

CASE NO.:
Appeal (crl.) 572 of 1994

PETITIONER:
Babu Ram and others

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 29/11/2002

BENCH:
S.N. Variava & Arun Kumar

JUDGMENT:
J U D G M E N T

Variava, J.

This Appeal is against a judgment dated 20th August, 1992 by which the conviction of the Appellants by the Trial Court by a judgment dated 26-7-1985 has been confirmed.

Briefly stated the facts are as follows:

On 8th of April 1979 in the early morning Ramadhin (since deceased), his wife Marri (PW 3) and their son Ramsharan (PW 1) had gone to the field allotted to them for collecting Mahua fruits. At that time all the Appellants, along with one person named Ramasre came to the field. Appellant No.2 was armed with a gun, Appellant No.3 was armed with a spear, Appellant No.1 was armed with a Pharsa and Appellants 4, 5 and 6 were armed with Lathies. Appellant No.2 asked Ramadhin as to why he was collecting Mahua fruits. Ramadhin insisted that he was entitled to collect Mahua fruits. On this Appellant No.1 threw Ramadhin on the ground and the other Appellants started hitting Ramadhin. They chased his son Ramasharan away from the place of incident. Then Appellant No. 1 cut one hand of Ramadhin while Ramasre cut the other hand. Appellant No. 2 fire his gun in the air to scare the son and the wife Marri. After causing injuries on Ramadhin, the Appellants left the place.

While the wife Marri was bringing Ramadhin towards the village in a Tonga, they met PW 2 one Kariya and PW 5 one Chhiddu and Ramadhin told them that it was the Appellants with Ramasre who had caused injuries on him. On the way to the village, Ramadhin then expired. All the Appellants and Ramsharan were arrested and charge-sheeted for offences under Section 302 read with Section 149 IPC as well as offences under Sections 148 and 147 of IPC. All of them pleaded not guilty and claimed to be tried.

The prosecution led the evidence of the son PW 1, wife PW 3 as well as the evidences of PW 2 and PW 5 that is the persons to whom extra judicial confession had been made. PW 1 the son turned hostile and refused to identify the Appellants. However, he gave testimony regarding the incident having taken place. However, the wife Marri gave evidence which has been believed by both the Trial Court as well as the High Court. On the basis of the eye-witnesses testimony of the wife Marri, the Trial Court convicted the accused with offences under Section 304 read with Section 149 and sentenced them to undergo rigorous imprisonment for life. The Trial Court also sentenced Appellants Baburam, Santram and Jhallu under Sections 149 IPC and sentenced them to rigorous imprisonment for two years and Appellants Ramdas, Ramlakhan and Balaprasad were convicted under Section 147 and sentenced to rigorous imprisonment for one year.

The High Court on appreciation of the evidence and after hearing the parties has confirmed the sentence.

Before us it has been submitted that the conviction is on the basis of the sole testimony of the wife PW 3. It has been submitted that she is interested witness and cannot be relied upon. It is submitted that in her cross examination, she had admitted that she had gone away to the house and therefore she could not have seen the incident and was not an eye-witness. We have examined the testimony of PW 3. In our view, there is no statement to the effect that she had gone away to the house. The sentence, sought to be relied upon, is drawn out of context. The reference to "going to the house" is after the incident. In fact her evidence is categoric. She states that she had seen the entire incident and was present during the entire incident. We therefore find no substance in this submission.

It is next submitted that the police recorded her statement after two days of the incident and that this casts a serious doubt on the prosecution case. In our view merely because her statement was recorded after two days, does not detract from the credibility of her evidence. Her statement is corroborated by the medical evidence and even to a certain extent by the evidence of the son PW 1.

In our view, there is no infirmity in the judgment of the Trial Court or the High Court.

We, therefore, see no reason to interfere. The Appeal stands dismissed. The bail bonds shall stand cancelled. The Appellants shall now be taken into custody forthwith.