

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1496 OF 2004

TEJ SINGH & ORS.

.....

PETITIONER

VERSUS

STATE OF MADHYA PRADESH

.....

RESPONDENT

O R D E R

1. This appeal by way of special leave arises out of the judgment of the High Court of Madhya Pradesh dated 28<sup>th</sup> January, 2004 whereby the conviction of the appellants for the offence punishable under Sections 302 and 302 read with Section 34 of the Indian Penal Code recorded by the Sessions Judge, has been maintained by the High Court.

2. As per the prosecution story the two deceased, Lakhan Singh and his brother Jagdish, were agriculturists with a land holding in village Dadoi, Police Station Satanvada. On 7<sup>th</sup> September, 1990, Babu Singh P.W. 8 took some rice to Jagdish in village Dadoi. Jagdish was the owner of some buffaloes. The two deceased accompanied by Babu Singh then took the buffaloes out from the village for grazing and as they came out of the village on to the banks of the river Sindh they were waylaid by Tej Singh, appellant armed

with a luhangi, Pappu armed with an axe, Dashrath with a lathi and Hanumant Singh with a Barchhi. Pappu who was subsequently declared a juvenile (and is being dealt with separately) opened the attack on the two deceased and all the accused caused them several injuries with their weapons. Babu Singh P.W., overtaken by fear, hid himself behind some bushes and saw the entire incident. On hearing the noise Bhola, Komal and Angad P.Ws. also reached the spot. They found that Lakhan Singh was dead and Jagdish was alive, though grievously injured. On an enquiry by Kok Singh-P.W. 10 who had also been attracted to the place Jagdish narrated the entire incident to the aforesaid witnesses inasmuch that he had been beaten by the three sons of Anantram and Tej Singh and having made the dying declaration died soon after. The investigation was thereafter initiated on the basis of the FIR registered at the police station and on the completion of the trial conviction as aforesaid was recorded by the trial court. This has been affirmed by the High Court.

3. The learned counsel for the appellant has urged that the evidence of P.W.8 - Babu Singh, the first informant could not be relied upon as he being a party man of the deceased, the story projected by him was a complete concoction. He has also pointed out that in

the light of the medical evidence on record it was not possible for the deceased Jagdish to have made a dying declaration as he was in a critical condition.

4. Ms. Vibha Datta Makhija, the learned counsel for the State of Madhya Pradesh has, however, refuted the arguments advanced by the learned counsel for the appellant.

5. We have heard the learned counsel very carefully.

6. We see absolutely no reason to disbelieve P.W.

8. Admittedly he bore no animosity with the appellants which could motivate him to make a false statement against them. He has also clearly stated that he had witnessed the incident from behind the bushes close by and has in his statement given graphic a blow by blow account of the participation of each of the accused. Likewise, we are of the opinion that oral dying declaration given by Jagdish inspires confidence. P.W. 2 Bholu and Komal Singh P.W. 3 have categorically deposed that on the prodding of Kok Singh, Jagdish had made a dying declaration naming the accused as the assailants. No animosity whatsoever had been suggested by the defence against these two witnesses as well. In this view of the matter, we find no merit in the appeal which is, accordingly, dismissed.

.....J  
[HARJIT SINGH BEDI]

NEW DELHI  
JULY 13, 2010.

.....J  
[C.K. PRASAD]



