

CASE NO.:  
Appeal (crl.) 1020-1021 of 1999

PETITIONER:  
NAGARJIT AHIR

RESPONDENT:  
STATE OF BIHAR

DATE OF JUDGMENT: 12/01/2005

BENCH:  
B.P. SINGH & ARUN KUMAR

JUDGMENT:  
J U D G M E N T  
WITH CRL.A.Nos.529, 530 and 531 of 2000

B.P.Singh, J.

This batch of appeals by special leave arises out of a common judgment and order of the High Court of judicature at Patna dated 25th February, 1999 in Criminal Appeal Nos. 513 & 515 of 1986.

There were 10 appellants before the High Court and those ten appellants have preferred these 4 appeals before us. Out of them, three have since died namely, Tribeni Ahir, Ramshish Ahir and Surajdev Dubey.

The appellants were tried by the Second Additional Sessions Judge, Arrah in Sessions Trial No.69/77. By judgment and order dated 30th September, 1986 the trial court found them guilty and convicted them of the offences with which they were charged and sentenced them to various terms of imprisonment. What is of significance is the fact that appellants Tribeni Ahir (since deceased), Dhorha Ahir, Nand Kumar Ahir and Jugeshwar Dubey have been sentenced to life imprisonment under Section 302 IPC. The remaining appellants have been sentenced to life imprisonment under Section 302 read with Section 149 IPC. Their convictions have been challenged before us in these appeals.

In the occurrence that took place at about 8.00 A.M. on 13.4.1976 Jagarnath Singh alias Natha Singh lost his life. In the same incident injuries were inflicted on 4 others, namely, PW-1 Kamta Singh (brother of the deceased), PWS 2 & 4 Murari Singh and Rangnath Singh, sons of the deceased and Ramta Singh PW-7, a cousin of the deceased.

The case of the prosecution is that at about 8.00 A.M. on the date of occurrence, the deceased as well as the injured witnesses and others had gone to take bath in river Ganges at the Taksemar Ghat. That was a day on which the Satuwan festival was being celebrated. Large number of persons had come to the Ghat for a holy dip in river Ganges. When the deceased and other members of his family including the injured witnesses, were coming out after taken bath, the appellants are alleged to have come and started assault. The case of the prosecution is that all those 12 persons were armed with barchhas. Surajdeo Dubey (since deceased) exhorted them to assault whereafter Tribeni Ahir, Dhorha Ahir, Nand Kumar Ahir and Yogeshwar Ahir inflicted barchha injuries on the deceased Jagarnath Singh who after receiving injuries on his chest and on his fore-head fell down and died. PW-1 Kamta Singh was assaulted by Sheoji Ahir, Moti Ahir and Teja Ahir while Ramta Singh PW-7 (the informant) was assaulted by Nand Kumar Ahir. Similarly, Rangnath Singh PW-4 was assaulted by Lakshman Ahir. On alarm being raised, Karu Kurmi PW-3 Sheo Bilash Singh PW-5 and some others arrived at the spot and witness the occurrence. The assailants fled away. The injured including the deceased w

ere first brought to Salempur Chatti and thereafter to the sadar hospital at Arrah. The decease d was declared dead while the other injured witnesses were treated at the same hospital. The first information report lodged by Ramta Singh PW-7 was recorded by Sub-Inspector R.B. Singh (since dead) at the Arrah Mufassil police station at 11.00 A.M. on the same day. The case w as investigated and ultimately the appellants were put up for trial.

The appellants took up various defences. Some of them stated that they have been falsely implicated due to enmity while others contended that this case was a counter blast t o Arrah Munfassil P.S.case No.11 registered on the same day which arose out of an incident wh ich took place earlier in the morning at 6.00 A.M. It was alleged that Tribeni and Ramshish Ah ir appellants were guarding their harvested bundles of gram and wheat which had been kept in their khalian. The prosecution party attempted to loot away the bundles and in that proce ss armed with deadly weapons they attacked the aforesaid appellants by barchha and lathi. On t he intervention of others, they were saved. Thereafter, Tribeni Ahir lodged a first informatio n report at 3.00 P.M.on the same day. That case was also investigated and the accused in that case which included some of the members of the prosecution party in this case were put up for tri al in Sessions Case No.449/77. It is not disputed that that case ultimately resulted in an acquit tal.

So far as the instant case is concerned, 7 eye-witnesses were examined by the prosecution and they are PWS 1,2,3,4,5,6 & 7. Of them PWS 1,2,4 & 7 are injured witnesses. The trial court as well as the High Court have concurrently found the appellants guilty. Th e courts below have found that the evidence of the prosecution witnesses, some of them injured witnesses, is worthy of credence and can be relied upon for convicting the appellants. The medical evidence on record corroborates the case of the prosecution. In view of the concurr ent findings of fact recorded by the courts below, which we find to be based on evidence on reco rd, it is not necessary for us to consider the facts of the case in detail. We shall, however, not ice the submissions urged before us.

It was firstly submitted that this case was in the nature of a counter blast to the case lodged by the members of the defence party. It was submitted before us that at 6.00 A.M.on the same day the members of the prosecution party had attempted to loot away harvested crop of Tribeni Ahir and Ramashis Ahir, who were also assaulted in the course of that incident. To save themselves, and as a counter blast, the instant case was registered. We may at this stage observe that though the occurrence as alleged by the defence took place at 6.00 A.M.on the date of occurrence, the first information report was lodged at 3.00 P.M. On the other hand, occurr ence giving rise to these appeals is said to have taken place at about 8.00 A.M.and the first information report was lodged at 11.00 A.M. Obviously, therefore, in point of time the rep ort lodged by the prosecution in this case was earlier than the report lodged by Tribeni Ahir.

It may, therefore, not be correct to suggest that this case was filed as a counter blast. In a ny event, as noticed earlier, the Sessions Case arising from the first information report lodged by th e

appellants resulted in acquittal.

It was then contended that the prosecution has not been able to explain the injuries suffered by Tribeni Ahir and Ramashis Ahir and, therefore, the prosecution case must fail.

The submission is mis-conceived. As held by the High Court, Tribeni Ahir and Ramashis Ahir were injured in a different occurrence which took place earlier in the morning even as alleged by the appellants. The occurrence giving rise to the instant appeals took place later at 8.00 A.M.

There were, therefore, two occurrences which took place on the same day. In the earlier occurrence Tribeni Ahir and Ramashis Ahir appellants were injured. In the subsequent occurrence, Jagarnath Singh lost his life and 4 others were injured. There were, therefore, two different occurrences and it, therefore, cannot be suggested that Tribeni Ahir and Ramashis Ahir were injured in the course of the same incident and that the prosecution has failed to explain their injuries. The submission proceeds with fallacious assumption that the two of the appellants were injured in the course of the the same incident.

It is worth noticing that in the report lodged by Tribeni Ahir, there is no mention of the fact that the assailants were also injured, and one of them died of the injuries sustained by him.

It was then urged that the place of occurrence has been shifted by the prosecution.

We have perused the evidence on record and we find that there is no substance in this submission. The consistent case of the prosecution is that after they took a dip in the river Ganges and came out and had thereafter, walked about 20 to 25 steps, they were assaulted by the appellants. We have carefully read the evidence brought to our notice and we find nothing in the evidence to suggest that the place of occurrence was a khalian belonging to Tribeni Ahir and Ramashis Ahir. There is no doubt reference to some bundles of gram kept in the fields near the place where the occurrence took place. That itself would not lead us to jump to the conclusion that the occurrence took place in a khalian. It appears from the evidence on record that the harvesting season was over and in many cases the harvested crop had been kept in the field while many cultivators had taken them to their khalihans. The mere fact that some bundles of harvested crops were lying near by does not necessary lead to the inference that the occurrence took place in a khalian. The evidence on this aspect of the matter is consistent and we find no reason to hold that the place of occurrence has been shifted. In this connection, we may also notice the submission urged on behalf of the appellants that the investigating officer was not available to give evidence in this case since he had died. We, however, do not find that the appellants were in any manner prejudiced by his non-examination. The evidence is consistent and the place of occurrence stands established by the clear evidence of the eye-witnesses which has not been impeached in their cross-examination.

It was then submitted that in spite of the fact that large number of persons had assembled at the bank of the river at the time of occurrence, the witnesses examined are only

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those who are members of the family of the deceased, or in some manner connected with him.  
We cannot lose sight of the fact that four of such witnesses are injured witnesses and, therefore,  
in the absence of strong reasons, we cannot discard their testimony. The fact that they are  
related to the deceased is the reason why they were attacked by the appellants. Moreover, in  
such situations though many people may have seen the occurrence, it may not be possible for the  
prosecution to examine each one of them. In fact, there is evidence on record to suggest that  
when the occurrence took place, people started running helter-skelter. In such a situation it  
would be indeed difficult to find out the other persons who had witnessed the occurrence. In any  
event, we have the evidence of as many as 7 witnesses, 4 of them injured, whose evidence has  
been found to be reliable by the courts below, and we find no reason to take a different view.

A submission was urged before us with regard to the motive for the commission of offence. In view of the direct evidence available on record, it is not necessary to go into that  
question, but it does appear from the evidence on record that the relationship between the parties was strained. This is obvious from the informatory petition filed by some of the appellants on 19th March, 1976 against some of the members of the prosecution party. The prosecution party also alleges that they got a case initiated against members of the defence party  
under Section 107 Cr.P.C. and a day before the occurrence they were being pressurised to withdraw that case. However, as we have observed earlier, in a case of this nature where the  
prosecution case is supported by as many as 7 eye-witnesses, it is not necessary to search for the  
exact motive which motivated the appellants to commit the offence.

We, therefore, find no reason to differ from the view taken by the courts below. However, there is one aspect of the matter which requires consideration. Appellant Nagarjit Ahir is the son of Lakshman Ahir. The prosecution has not alleged any overt act against Nagarjit Ahir. The evidence on record establishes the fact that large number of persons were  
present. In such a case, it may be safe to convict only those persons against whom overt act is  
alleged with the aid of Section 149 IPC, lest some innocent spectators may get involved. This is  
only a rule of caution and not a rule of law. In the instant case, we find that even if Nagarjit Ahir  
was present when the occurrence took place, there is nothing to suggest that he shared the common object of the unlawful assembly. Admittedly, he did not take any part in the assault.  
We do not, therefore, consider it safe to convict him merely on the ground that he was present, because admittedly large number of persons had come to the ghat that day for taking a bath in  
river Ganges. We, therefore, extend to him the benefit of doubt and acquit him of all the charges  
levelled against him.

In the result, Criminal Appeal No.1020/99 preferred by Nagarjit Ahir is allowed and he is acquitted of all the charges levelled against him. This appellant is on bail. His bail bonds  
are discharged.

The other appeals i.e. Criminal Appeal Nos.1021/1999, 529, 530 & 531 of 2000 are dismissed. The appellants are on bail. Their bail bonds are cancelled. The appellants must  
surrender forthwith to serve out the remainder of the sentence, failing which the State must

t take  
steps to apprehend them and send them to custody.

JUDIS