted blood all around. On exploration all layer ecchymosis with blood. Fracture of the parietal bone. There was extradural and intracranial haemorrhage seen.
- (2) Lacerated wound 2 cm x 1 cm x bone deep with haematoma in area of 6 cm x 4 cm., parieto occipital region.
- (3) Haematoma with swollen 4 cm x 4 cm area, over the left parietal region. Extradural haemorrhage seen.
- (4) Diffuse swollen 10” x 6” right lower left thigh. On exploration compound fracture of femur bone was seen.
- (5) Deformity with swelling 6” x 4” area middle of left fore arm. Fracture of radius and ulna shaft.
- (6) Deformity with swelling 4” x 4” over the right hand fracture of metacarpal bone of IInd, 3rd and 4th Fingers.
- (7) Contusion 10 cm x 2 cm over the right chest.
- (8) Incised wound 6 cm x 2 cm x one forth finger is amputated from its base and IIIrd finger is attached to skin.

- (9) Contusion 10 cm x 2 cm Right back below scapula.
- (10) Contusion 10 cm x 2 cm over the right back L1, L2, L3 level.
- (11) Swelling around the left ankle 6 cm x 6 cm.
- (12) Abrasion 4 cm x 4 cm area around right elbow joint.

6. Mr. Gambhir has laid great stress on his submission that as only injury No.1 was on the head and the others being on vital parts of the body indicated that there was no common object of the unlawful assembly to murder Dhyanpal Singh. We, however, beg to differ as the very genesis of the incident i.e. the motive for the attack and the manner in which the complainant party had been waylaid by several persons armed with lethal weapons and the fact that a large number of injuries with several fractures had been caused, show that the accused party had come with the intention of settling scores with Dhyanpal Singh.

7. Much emphasis has been laid by Mr. Gambhir on the possibility as to the participation of Aniruddha Singh accused. He has pointed out that from the evidence, it appeared that the fatal injury on the head of the deceased had been caused by Narendra Singh (since acquitted) with a Dharia and in this view of the matter the only role which could be attributed to Aniruddha Singh was that of a Lalkara i.e. an exhortion to the other accused.
8. It has, however, been pointed out by State Counsel that as a matter of fact, Aniruddha Singh had caused injury No.1 and not Narendra Singh and that the trial Court had dealt with this matter in extenso and after going through the eye witnesses' account observed that it was Aniruddha Singh who had caused the said injury to the deceased with an axe and the mere fact that the First Information Report was silent on this aspect would not dislodge the prosecution story in the face of overwhelming eye witnesses' testimony. Moreover, it needs to be reiterated that as per the evidence,

Aniruddha Singh, was the leader of the accused party and in the forefront of the land dispute. The judgments cited by Mr. Gambhir based on their own facts, can thus have no relevance to the facts of the case.

9. We are, therefore, of the opinion that there is no merit in this appeal and it is accordingly dismissed.

..... J.
(**S.B. SINHA**)

.....**J.**
(**HARJIT SINGH BEDI**)

New Delhi

Dated: May 16, 2008