

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 272 OF 2007

Moniruddin Ahmed @ Lalu
Dealer & Ors.

.... Appellant(s)

Versus

State of West Bengal

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) This appeal is directed against the final judgment and order dated 08.02.2006 passed by the High Court of Calcutta in C.R.A. Nos. 339 and 354 of 2002, in and by which the High Court confirmed the conviction of the appellants herein under Section 302 and sentenced them to undergo life imprisonment.

2) **Case of the prosecution in brief:**

i) According to the prosecution, on 21.10.1982, at about 1 p.m., the appellants and few others armed with deadly weapons like spears, axes, bombs etc., launched an attack on the informant and his associates. Finding their lives at stake, the witnesses scampered through the fields. While chasing the witnesses, the miscreants viz., Lalu Dealer and Salim threw bombs at regular intervals. A bomb hurled by them struck a person called Tulu. As he fell into the ground, he was encircled by six persons. Finding the injured in helpless condition, Lalu the first appellant struck him with a spear. Another accused called Rausan also struck him with a deadly weapon. After seeing some residents of the locality crowding around, the miscreants stopped chasing the other witnesses. The informant and other witnesses saved their lives, hiding in the paddy fields. With the injured succumbing to his injury, the matter was reported to the local Police Station.

ii) A case of murder was instituted by Bharatpur Police Station. After conducting inquest over the dead body, the

Investigating Officer sent the dead body to the hospital for post-mortem and also prepared a sketch-map with an index. Some of the incriminating articles found at the spot were also seized and sent for chemical examination. Meanwhile, the available witnesses were examined by the Investigating Officer. Finally, on examination of all available witnesses and collection of the post-mortem report, injury report and Analyst's report, the charge-sheet was submitted. Following the commitment of the case to the Court of Sessions, charge under Sections 108 and 302/149 of IPC were framed against 42 accused persons.

iii) The accused persons having pleaded innocence, the prosecution examined 16 witnesses to prove their case.

iv) Relying heavily on the statements of the eye-witnesses and the post-mortem report, the trial Judge convicted 12 accused persons under Sections 148 and 302/149 IPC. They were sentenced to rigorous imprisonment for life and fine of Rs.4,000/- each, in default, rigorous imprisonment for four months for commission of offences under Section 302/149 IPC. They were also sentenced to rigorous imprisonment for

two years and fine of Rs.1,000/- each, in default, rigorous imprisonment for two months for commission of offences under Section 148 of IPC.

v) Aggrieved by the said judgment and order of conviction, the appellants herein and 9 others moved the High Court in C.R.A. No. 339 of 2002 and C.R.A. No. 354 of 2002. C.R.A. 339 of 2002 was preferred by Moniruddin Ahmed @ Lalu Dealer and the other C.R.A. No. 354 of 2002 was preferred by the other 9 accused and 2 of the appellants herein. The High Court, by its judgment and order dated 08.02.2006, dismissed C.R.A. No. 339 of 2002 moved by Moniruddin Ahmed @ Lalu Dealer while allowing C.R.A. No. 354 of 2002 in part moved by the other 9 accused and upheld the conviction of 2 of the appellants herein viz., Rausan Sekh and Salim Sekh. Aggrieved by the above conviction, the appellants have approached this Court by way of special leave.

3) Heard Mr. K.N. Balagopal, learned senior counsel appearing for the appellants and Ms. Radha Rangaswamy, learned counsel appearing for the State.

4) Learned senior counsel for the appellants submitted that there should not be any conviction and sentence on disjointed and scrappy evidence. The trial Court as well as the High Court failed to take into account various infirmities that crept into the evidence during the trial. He further submitted that the Courts below committed an error in relying on the evidence of PWs 7 and 8 as they had not seen the incident. In the same manner, PW 9 who was at the relevant time in the roof of the house, it was not possible for him to see the incident from a long distance. On the contrary, learned counsel for the State submitted that PWs 7 and 8 - injured witnesses, PWs 9 and 12 who also witnessed the occurrence clearly established the prosecution case. It is further submitted that the statement of eye-witnesses being consistent and coherent, the trial Court rightly relied on their statements.

5) We have carefully perused the materials and considered the rival submissions.

6) Though, charge sheet was laid against 42 accused persons, we are concerned about the role of three appellants and whether prosecution has established their guilt beyond doubt. Among the eye-witnesses present at the spot, PW 7 who sustained injuries in the incident narrated that the appellants Moniruddin Ahmed @ Lalu Dealer, Salim Dafadar @ Sekh, Rausan Sekh, Ibrahim Sekh, Abu Siddiki, Motor Sekh, Mantu Sekh and many others chased him and his associates on seeing them near the Talsouri Tank. Frightened by their aggressive look, PW 7 and other witnesses started fleeing towards the field. He further asserted that he noticed Lalu Dealer and Salim Sekh throwing bombs towards them. One of the bombs struck Abdul Hasib, as a result he fell down on the ground in the field of Abu Bakkar. At that time, all the appellants and other accused surrounded him and Lalu Dealer struck him with a 'pathtangi', the other accused persons also assaulted him with 'lathi', 'henso' and 'bollom'.

7) The other injured witness PW 8 also narrated the incident as explained by PW 7. According to him, on seeing the aggressive mood of the accused, he and his associates

escaped through paddy fields. When they were on the move, he saw accused Lalu Dealer and Salim Dafadar throwing bombs towards Abdul Hasib. As explained by PW 7, PW 8 also informed the Court that on encircling Lalu Dealer struck Abdul Hasib with a spear, Rausan delivered a blow on him with a 'pathtangi'. In the same manner, as explained by PWs 7 and 8, PW 9 referred to the involvement of the appellants and others, their overt act and the weapons used by them. He also testified that by the merciless act of the appellants, ultimately, it resulted in death of Abdul Hasib.

8) Another witness relied on by the prosecution is PW 12. He was also present at the spot. Like PWs 7, 8 and 9, he also narrated the incident how the accused chased and ultimately caused the death of Abdul Hasib. As rightly observed by the High Court, though the above-said witnesses did not place their medical reports about their injuries, their presence at the spot cannot be doubted and rightly believed their version. An analysis of the prosecution witnesses clearly show that the fatal blow with spear was delivered by Lalu Dealer – the first appellant. It is also clear that the appellants and others

chased the deceased with deadly weapons in their hands. In our view, among the several accused the role played by the appellants had been analysed by the High Court and rightly concluded that the appellants alone were responsible and confirmed their conviction and sentence. On perusal and analysis of the evidence of PWs 7, 8, 9 and 12, we are satisfied that the prosecution has established the charge against the appellants under Sections 148 and 302/149 of IPC.. Though the first appellant took the plea of alibi, the same was not substantiated. It is basic law that prosecution is to prove that the accused was present at the scene and had participated in the crime. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. However, once the prosecution succeeds in discharging its burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with certainty so as to exclude the possibility of his presence at the place of occurrence. It is also settled that when the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence,

normally the court would be slow to believe any counter evidence to the effect that he was elsewhere when the occurrence happened. In the case on hand, we have already noted the absolute evidence indicating the presence of Lalu Dealer at the scene of occurrence. He was not only at the spot but also caused the death of Abdul Hasib by a fatal blow with spear. As rightly observed by the High Court, the stand taken by the defence witnesses is unacceptable.

9) In the light of the above discussion, we are in agreement with the conclusion arrived at by the High Court. Consequently, the appeal fails and the same is dismissed.

.....J.
(P. SATHASIVAM)

JUDGMENT

.....J.
(R.M. LODHA)

NEW DELHI;
MAY 10, 2010