

CASE NO.:
Appeal (crl.) 927 of 2005

PETITIONER:
Dev Narayan and others

RESPONDENT:
State of Madhya Pradesh and others

DATE OF JUDGMENT: 11/10/2006

BENCH:
G.P. Mathur & A.K. Mathur

JUDGMENT:
J U D G M E N T

G.P. Mathur, J.

This appeal, by special leave, has been preferred by nine accused against the judgment and order dated 21.2.2005 of High Court of Madhya Pradesh by which the appeal filed by the appellants against the judgment and order dated 11.3.1995 of Special Judge, Sehore in Special Case No. 156 of 1994 was dismissed. The learned Special Judge (Sessions Judge) had convicted the appellants under Sections 147, 148, 307 read with Section 149 and Section 302 read with Section 149 IPC and had sentenced them to various terms of imprisonment. They were awarded life sentence and a fine of Rs.5,000/- and in default to undergo RI for one year under Section 302 read with Section 149 IPC. All the sentences were ordered to run concurrently.

2. The case of the prosecution, in brief, is that the complainant Dinesh Singh is Thakur by caste and is resident of village Hasnabad. Sardar, who lost his life in the incident in question, was working as servant of Dinesh Singh and used to look after his cultivation. All the eleven accused also belong to village Hasnabad and they are Khatri by caste. There was long standing enmity between Dinesh Singh and his family members on the one side and persons of Khatri community on the other side. Panchayat elections had taken place 3-4 months prior to the incident in which Raju @ Rajesh Prajapati accused won the election. The case of the prosecution further is that the deceased Sardar was unwell and he was brought to the house of the complainant Dinesh Singh in the afternoon of 1.9.1994 so that some medical aid could be provided to him. The complainant Dinesh Singh took the deceased Sardar on his scooter to Sehore Government Hospital sometime before 6.00 P.M. The doctor, after examining Sardar, advised for certain investigations and prescribed some medicines. Dinesh Singh then took Sardar to a place where his x-ray examination was done and after purchasing the medicines he started for his village Hasnabad at about 7.30 P.M. When he had taken a turn on Hasnabad road from the side of Echhavar road, which is about four kilometers from Sehore, he saw eleven accused armed with various weapons standing there. He tried to accelerate the speed of his scooter and in the light of the same saw and identified the eleven accused standing by the side of the road. However, the engine of the scooter stopped and the accused surrounded both of them. Dev Narayan, Laxmi Narayan and Bhanwar Lal accused caught hold of the complainant Dinesh Singh while Ghisi Lal, Ramesh, Babu Lal and Mahesh accused caught hold of Sardar deceased. Laxmi Narayan and Bhanwar Lal accused then instigated that they should be finished. Dev Narayan accused assaulted the complainant with a 'chhuri' and Hari Narayan accused assaulted him with a 'gupti'. Ghisi Lal and

Mahesh accused armed with 'kulharis' assaulted Sardar. The complainant however tried to run away from the spot. Meanwhile a jeep came from the opposite direction and seeing the same the assailants stopped chasing the complainant. The complainant then came to the house of Kailash, who was working as driver, and narrated the incident to him. Kailash then took him to P.S. Kotwali on the jeep of Agricultural College. The complainant lodged the FIR of the incident at 8.30 P.M. on 1.9.1994 at P.S. Kotwali. From there he was referred to the district hospital. After lodging of the FIR a case was registered and the investigation followed.

3. After completion of the investigation PW-15 B.R. Mistri submitted charge-sheet against eleven accused. The learned Sessions Judge framed charges under Sections 147, 148, 307 read with Section 149 and Section 302 read with Section 149 IPC against all the accused. The accused pleaded not guilty and claimed to be tried. In order to establish the case prosecution examined 17 witnesses and filed some documentary evidence. The accused in their statements under Section 313 Cr.P.C. denied the prosecution case and alleged their false implication on account of enmity. They examined one witness, namely, Shiv Prasad, chowkidar of village Hasnabad, in their defence. The learned Sessions Judge believed the case of the prosecution and convicted and sentenced all the eleven accused as mentioned earlier. The appeal filed by the accused was dismissed by the High Court. Out of the eleven persons who had been convicted, only nine accused have preferred the present appeal.

4. We have heard learned counsel for the appellants, learned counsel for the State of Madhya Pradesh and have perused the record.

5. Before examining the testimony of the eye witness the medical evidence may be considered first. PW-12 Dr. S.K. Jain examined Dinesh Singh at 10.40 P.M. on 1.9.1994 in the District Hospital, Sehore and found the following injuries on his person: -

- "1. An incised wound on the right palm measuring 1" x <" skin deep.
2. Linear incised wound on the left shoulder scapular region four in number of the size 5" x skin deep.
3. Linear incised wound on the right scapular region 5" x skin deep.
4. Two bruises on mid back region size 4" in length.
5. A contusion on the head 2" x 2".

The doctor has opined that injury Nos. 1, 2 and 3 had been caused by a sharp edged weapon and injuries Nos. 4 and 5 had been caused by a blunt weapon.

6. PW-14 Dr. Anand Sharma, Assistant Surgeon of District Hospital, Sehore conducted Post Mortem examination on the body of the deceased Sardar on 2.9.1994 and found the following injuries on his person: -

- "1. An incised wound right leg above anterior middle 1/3 of tibia and fibula. Size of wound is 1" x 1" x 1" wound cutting the bone.
2. An incised wound over right leg 6" below knees anterior side of leg. Size of wound is 1" x " x ".
3. Incised wound on right thigh, medically 3" above the knee joint, size of wound was 1" x " x ".
4. An incised wound left leg lower 1/3 on anterior lateral side of leg, size of wound is 2" x 1" x 1" cutting fibula bone.
5. An incised wound left leg, middle 1/3 of anterior tibia area, size of wound is 2" x 1" x 1".
6. An incised wound lateral side of knee on left leg size of wound is 2" x 1" x 1", wound cut the fibular head.
7. An incised wound on left hip region on upper end of femoral region, size of wound is 1" x " x 1".
8. An incised wound on glottal region of hip. Size of

wound was 1" x " x 2".

9. An incised wound on left side of chest on posterior axillary line 3" below axilla. Horizontally size of wound 2" x 1" x 3" piercing thoracic cavity.

10. An incised wound left side of neck region starting from " below left ear lobule going up to centre of neck, transversely and obliquely replace size 4" x 2" x 3" cutting muscles of the neck, carotid vessels and vein of the neck, cutting cartilage of neck and trachea and left carotid artery cut.

11. An incised wound on left side of face, starting from angle of mandible reaching up whole of body of the mandible, all muscle of region cut and cutting mandible also, transverse and obliquely placed. Size of wound 4" x 3" x 3".

12. An incised wound over right hypochondrium size 1" x " x ".

The doctor has opined that the death had occurred on account of shock and haemorrhage and injuries No. 9, 10, 11 and 12 were sufficient in the ordinary course of nature to cause death.

7. There is only one eye witness of the incident, namely, PW-1 Dinesh Singh. He has admitted in his cross-examination that Chain Singh of Khati community had been murdered about 3-4 years back in which he and Sardar (deceased) had been prosecuted but had been acquitted about 2 years prior to the present incident. He has also admitted that on account of the aforesaid murder case there was strong feeling of enmity between his family members on the one side and persons belonging to Khati community on the other side. His statement, therefore, establishes the fact that his family members and the persons belonging to Khati community of his village are on inimical terms. Hence his testimony has to be assessed with care and caution.

8. PW-1 Dinesh Singh claims to have identified the accused, who were standing by the side of the road, in the light of the scooter. He has admitted that as soon as he saw the accused he tried to accelerate the speed of the scooter but its engine stopped as he had not pressed the clutch. The light of the scooter too would have switched off after the engine had stopped. In such circumstances he would have got only a momentary glimpse of the assailants. His statement shows that Dev Narayan accused was armed with a 'chhuri'; Hari Narayan accused was armed with a 'gupti' and Ghisi Lal and Mahesh accused were armed with 'kulharis'. In the FIR and also in his statement in court PW-1 Dinesh Singh has assigned specific role to these four accused of causing injuries to himself and to Sardar deceased. The injuries sustained by PW-1 Dinesh Singh and by the deceased Sardar could have been caused by the weapons with which the aforesaid four accused were alleged to have been armed. The active participation of these four accused in the incident in question is, therefore, fully established.

9. In view of the fact that PW-1 Dinesh Singh is highly inimical to the members of Khati community of village Hasnabad and also the fact that he got only momentary glimpse of the assailants in the light of the scooter, which got switched off when the engine of the scooter stopped in the process of accelerating the speed of the same, we do not consider it safe to maintain the conviction of the accused other than those who have been assigned specific role. We may clarify here that we are not doubting the prosecution case in its entirety but are adopting the said course of giving benefit of doubt to remaining accused by way of abundant caution.

10. In the result the appeal filed by the appellant No. 1 Dev Narayan, appellant No. 3 Ghisi Lal Khati and appellant No. 7 Hari Narayan Khati is dismissed. Mahesh accused has not preferred any appeal in this Court and has been arrayed as respondent No. 3 in the present appeal. The appeal filed by appellant No. 2 Ramesh Khati,

appellant No. 4 Raju @ Rajesh Prajapati, appellant No. 5 Laxmi Narayan, appellant No. 6 Bhanwar Lal, appellant No. 8 Rajesh Verma Khati and appellant No. 9 Babu Lal is allowed. The conviction of the aforesaid appellants and the sentences imposed upon them are set aside. They shall be released forthwith unless wanted in some other case.

11. Ramesh Chandravanshi has not preferred any appeal in this Court and has been arrayed as respondent No. 2 in the present appeal. However, as he has not been assigned any specific role in the statement of PW-1 Dinesh Singh and we have set aside the conviction of other accused who are identically situate, his conviction also deserves to be set aside. Accordingly we set aside the conviction of Ramesh Chandravanshi (arrayed as respondent No. 2 in the present appeal) and the sentences imposed upon him by the learned Sessions Judge, which was affirmed in appeal by the High Court. He shall also be released forthwith unless wanted in some other case.