

PETITIONER:
RAJA RAM AND ORS.PREM SINGH & ANR.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 16/01/1997

BENCH:
M.K. MUKHERJEE. S.C. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

WITH
CRIMINAL APPEAL NO. 3 OF 1993
J U D G M E N T

S.P. KURDUKAR, J.

Tola Ram son of Sidhu (since deceased) was the resident of village Lorwas. Ramesh (PW 3), Prabhu, Rattan, Daya Ram (PW 4), Bondu and Bheru are the sons of Tola Ram. A month prior to the date of incident i.e. October 24, 1984, Ramesh (PW 3), his brother Prabhu and their two friends were sitting under a mango tree at about 10.00 a.m. Kodar Mal (A-6) was passing by the said mango tree when Ramesh (PW 3) and his companions teased him (A-6) by saying 'Topiwale Darbar Ek Bidi De Do'. A-6 felt offended and alleged to have given fist and kick blows to Ramesh. On intervention of Jaggu, the matter ended there but A-6 threatened them that he will deal with Ramesh in a short while. October 24, 1984, happened to be the Diwali Day and at about 8.00 p.m., Ramesh (PW 3) was going to the house of Badri Lal Kulmi to colour the cattle. Bheru and Bondu, other two brothers were also going with him to colour the bullocks of Jagdish. When they came near the chowk, Prem Singh (A-1) and Kodar Mal (A-6) surrounded Ramesh and told him that now they would tell him how the 'Topiwala Darbar' was? A-1 and A-6 assaulted Ramesh (PW 3) with lathis as a result of which he fell down and then he was dragged by these two accused persons, catching hold of his legs. Bondu then called his brother Daya Ram who tried to rescue Ramesh when he was given lathi blows on his head by these two accused persons. In the meantime, Tola Ram Reached that place whereupon Raja Ram (A-2) gave a lalkara that Tola Ram should be finished. Narain Singh (A-3), Bheru Singh (A-4), Dhan Singh (A-5) and Kodar Mal (A-6) caught hold of Tola Ram whereupon Prem Singh (A-1) and Narain Singh (A-3) assaulted him with lathi and farsi. Tola Ram sustained bleeding injuries and fell down whereupon Ramesh (PW 3) and his other companions ran away out of fear. After a shortwhile, Kanchan Bai and her husband Ganpat alongwith Ramesh (PW 3) came to the place of occurrence, lifted Tola Ram and brought him to his house. Since it was night time, they could not secure a bullock cart to take Tola Ram to the police station at Shahjapur. First Information Report was

lodged by Ramesh (PW 3) on 25th October, 1984 at about 11.30 a.m. at Shahjapur police station. After recording the FIR (Ex.P5), Mohkam Singh, SHO (PW 8) proceeded to the place of occurrence. After holding the inquest on the dead body of Tola Ram, it was sent to the District Hospital. Shahjapur for post mortem examination. Ramesh (PW 3) and Daya Ram were also sent to the hospital for medical treatment. After completing the investigation, a charge sheet came to be submitted against the six accused persons for committing the offences punishable under Sections 148, 302/149, 302,324/149 of the Indian Penal Code.

2. It needs to be mentioned that Kodar Mal (A-6) who had also sustained the injuries on his head, lodged a complaint in the very same police station about an assault on him by Tola Ram and others (complainant party). A-6 was also sent to the hospital and was treated for injuries on his head. It is the common premise that the complaint lodged by A-6 remained unattended and no steps whatsoever were taken in that behalf by the SHO of Shahjapur police station.

3. All the six accused persons denied the allegations levelled against them and pleaded that they have been falsely implicated in the present crime due to the enmity on account of election. According to Kodar Mal (A-6), on October 24, 1984, he was assaulted by Ramesh (PW 3), Daya Ram and Tola Ram and during that assault, he had sustained serious injuries on his head. All the accused persons pleaded that they are innocent and they be acquitted.

4. The prosecution in support of its case relied upon the evidence of Ramesh (PW 3) and Daya Ram (PW 4) who claimed to be the eye witnesses to the incident in question. In addition to this evidence, prosecution also examined formal witnesses and relied upon the post mortem examination report and the injury certificates in respect of Ramesh and Daya Ram. The defence examined three witnesses in support of their defence.

5. The learned trial judge on appraisal of oral and documentary evidence on record by his judgment and order dated 17th February, 1986 convicted Prem Singh (A-1) under Sections 302 and 147 of the Indian Penal Code and sentenced him to suffer imprisonment for life and RI for two years respectively (two counts). A-2 to A-6 were also convicted under Section 302 read with Sections 149 and 147 of the Indian Penal Code and each one of them was sentenced to suffer life imprisonment and RI for two years respectively (two counts). Substantive sentences were ordered to run concurrently.

6. Aggrieved by the judgment and order of convictions and sentences passed by the trial court, Raja Ram (A-2), Narain Singh (A-3), Bheru Singh (A-4) and Dhan Singh (A-5) filed Criminal Appeal No. 80 of 1986 whereas Prem Singh (A-1) and Kodar Mal (A-6) filed Criminal Appeal No. 93 of 1986 in the High Court of Madhya Pradesh. Both these appeals were heard together and the High Court by its common judgment and order dated 28th April, 1992 dismissed both the appeals. Being aggrieved thereby, all the accused on obtaining Special Leave filed two separate criminal appeals. Criminal Appeal No. 2 of 1993 is filed by A-2 to A-5 and Criminal Appeal No. 3 of 1993 is filed by A-1 and A-6.

7. We are taken through the judgments of the courts below as well as the oral and documentary evidence on record. The High Court being the first appellate court was expected to analyse the evidence of eye witnesses and other materials on record. In the entire judgment, we do not find any such analysis of the evidence and consequently, we were required to go through the evidence on record.

8. At the outset, it may be stated that learned counsel for the appellants did not seriously dispute before us that Tola Ram died a homicidal death. Dr. Deosuman Mehta (PW 1) who held the autopsy on the dead body of Tola Ram, noticed the following injuries:-

1. Lacerated wound on tempero occipital region right side 2-1/2" x 1/2" - Fracture of temperol and occipital bone was seen.

2. Lacerated wound on occipital region 2-1/2" x 1/2". Multiple fracture of occipital bone was seen. Brain matter was coming out from the wound.

3. Contusion on right hypochondrium 1-1/2".

4. Contusion on right arm fracture of right humerus was seen.

Dr. Deosuman testified that all these injuries were ante mortem and cause of death was due to shock caused by multiple fracture of skull bone and haemorrhage.

9. In view of this medical evidence, we confirm the finding of the courts below that Tola Ram met with homicidal death.

10. It is brought to our notice during the course of hearing that Raja Ram (A-2) who was on bail died during the pendency of the appeal. Therefore, the appeal to that extent stands abated.

11. In order to prove the complicity of the appellants accused, the prosecution strongly relied upon the evidence of Ramesh (PW 3) and Daya Ram (PW 4) who were the eye witnesses. They also sustained injuries on their person during the incident in question. Ordinarily, therefore, their evidence must receive a credence. Ramesh (PW 3) lodged a First Information Report (Ex.P5) on 25th October, 1984 at 11.30 a.m. There are some discrepancies in his evidence as to whether he or his relation Ganpath who accompanied him narrated the incident to the officer on duty at the police station. When the witness was found inconsistent with his statement recorded under Section 161 of the Cr. P.C., he was declared hostile and permission to cross-examine him was sought. We have gone through his evidence very carefully and notwithstanding the fact that he is an injured witness and a son of Tola Ram, shown ignorance on various material circumstances. We, therefore, do not find it safe to place any reliance upon his evidence. The High Court had not at all considered this aspect in its judgment and erroneously accepted his evidence as truthful. It was rightly submitted on behalf of the appellants/accused that the High Court had committed an error while accepting the evidence of this witness as credible. We, therefore, leave his evidence out of consideration.

12. The next eye witness is Daya Ram (PW 4) who had received injuries while trying to rescue Ramesh from the assault by the accused persons. Daya Ram testified that when Ramesh was being assaulted by A-1 and Kodar Mal, his father Tola Ram reached there. he also reached at the place of occurrence when Ramesh was being assaulted. He further stated that A-1 hit on the head of Tola Ram with a saria. Narain Singh (A-3) gave farsi blows on the hand and leg of Tola Ram who then fell down on the ground and thereafter other accused started beating him with lathis. After seeing this assault, he, Ramesh (PW 3), Bheru and Bondu ran away. The evidence of this witness does not find any corroboration from the medical evidence as regards the blow alleged to

have been given by Narain Singh (A-3) by farsi. As indicated above, there was no injury on the person of Tola Ram, caused by any sharp weapon. All that, therefore, remains proved on record is that Prem Singh (A-1) had given a saria blow on the head of Tola Ram. This witness tried to magnify the incident by stating that after Tola Ram fell down, other accused persons assaulted him with lathis. Surprisingly enough, this part of his evidence does not find corroboration from the medical evidence. It is in these circumstances, we do not find it safe to accept his evidence to prove the complicity of A-3 to A-6 in the present crime. There is sufficient material on record to show that Kodar Mal (A-6) had sustained a injury on his head and infact he was admitted in the hospital for treatment. It also needs to be noted that Kodar Mar (A-6) had gone to the police station and lodged a complaint as regards the assault on him caused by the deceased Tola Ram and others but the police did not take any step to investigate into this complaint. Dr. Qureshi (FW 2) has testified that Kodar Mal was admitted in the hospital for his injuries on head. Kodar Mal (4-6) in his statement recorded under Section 313 Cr.P.C. stated that he was assaulted by the complainant party on October 24, 1984, at about 8.30 p.m. at chowk wherein he sustained the bleeding injuries. No explanation whatsoever is forthcoming from prosecution. After considering the oral and documentary evidence on record, we are of the opinion that the prosecution has failed to prove its case against A-3 to A-6 beyond reasonable about and, therefore, they are entitled to be acquitted of all the charges.

13. As regards Prem Singh (A-1), there is sufficient evidence on record to prove that he assaulted Tola Ram on his head with a saria and as a result thereof, he sustained two lacerated wounds on his temperol occipital region on right side and on occipital region which caused the fracture of temperol and occipital bone. Dr. Deo Suman, the medical expert has testified that the cause of death was due to shock caused by multiple fracture of skull bone and haemorrhage. In this view of the matter, Prem Singh (A-1) is individually held responsible for causing the death of Tola Ram and, therefore, his conviction under Section 302 of the Indian Penal Code has to be sustained. We accordingly do so. As regards the conviction of Prem Sigh (A-1) for rioting under Section 147 of the Indian Penal Code cannot be sustained in view of the act that the other co-convicts have been acquitted of all the charges. We accordingly set aside the conviction of the appellant Prem Singh (A-1) under Section 147 of the Indian Penal Code and acquit him of the said charge.

14. For the foregoing conclusions, Criminal Appeal No. 2 of 1993 filed by Narain Singh (A-3), Bheru Singh (A-4) and Dhan Sigh (A-5) is allowed. They are given the benefit of doubt and are acquitted. Consequently, their convictions and sentences to stand set aside. Bailbonds of A-3 and A-4 are cancelled. Dhan Singh (A-5) who is in custody be released forthwith, if not required in any other case. Appeal of Raja Ram (A-2) to stand abated.

Criminal Appeal No. 3 of 1993 is partly allowed. The order of conviction and sentence passed against Kodar Mal (A-6) is quashed and set aside and he is given the benefit of doubt and accordingly acquitted of all the charges. The conviction and sentence of Prem Singh (A-1) under section 302 of the Indian Penal Code is confirmed, but, however, his conviction and sentence under Section 147 of the Indian Penal Code is set aside and his appeal to that extent is allowed. Kodar Mal (A-6) be released forthwith, if not

required in any other case.

JUDIS