

CASE NO.:  
Appeal (crl.) 282 of 2003

PETITIONER:  
Shridhar & Anr.

RESPONDENT:  
Vs.  
State of Madhya Pradesh

DATE OF JUDGMENT: 18/08/2003

BENCH:  
Y.K.Sabharwal & Brijesh Kumar.

JUDGMENT:  
JUDGMENT

BRIJESH KUMAR, J.

This appeal is preferred against the judgment and order dated 17.5.2002 passed by the Madhya Pradesh High Court dismissing the appeal of the appellants against their conviction and sentences of imprisonment for life under Section 302/149 as well as six months rigorous imprisonment under Section 323/149 of the Indian Penal Code. In all seven persons have been convicted by the Sessions Judge out of which Shankariya and Malkhe died during the pendency of the appeal in the High Court. The remaining five accused persons who have been convicted are : Munna, Shridhar, Motilal, Sarman and Gopal out of these persons Shridhar and Motilal are appellants before us in this appeal.

The prosecution case is that on 12.3.1983 at about 7.00 p.m. deceased Hakimsingh and PW-1 Rajendrasingh on way to their field passed through the house of Shankariya who is said to have accosted Hakimsingh asking him as to why he had been visiting the wife of his brother Ramcharan. Hakimsingh protested, upon which Shankariya and Malkhe with lathis, accused Sarman assaulted with farsa. Gopal and Motilal are said to have given lathi blows on the head of Hakimsingh. PW 1 Rajendrasingh tried to intervene at which he was also assaulted by Shankariya and Gopal. The alarm of Rajendrasingh attracted PW 4 â\200\223 Mahaveersingh, PW3 Sagarsingh, PW5 Raghurajsingh and PW 6 Dildarsingh to the spot.

PW 1 â\200\223 Rajendrasingh lodged the report of the incident upon which a usual investigation was conducted by the police of P.S.Veerpur. The weapons of the assault namely, lathi and farsa etc. are also said to have been recovered during the course of investigation. On completion of the investigation the police filed the charge-sheet. Rajendrasingh and Hakimsingh were sent for medical examination. PW-8 Dr.K.K.Singh found two injuries on the person on Rajendrasingh; one of which was a lacerated wound on the forehead and the other a bruise on the left hand. On the person of Hakimsingh he noted nine injuries most of which were lacerated wounds and quite a number of them on the head. Hakimsingh however, later died on 21.3.1983 in J.A.Group of Hospitals, Gwalior. The post-mortem examination was conducted on his body and as many as ten injuries were noted on his person including stitched wounds. The injuries were on the face, head and other parts of the body.

The prosecution, to prove its case, has examined PW 1- Rajendrasingh, PW 3- Sagarsingh, PW 4 â\200\223 Mahaveersingh and PW 5 â\200\223 Raghurajsingh as eye-witnesses. PW 6 â\200\223 Dildarsingh is also one of those who is said to have rushed to the spot at the time of the incident. PW 8 â\200\223 Dr.K.K.Singh examined the injuries of Rajendrasingh and Hakimsingh and PW 7 â\200\223 Dr.V.K.Divan conducted the post-mortem examination on the dead-body of Hakimsingh. The other former witnesses and the investigating officers were also examined.

The defence of the accused persons was that they have been

falsely implicated in the case. According to them, the complainant party wanted to grab the property and land of the appellants.

It also appeared that a cross report was lodged by late Shankariya, accused at the same police station. According to them, late Shankariya, accused Munna and Sarman had received injuries.

The learned counsel for the appellants has mainly emphasized that the present appellants namely, Shridhar and Motilal were not present at the spot. He further submitted that the prosecution case as initially taken up has not been pursued as to how the incident occurred and the story of Hakimsingh having illicit relations with the wife of the brother of Shankariya has been given up at the stage of the evidence. We feel that it would not be necessary to go into that aspect of the matter in view of the fact that a fight had taken place at the time and date as indicated by the prosecution is not in dispute. A cross report has also been lodged and it was the case of the accused persons that Munna and Sarman had received injuries.

It is true at the evidence stage the prosecution story was slightly changed as to how the dispute had started. As it was stated at the end that a quarrel took place as cattle of late Shankariya had entered into their fields. But as observed above in the facts and circumstances of this case the question as to how the fight started no more remains important since admittedly the incident occurred resulting in injuries to Hakimsingh and Rajendrasingh as a result of which later on Hakimsingh died. Cause of fight therefore, is not a point to be much concentrated upon. The other relevant question which may arise for consideration is as to which of the party was aggressor and further if there was any right of private defence available to the accused persons. The Trial Court as well as the High Court has considered this aspect of the matter and has come to the conclusion that it would not be possible to hold that Hakimsingh and Rajendrasingh would be aggressors or they picked up a fight empty handed. As a matter of fact no such arguments have been advanced on behalf of the appellants before us to dislodge the findings arrived at by the two courts. The main stress on behalf of the appellants has been that they were not present at the spot. Arguments have mainly been advanced only in that direction.

It is submitted that so far the appellant Shridhar is concerned he has not been assigned any role of assault to Hakimsingh or the injured Rajendrasingh. One of the eye-witnesses has also not named him as an accused person at the spot at the time of the incident. It is submitted that it makes his presence doubtful. The submission in regard to Motilal is that he is said to have given a lathi blow on the neck of the deceased Hakimsingh. But there is no blunt weapon injury on the neck of Hakimsingh. Therefore, it is submitted that his presence is also not made out at the relevant time of the incident.

We have scrutinized the submissions made by the learned counsel for the appellants and we notice that a role has been assigned to each of the accused persons but Shridhar. It is said that Shankariya and Malkhe started assaulting Hakimsingh. The FIR also indicates the role played by different accused persons but so far accused Shridhar is concerned no role has been assigned to him for assault either to Hakimsingh or to Rajendrasingh. The other accused persons, namely, Sarman who has been stated to have given farsa blow whereas Motilal and Gopal are said to have given lathi blows to Hakimsingh. It is also to be noticed that one of the eye-witnesses has also not named Shridhar as one of the accused in his statement in the Court. This circumstance makes the presence of Shridhar doubtful more so as a member of an unlawful assembly. Otherwise there was no good reason as to why no role would have been assigned to him in the FIR or in the statements of the prosecution witnesses and one of them having not named him altogether. Learned counsel appearing for the State has, however, drawn our attention to the fact that the lathi which is said to have been recovered from Shridhar was blood stained. The submission is this circumstance connects very much with the incident. But a perusal of the report of the chemical examiner does not indicate that the weapons, namely, lathi etc. were stained with human blood. Therefore, no aid can be taken from this circumstance too. Therefore, we don't consider it prudent to infer conclusively that Shridhar was one of the members of the unlawful

assembly. A doubt has also arisen, as indicated earlier, due to the fact that one of the eye-witnesses does not name at all in his statement before the Court.

So far the appellant-Motilal is concerned his case stands on a different footing. He has been assigned a role of assault on Hakimsingh by his lathi. This has been maintained through out in the FIR as well as in the statements of all the witnesses. The learned counsel for the appellants has vehemently urged that there is no injury by any blunt weapon on the neck of the deceased Hakimsingh and the role which has been assigned to Motilal is that he had given a blow on the neck. The injury report of Hakimsingh shows that he has received a number of injuries on the front and back side of the head which have also been caused by a blunt weapon. It is difficult in a criminal case to go by exactly tallying the injuries blow by blow. Quite often injuries may tally but it is equally possible that at times a blow aimed at a particular part of the body may hit the other neighbouring part of the body and not exactly the part where the blow is aimed at. It is a case where Hakimsingh was being assaulted by lathis and farsa by a number of persons which blow of which accused may land on which part of the body cannot be stated with exactitude. Not much would turn upon it. Such a discrepancy as indicated and mentioned above cannot said to be glaring or so diverse to the manner of assault that normally it may not be possible to explain it. The evidence on the point of assault by Motilal is concerned, it is also described in the FIR. The FIR was lodged promptly within two hours of the incident. Therefore, we are unable to accept the submission made on behalf of the appellant-Motilal that his presence is also not established because of the fact that no blunt weapon injury was found on the neck of the dead-body of Hakimsingh.

In view of the discussion held above, we extend the benefit of doubt to Shridhar. Thus, appeal on his behalf is allowed and the conviction and sentence as awarded to him by the Trial Court and confirmed by the High Court are set aside. He shall be set at liberty forthwith unless wanted in connection with any other case. So far Motilal is concerned, his appeal is dismissed. He shall serve out the sentence.