

CASE NO.:
Appeal (crl.) 229 of 1997

PETITIONER:
Bagdi Ram

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 03/12/2003

BENCH:
N. SANTOSH HEGDE & B.P. SINGH

JUDGMENT:
JUDGMENT

B.P. SINGH, J.

Bagdi Ram, who is the sole appellant in this appeal by special leave, has impugned the judgment and order of the High Court of Madhya Pradesh, Jabalpur in Criminal Appeal No. 94 of 1991 dated 30th September, 1996 finding him guilty of the offence under section 304 Part-I IPC and sentencing him to undergo rigorous imprisonment for eight years and a fine of Rs.5,000/-, in default to undergo further rigorous imprisonment for 20 months.

Appellant Bagdi Ram, alongwith five members of his family, was put up for trial before the Second Additional Sessions Judge, Mandsaur in Sessions Trial No. 212 of 1990 in which they were variously charged of the offences under sections 147, 148, 323/149, and 302/149 IPC. The trial court by its judgment and order dated 20th December, 1990 acquitted all of them holding that they had acted in exercise of their right of private defence and that the prosecution had failed to explain the injuries suffered by three members of the defence party. State of Madhya Pradesh preferred an appeal against the acquittal of all the six accused persons and by the impugned judgment and order, the High Court while setting aside the order of acquittal passed in favour of appellant Bagdi Ram and his son Ramesh, acquitted the other accused persons. The High Court, as noticed earlier, found the appellant guilty of the offence under Section 304 Part I IPC and sentenced him as earlier noticed. Ramesh was found guilty of the offence under section 323 IPC and was sentenced to the period of imprisonment already undergone and a fine of Rs.500/-, in default to undergo rigorous imprisonment for two months.

The incident giving rise to this appeal occurred on May 12, 1990 in village Digaonmali in which Mangilal and three members of his family suffered injuries at the hands of the accused. One of them, namely Jagdish later succumbed to his injuries.

The case of the prosecution is that Bagdi Ram and Mangilal, PW.4 resided as neighbours in the same locality. On the date of incident the appellant herein was getting a wall constructed which was objected to by Mangilal, PW.4 on the ground that the construction of the wall would obstruct passage to his house. An altercation followed in which the appellant and his sons are alleged to have abused Mangilal to which Mangilal objected. The appellant and his three sons, namely Jagdish, Dinesh and Dilip started assaulting Mangilal, PW.4 causing injuries on his back and head. Ramesh, PW.1, son of Mangilal intervened but he was also assaulted. The incident attracted Jagdish, (deceased) and Gopal, PW.3 another son of Mangilal to the place of occurrence and when they attempted to intervene they were also assaulted. The case of the prosecution is that appellant Bagdi

Ram caused an injury on the head of the deceased by assaulting him with a 'gainti' (pick-axe) as a result of which Jagdish, (deceased) fell down. Other members of the family of appellant Bagdi Ram also came to the spot and started pelting brick-bats on the members of the prosecution party. This attracted many residents of the locality to the place of occurrence, Bhanwarlal, PW.6, being one of them. Apart from deceased Jagdish and Mangilal, PW.4, Sampatibai, PW.2 wife of Mangi Lal and Gopal, PW.3 were also injured. Bhanwarlal, PW.6 brought them to the District Hospital at Mandsaur. Jagdish (deceased) was unconscious. It appears that Ramesh, PW.1, who was assaulted alongwith his father when the incident began, had rushed to the police station at Afzalpur and lodged a report Ext. P/1 at 10.20 a.m. and a case was registered by Head Constable Gopala Singh, PW.8 under Sections 341, 294 and 323 IPC.

When the injured persons were admitted in the hospital, Dr. A.V. Gwaliorkar, PW.10 sent information to the police station and pursuant thereto Head Constable Ramnagina Singh, PW.9 came to the hospital. He arranged for the medical examination of the injured witnesses as well as Jagdish who later died. Since the condition of Jagdish was precarious, he was shifted to H.Y. Hospital, Indore but he succumbed to his injuries on May 16, 1990.

The post-mortem examination of the dead body of deceased Jagdish revealed the following ante mortem injuries suffered by him :-

- "1. Contusion 3 cm. square in shape on the right leg.
2. Abrasion 2 cm. x 1 cm. below left eye.
3. Abrasion 2.5 cm. x 1 cm on back side of left elbow.
4. Punctured lacerated wound present on the glabella, 2 cm in diameter, scalp deep. Underneath bone was fractured into pieces.
5. Rail pattern bruise present on the left eligible lateral aspect 6 cm x 2 cm size. Intervening (eligible) is 1 cm. obliquely vertical.
6. Rail pattern bruise present on left scapular region, middle part, obliquely transverse 6 cm x 1.5 cm margins slightly diffused. Intervening healthy area is 0.5 cm.
7. Surgical and stitched wound present on scalp right side arising from ptarygia going upwards for 6 cms. then curve laterally and goes posteriorly for 14 cms. arise and (eligible) downwards. It is 22 cms. long and 1.5 cm. wide. It is having intact stitches. It is having laceration of margins of wound at middle part from anterior to posterior end. There is abrasion on border laterally 0.6 cm."

The injury caused on the head of Jagdish was such that it fractured the right temporal parietal region and there was a craniotomy hole in 5 cm. diameter area. There was a radiating fracture extending upto right ptergia region 6 cm. in length. Extra dural haematoma present at an area of 8 cm. x 6.5 cm. The fracture extended to the base of the skull in right anterior cranial fossa from external fracture. There is no dispute that the injury allegedly caused by the appellant on the head of the deceased resulted in his death.

The prosecution examined several eye witnesses to prove its case which included Mangilal, PW.4, his wife Sampatbai, PW.2 and two sons Ramesh, PW.1 and Gopal, PW.3 and Bhanwarlal, PW.6, a co-villager.

The defence on the other hand contended that the prosecution party was the aggressor and that they had assaulted three members of the defence party, namely - accused Sumitra, Bagdi Ram and Dinesh. It was contended that the members of the prosecution party were aggressors and they had only retaliated in exercise of the right of private defence of person.

The trial court was impressed by the plea urged before it, namely that the members of the prosecution party were the aggressors. It held in favour of the accused holding that since the appellant was constructing a wall on his own land, the members of the prosecution party had no rhyme or reason to object. Since the injuries sustained by three members of the defence party was not explained by the prosecution, it held that the prosecution party was the aggressor and the accused acted in exercise of right of private defence of person.

The High Court on a careful appreciation of the evidence on record has found the findings recorded by the trial court unsustainable having regard to the evidence on record. The evidence on record clearly establishes that Mangilal, when he initially objected to the erection of the wall in front of his entrance, was not an aggressor. He merely objected to the construction of a wall blocking his passage. All members of the prosecution party including those who came subsequently were unarmed. The mere fact that they objected to the erection of the wall in front of their entrance did not pose any threat to the members of the defence party. There was really no reason for the members of the defence party to adopt an aggressive posture by assaulting Mangiram and his son Ramesh in the first instance, and thereafter assaulting Jagdish, deceased and others. It is noticeable that Mangiram and his son Ramesh were initially assaulted, and when they raised an alarm Jagdish, deceased, came running to the rescue of his father and brother. Admittedly he was unarmed. His rushing to the place of occurrence was not an act of aggression and it was only natural for him to come to the rescue of his father and brother who were being assaulted by the appellant and his family members. In such a situation there was really no justification for the appellant to assault Jagdish with a 'gainti' (pick-axe) and that too on the head of Jagdish causing such a serious injury. He must have assaulted Jagdish, deceased, with all his might having regard to the fact that the skull bone was fractured and extensive damage had been caused to the skull, as noticed by the doctor who performed the post-mortem examination.

Having appreciated the entire evidence on record we are satisfied that the High Court was right in holding that the appellant and other members of his family had no apprehension of danger to their person because members of the prosecution party were all unarmed. It has come in evidence, and the High Court has also recorded a finding that at some stage brick-bats were pelted from both sides by members of the families of Bagdi Ram and Maniglal which included some ladies. The injuries on the person of three of the accused are thus explained. Since both the parties indulged in brick-batting the High Court has given the benefit thereof to the defence and has acquitted four of the accused persons against whom there was no direct evidence of having participated in the assault. The High Court has analysed the evidence on record with a view to find out which of the members of the defence party actually assaulted the members of the prosecution party. So far as the appellant is concerned the evidence is clear and categorical that it was he who assaulted the deceased on his head with 'gainti' (pick-axe). The High Court,

however, held, and in our view, rightly, that in the facts and circumstances of the case the appellant did not intend to cause the death of the deceased. There was an altercation followed by assault on PWs.1 and 4 and brick-batting from both sides. When tempers ran high, in the heat of passion, upon sudden quarrel, the appellant assaulted the deceased though unarmed, but without pre-meditation. He caused only one injury to the deceased by picking up the 'gainti' (pick-axe) lying there, and the fact that he did not repeat the blow is indicative of the fact that he did not intend to cause the death of the deceased. The High Court gave to the appellant the benefit of Exception 4 to Section 300 and found the appellant guilty of the offence under section 304 Part I IPC. We find no error with the finding recorded by the High Court. But in the facts and circumstances of the case we are of the view that the sentence of eight years is on the higher side. The ends of justice would be met if the sentence is reduced to three years rigorous imprisonment.

Accordingly we allow the appeal partly modifying the sentence awarded to the appellant to three years rigorous imprisonment under Section 304 Part I IPC but maintain the sentence of fine of Rs.5,000/- and in default of payment of fine to undergo further rigorous imprisonment for six months. This Court by its order dated 25th April, 1997 had granted bail to the appellant. The bail bonds furnished by the appellant are cancelled and he is directed to surrender to serve out the remainder of his sentence. He shall be entitled to the benefit of set off under Section 428 of the Code of Criminal Procedure.