

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 269 OF 2008

MANJIT SINGHAPPELLANT(S)

VERSUS

STATE OF RAJASTHANRESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 270 OF 2008

KAMLESH KUMAR & ANR.APPELLANT(S)

VERSUS

STATE OF RAJASTHANRESPONDENT(S)

JUDGMENT

Aftab Alam, J.

1. Criminal Appeal No.269 of 2008 is on behalf of a single appellant – Manjit Singh. Criminal Appeal No.270 of 2008 (that came to this Court from jail) is on behalf of two appellants, namely, Kamlesh Kumar and Pradhuman Singh @ Paddu who are represented by Mr. Ravi Prakash Mehrotra, advocate, nominated as *Amicus Curiae*. Both

the appeals arise from the same judgment and order of the Rajasthan High Court. They were, therefore, heard together and are being disposed of by this common judgment.

2. All the three appellants stand convicted under Sections 302 and 307 read with Section 34 of the Penal Code. For the offence of murder they are sentenced to rigorous imprisonment for life and a fine of Rs.2,00,000/- each with the default sentence of five years' rigorous imprisonment. For the offence of attempt to murder, they are sentenced to rigorous imprisonment for 10 years and a fine of Rs.1,00,000/- each with the default sentence of two years' rigorous imprisonment. The sentences of imprisonment for the two offences, however, have been directed to run concurrently.

3. The case of the prosecution is based on the statement (*Parcha Bayan*) of Hitesh Galav recorded by ASI Champa Lal at Hospital Baran on September 14, 1998 at 11:30 p.m. The *Parcha Bayan* – Exhibit P.4 gave rise to and it was incorporated in the formal FIR No.211/98, Police Station Mangrol. In his statement before the Police, Hitesh Galav said that on that day at about 9.00 in the evening he along with Hemant (deceased), Madhusudan (deceased) and Maharaj was sitting in the *Hanumanji Mandir* near the Mangrol bus stand. At that time Manjit Singh Rajput, Kamlesh Sharma and Paddu Sardar (the three appellants) came there and with a view to kill them on

account of previous enmity attacked them with knives. The three accused gave them repeated knife blows as a result of which the three of them were wounded. He further said that he had received one knife injury on the right side of his abdomen and another injury on the right side under the arm. One of them (the accused) also made the exhortation to take out the revolver but at the same time Hariom Soni and some other people arrived there. Parvat Singh also came there who lifted them and brought them straight to Mangrol Hospital from where they came to Baran. He further said that he had received injuries on both his hands as well.

4. The FIR was initially recorded under Section 307/34 but on the death of Hemant and Madhusudan, Section 302 of the Penal Code was also added to the case. On submission of charge sheet by the police, the appellants were tried before the Sessions Judge, Baran, who by his judgment and order dated September 15, 1999 passed in Sessions Case No.132/1998 convicted and sentenced them, as noted above. The appellants preferred Appeals [D.B. Criminal Appeal No.640/1999 (Kamlesh Kumar), D.B. Criminal Appeal No.796/1999 (Manjit Singh) and D.B. Criminal Appeal No.764/1999 (Pradhuman Singh @ Paddu)] before the High Court of Rajasthan which were dismissed by the High Court by judgment and order dated January 13, 2006.

5. These two appeals arise from the judgment of the High Court.
6. It will be useful to note, at the outset, the injuries found on the person of Hemant and Madhusudan in their respective post-mortem reports (Exhibit 25 and Exhibit 26 respectively).
7. Hemant had the following injuries on his person:
 1. Stab wound just right to mid line chest at 4th inter costal space elliptical 3x1 cm. deep to chest cavity.
 2. Two stab wounds one on ant. & one on post aspect of left shoulder 2x1x1cm.
 3. Incised wound 5x2x½ cm. dorsum of left hand on 3rd & 4th inter metacarpal space.
 4. Stab wound 3x1x1cm. left thigh lower and other part.
 5. Incised wound 3x1x¼ cm. below left ear.
8. Madhusudan had the following injuries on his person:
 1. Stab wound 4x2cm. x deep to chest cavity, trans, elliptical, direction medially & upwards on left side of left chest wall 3" lat. to breast nipple.
 2. Two stab wounds 2x1x1cm. on left side of left arm.
9. Hitesh Galav who survived the attack after being treated in the hospital for about 10 to 12 days and who was later examined as PW.2 on behalf of the prosecution had also received the following injuries, as recorded in his injury report Exhibit P-24:-

1. Incised wound 3x2x1cm. Rt. Hand.
2. Stab wound 3x2x5cm. Rt. Lumber area
3. Incised wound (two) 4x2 each 2 inch Lt. forearm.
4. Stab wound 3x2cm. x 2cm. Rt. Chest.

10. The post-mortem reports of Hemant and Madhusudan and the injury report of Hitesh Galav leave no room for doubt that they were assaulted with knives. The question now arises as to whether the injuries that led to the death of Hemant and Madhusudan and caused wounds to Hitesh Galav were inflicted by the three appellants.

11. The prosecution in support of its case examined four eye witnesses, PW.1 Nirmal Dass, PW.2, informant-Hitesh Galav, PW.3 Hariom Soni and PW.4 Naresh Galav. All of them consistently stated that while Hitesh, Hemant, Madhusudan, Maharaj and Naresh Galav along with few others were sitting in the temple, the appellants came there and attacked them with knives causing injuries to them. There is hardly any inconsistency in the depositions of the four eye witnesses and there is no reason not to accept their testimony.

12. However, Mr. Ravi Prakash Mehrotra, learned counsel appearing for the two appellants in Criminal Appeal no.270/2008 strenuously argued that there was a major inconsistency in the deposition of PW.2 made before the trial court and in his statement recorded by ASI Champa Lal, PW.16 as *Parcha Bayan*. Mr. Mehrotra submitted that in

the deposition before the court PW.2 gave a substantially different version of the occurrence. He stated that he along with Hemant, Madhusudan, Maharaj and Naresh Galav were sitting in the temple when the appellants came there. Manjit Singh accosted Hemant saying that a complaint was lodged against them and they (the three victims of the assault) too had joined the group that had gone for lodging the complaint. Saying this, Paddu Singh took out a bottle and hit Hemant on the head with it. They tried to rescue Hemant but at that point of time all the three appellants took out knives and attacked him, Hemant and Madhusudan. Mr. Mehrotra submitted that the same version, of course, in different words was given by the other three prosecution witnesses who were produced in court as eye witnesses. He submitted that the *Parcha Bayan* was silent about Hemant being hit on his head first by a bottle and then the attack taking place on all three by knives. Mr. Mehrotra further submitted that a bottle with blood stains was actually recovered from the place of occurrence. He maintained that this variation in the two versions completely discredited the prosecution case and made it liable to be rejected.

13. We are unable to agree. The fact that the assault by the bottle on Hemant is not mentioned in the *Parcha Bayan* is, at best, an omission and it does not in any way affect the veracity of PW.2, not to say the other three eye witnesses. As a matter of fact, in cross-examination a

question was put to PW.2 regarding this omission in the *Parcha Bayan* and he said that at the time the *Parcha Bayan* was recorded he was in shock and was being administered intravenous drip. He was, therefore, not in a position to give a detailed account of the occurrence and he simply stated about the main assault by knives.

14. In any event, the omission in the FIR would not, in any way, affect the depositions of PWs 1, 3 and 4. Mr. Mehrotra was unable to show that those three witnesses had not mentioned about the assault on Hemant by bottle in their statements recorded under Section 161 of the Code of Criminal Procedure.

15. Mr. Mehrotra next submitted that the previous enmity alluded to by PW.2 related to an incident that was several months old and the incident was too small to lead to such an assault in which two persons were killed. It is well settled that motive is not of much relevance in a case where the ocular evidence is of such quality as to prove the culpability of the accused beyond doubt. Moreover, even the prosecution case regarding the motive cannot be rejected simply because the earlier incident had taken place a few months before the occurrence.

16. On hearing counsel for the appellants and on going through the materials on record we find that there is ample material on record to support the conviction of the appellants. There is no reason for us to

interfere with the judgments of the courts below insofar as the appellants' conviction is concerned.

17. We, however, find that apart from the sentence of life imprisonment the appellants have been punished with fine of Rs.2,00,000/- each with default sentence of five years under Section 302 of the Penal Code and additionally a fine of Rs.1,00,000/- each with the default sentence under Section 307 of the Penal Code. We are of the view that the imposition of such heavy fines with such stringent default sentences is not warranted in the case. We, accordingly, reduce the amounts of fine to Rs.10,000/- and Rs.5,000/- respectively for the two offences with the default sentence of six months rigorous imprisonment and three months respectively under each of the two provisions.

18. The appeals are dismissed subject to the modification and reduction in the amounts of fine.

.....J.
(Aftab Alam)

.....J.
(H.L. Gokhale)

New Delhi;
July 25, 2012.