

PETITIONER:
HARNAM SINGH AND ORS.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT 12/12/1995

BENCH:
KIRPAL B.N. (J)
BENCH:
KIRPAL B.N. (J)
MUKHERJEE M.K. (J)

CITATION:
JT 1995 (9) 178 1995 SCALE (7)127

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

KIRPAL, J.

The appellants were tried for offences under Sections 147, 148 and 302 of the Indian Penal Code (for short 'IPC') or in the alternative under Section 302 read with Section 149 on the allegation that they had committed rioting and that while being armed with deadly weapons, they had committed murder of Deokaran Singh or, in the alternative, they all committed his murder in prosecution of common object of unlawful assembly of which these seven appellants were members on 21st September, 1979, at 5 p.m. at village Baghwar, P.S. Kareli.

The Sessions Judge, Narsinghpur by his judgment dated 8th February, 1980, acquitted the appellants. The State filed an appeal against acquittal and the son of the deceased - Deokaran Singh also filed a revision application. The High Court came to the conclusion that the judgment of the trial court was perverse and, on the appraisal of the evidence, it set aside the acquittal of the appellants and convicted each one of them under Section 304 Part-II read with Section 149 IPC. Different sentences were imposed. It is against this judgment that appeal by special leave has been filed.

The case of the prosecution was that prior to 21st September, 1979, the date of the incident, construction of a road from Kareli to Baghwar had commenced. The contractor for the work was one Jethabhai (CW-1). The construction work was being done near the huts of Hari Ram and Sukh Ram (father of Sushilabai PW-3). As there were disputes with regard to the location of the road in the village, opinion of the members of the Gram Panchayat had been sought by the contractor a couple of days earlier. One opinion was that the road should pass near the huts of Hari Ram and Sukh Ram which would involve damaging their huts and, to this proposal, the deceased Deokaran Singh was opposed. It is alleged that on the morning of 21st September, 1979,

Deokaran Singh had protested against the construction of the road which would result in the damage to the huts of the poormen and, therefore, the work appears to have been deferred. Later that day at about 5 p.m. Deokaran Singh again passed that way and he found that the construction of the road had begun in a manner which would adversely affect the huts of Hari Ram and Sukh Ram. He again protested. It was then that a number of persons assaulted Deokaran Singh with pick-axe, axe and spade etc. which implements were being used in the construction work and were readily available at the spot, thereby causing injuries to Deokaran Singh which led to his death on the spot.

According to the prosecution when Deokaran Singh had opposed the construction of the road and the contractor not having agreed to the construction in view of the opposition, the appellants themselves had commenced the construction work. When Deokaran Singh had appeared on the scene at about 5 p.m. and had protested, then Appellant No.5 - Inder is alleged to have called out to kick Deokaran Singh in the face and this was followed by an assault on Deokaran Singh by all the appellants headed by Harnam Singh-Appellant No.1 who gave the first blow with a pick-axe on the head of Deokaran Singh.

According to the prosecution the eye-witnesses to this incident were Trilok Singh (PW-1), Sushilabai (PW-3), Daya Ram (PW-4), Rajindra Singh (PW-5) and Devi Singh (PW-7). The first information report was lodged by Trilok Singh (PW-1) at 6.00 p.m. on that very evening at Police Station Kareli wherein all the appellants herein were named as assailants of his father Deokaran Singh. The prosecution did not examine Jethabhai as its witness but during the course of the trial the court itself examined the contractor-Jethabhai (CW-1) as a court witness since his presence at the time of the incident was admitted by all concerned.

The appellants herein mainly disputed the identity of the culprits. The fact that Deokaran Singh was assaulted on 21st September, 1979, and the place of the incident and the nature of his injuries were not in dispute. Appellant No.3 Narendra Singh in fact stated that he was present in the village and had heard about the murder of Deokaran Singh and he had gone to the Police Station Kareli to make a report, even though he himself was not there at the place of occurrence. Appellant No.3 is stated to have found Trilok Singh (PW-1) and his doctor brother at the Police Station Kareli when they had come to report the incident. All the appellants denied any participation in the incident and they alleged that they had falsely been implicated. The appellants examined one Dharamvir (DW-1) in their defence who was alleged to be a partner of Jethabhai (CW-1) in the contract and was stated to be an eye-witness to this incident. The said DW-1 claimed that he had come to the court on his own on hearing of the case and he stated that he did not disclose to anyone, before appearing in the court, that he was an eye-witness. According to Dharamvir the assailants were unknown persons from amongst the labourers who were doing the construction work and the appellants were not the assailants.

While acquitting the appellants, the trial court primarily relied upon the testimony of Dharamvir (DW-1) by treating him to be an eye-witness and had also taken into account the part of the case diary statement of Jethabhai (CW-1) which he had denied making at any time, as substantive evidence, to hold that the identity of the assailants was unknown. The testimony of the eye-witnesses was rejected by the trial court as being unreliable mainly

on the ground that their version about the identity of the assailants was in conflict with the testimony of Dharamvir and the case diary statement of Jethabhai.

The High Court, as already observed, examined the entire evidence and came to the conclusion that the acquittal of the appellants was perverse and the same was set aside because, according to the High Court, the conclusion which had been reached by the trial court was not at all plausible in the light of the over-whelming evidence against the appellants.

In arriving at the aforesaid conclusion, the High Court recorded that the counsel for the appellants had himself placed reliance on the testimony of Jethabhai (CW-1) and had conceded that his testimony could not be rejected. The High Court observed that in view of this Appellant No.1-Harnam Singh, who was specifically named by Jethabhai, he could not be acquitted and that Jethabhai's version was consistent with the testimony of other eye-witnesses examined by the prosecution for the purpose of fixing the identity of the other assailants, whom Jethabhai could not specifically name even though he identified them by face in the court. The High Court also came to the conclusion that the evidence of the other eye-witnesses was reliable and that Trilok Singh (PW-1), who was the son of the deceased and had lodged the first information report, was a witness to the incident. While taking into account the evidence of Dr. Chouhan (PW-6), with regard to the nature of injuries, the High Court considered it safer to hold that the offence which had been made out fell under section 304, Part II, I.P.C. and not under section 302 I.P.C. Consequently, while convicting the appellants herein, Harnam Singh-Appellant No.1, Anil-Appellant No.4 and Seth-Appellant No.7 were each sentenced to seven years rigorous imprisonment because Harnam Singh had inflicted the first blow with a pick-axe on the head of the deceased and the Appellant No.4 and Appellant No.7 had inflicted blows on the neck with axe. The other appellants were each sentenced to five years rigorous imprisonment.

As in the High Court, the only contention which has been raised by Mr. U.R. Lalit, learned senior counsel for the appellants, is that they were not the assailants. According to the learned counsel it is because of the enmity between the parties, namely, the appellants and Trilok Singh (PW-1) that the appellants have wrongly been accused of having committed a crime. The appellants, it was submitted, were not present at the scene of the incident. It was further contended that the trial court had dealt with the testimony of each of the witnesses very elaborately and had given cogent reasons for coming to the conclusion that their testimony could not be believed. With regard to the evidence of Jethabhai, it was argued that his evidence was suspect and, in any case, section 149 I.P.C. was not applicable on the facts of the present case.

In our opinion, the well considered and reasoned judgment of the High Court calls for no interference. The counsel for the appellants had, before the High Court, conceded that the testimony of Jethabhai (CW-1) could not be rejected. Faced with this difficulty, Mr. Lalit contended that Jethabhai, at best, had only identified Harnam Singh as one of the assailants and the evidence of Jethabhai does not show that Trilok Singh (PW-1) was present at the time of incident and, therefore, he could not be regarded as an eye-witness.

Jethabhai (CW-1) had stated that except for Harnam Singh, whom he had known earlier, he had seen the other appellants only on the date of incident. In his evidence he

stated that on 21st September, 1979, he had gone to the site of construction at about 4.00 P.M. or 4.30 P.M. by motor-cycle. He saw the work was in progress but none of his labourers were working there. There were six or eight persons who were working, out of which he knew only Harnam Singh. He further stated that six to seven persons who were digging the soil pounced upon deceased and assaulted him. Thereupon, he got frightened and pulled his son and mounted on his motor-cycle and set-forth to Kareli. He further stated that he went to the dispensary of the deceased son, who was a doctor, and when he was informing about the fight, Trilok Singh (PW-1) came there and told his brother, the doctor, that the appellants had killed their father. In answer to a question by the public prosecutor Jethabhai stated "Today I can say that those accused who are present in the court they had assaulted Babulal. I have heard Babulal's name only to be Babulal not any other". It appears that Babulal was the other or common name of Deokaran Singh as the witness has specifically stated that he was the father of Trilok Singh (PW-1) and it is not in dispute that Trilok Singh is the son of the deceased.

In view of the aforesaid testimony, the High Court rightly came to the conclusion that the same corroborated the evidence of Trilok Singh (PW-1) because, according to Jethabhai, when he was at the dispensary of deceased's son, Trilok Singh had come in and had informed his brother that their father had been killed. From this the High Court concluded, and in our opinion correctly, that Trilok Singh knew about the death of his father and that knowledge was not acquired from Jethabhai, as was sought to be contended by the appellants.

We have referred to the evidence of Jethabhai in some detail in order to satisfy ourselves that the conclusion arrived at by the High Court, which was hearing an appeal against acquittal, does not suffer from any infirmity. We have also examined the statements of other witnesses and of Sushilabai (PW-3) in particular in whose land the alleged digging was taking place and who had clearly identified the appellants in her testimony and we find that there was no reason as to why the eye-witnesses cited by the prosecution should have been disbelieved. The High Court has rightly noticed that the first information report was lodged very promptly and the names of the appellants were mentioned therein as assailants. We are in complete agreement with the High Court that the identity of the assailants was established and that it is the appellants herein who had inflicted the injuries on Deokaran Singh alias Babulal which had resulted in his death.

The conviction under section 304 Part II I.P.C. and the sentences imposed upon the appellants by the High Court are upheld and this appeal is dismissed. The accused who are on bail will now surrender to their bail bonds to serve out the requisite sentences.