

SUPREME COURT OF INDIA

Hammu

Vs.

State of M.P.

Crl.A.No.54 of 1973

(R. S. Sarkaria, P. N. Shinghal and O. Chinnappa Reddy, JJ.)

31.07.1979

JUDGEMENT

CHINNAPPA REDDY, J.:-

1. The appellants and four others were tried by the learned First Additional Sessions Judge, Ujjain, for alleged offences under Sections 147, 148, 302, 307, 323 and other cognate offences. While the other four accused persons were acquitted of all charges, the five appellants were acquitted of the major charge of murder and convicted of various lesser offences, A-1 under Sections 148, 326 read with 149 and 34, 324, 323 and 352, Indian Penal Code, A-2 under Sections 147, 326 read with 149 and 34, 324 and 323 read with 149 and 352, A-3 under Sections 147 and 149 read with 324 and 323, and A-4 under Sections 147, 324 read with 149 and 34, 323 and 323, and A-5 under Sections 147, 324 read with 149 and 34, 323 and 323, Indian Penal Code. A-1, 2, 4 and 5 were sentenced to various terms of imprisonment while A-3, a lad of 15 years of age, was released on probation of good conduct for a period of two years. The present appellants preferred an appeal to the High Court of Madhya Pradesh against their convictions while the State preferred an appeal against their acquittal on the major charge of murder. The High Court dismissed the appeal filed by the appellants but allowed the appeal filed by the State and convicted all of them under Section 302 read with Section 149 and sentenced each of them to suffer imprisonment for life. The present

appeal has been filed under the Supreme Court Enlargement of Criminal Appellate Jurisdiction Act.

2. The case of the prosecution briefly was as follows :

P. W. 1, a student aged about 20 years, was returning home from the market at about 3.30 p.m. on 21-4-1964 when he was accosted by A-1 and A-2 and questioned why he had abused A-1's younger brother. P. W. 1 replied that he had not abused A-1's brother. A-1 then gave him a few fist blows whereupon he ran away to his house. At his house he was narrating the incident to P. W. 3, the wife of his neighbour P. W. 2, when all the accused came there and surrounded his house. They abused him for some time and pelted stones. Just then P.W. 2 also returned home. He pacified the accused and sent them away. A little later P.W. 1's brothers, the deceased and P.W. 4, returned home. The incident was narrated to the deceased and P.W. 4. The three brothers decided to go to the Police Station to lodge a complaint. They came out of the house, crossed the lane and reached the road. P. W. 1 had a hockey stick with him at that time. As soon as they reached the road they heard A-5 shouting 'they are going, stop them'. On hearing the shouts the rest of the accused came there. Accused 1 and 2 had a knife and a stick each with them, while the rest of the accused were either unarmed or had sticks with them. A-1 stabbed the deceased in the abdomen with a knife while A-2 stabbed him on the hip with a knife. A-5 beat P.W. 1 on the head with a stick. P. W. 1 was dragged into the lane by A-3, 4, 5 and 7 and given a beating. A-4 beat him on the head with a stick while A-7 beat him on the left shoulder. P.W. 4 was caught by A-3 and was beaten by A-1, A-4 and A-5. P.Ws. 2 and 3 intervened. The accused then left the scene and went away. P. W. 2 led the deceased towards his house and gave him water. He found that the intestines of the deceased had come out and blood was flowing. P.W. 4 took the deceased to the hospital in a Tonga. The deceased died in the hospital in the course of the night. Meanwhile P.W. 1 rushed to the Police Station and gave a report (Exhibit P-1) at 3.45 p.m. In the report he mentioned A-1 to A-6 as the persons who surrounded and beat him. He mentioned A-1 as the person who stabbed the deceased. He did not mention A-2 as one of the persons who stabbed the deceased. After registering the First Information Report the Station House Officer, Mahakal, Ujjain proceeded with the investigation. The Medical Officer who first examined the deceased found two incised injuries, one on the left buttock and the other in the abdomen. The intestines and omentum had come out. The same Medical Officer also examined P.Ws. 1 and 3 and found injuries on their persons. The autopsy of the deceased was conducted by the Medical Officer, Civil Hospital, Ujjain, M. P. He gave his opinion that the deceased died due to shock and haemorrhage due to multiple injuries to the intestines. In his opinion the abdominal injury was sufficient in the ordinary course of nature to cause death.

3. The prosecution examined P.Ws. 1 to 4 as direct witnesses to the occurrence. P.W. 1 spoke to the details of the prosecution case. In his examination-in-chief he first stated that both A-1 and A-2 stabbed the deceased in the abdomen but immediately added that A-2 also had stabbed the deceased but he did not see whether it was in the abdomen or in the back. The part attributed by him to A-2 in the attack on the deceased, of course, was a distinct improvement on the version given by him in the First Information Report where he had mentioned A-1 only as having stabbed the deceased. In his cross-examination he categorically stated that it was incorrect to say that A-2 had stabbed the deceased. He was questioned whether he had not failed to state before the police that it was A-1 that

had stabbed the deceased. He asserted that he had stated to the Police that it was A-1 that had stabbed the deceased. He pointed out that in the statement attributed to him in the case diary, the name of A-1 was written first and then scratched out and the name of A-2 was written.

4. P.W. 2 stated in his examination-in-chief that 'A-1 and A-2 dealt blows with knives on the stomach and on the hip of the deceased'. In his cross-examination he admitted that he did not get it recorded in his statement before the police that A-1 had stabbed the deceased. He attributed it to a slip of memory. He also admitted that when the deceased was stabbed, A-1 and A-2 alone were near him while the rest of the accused were standing away at a distance of 10 to 12 steps from the deceased. He further added that the other accused had no hand in stabbing the deceased and had no intention of doing so but they had come there with A-1 and A-2.

5. P.W. 3 deposed that A-1 stabbed the deceased on the hip and A-2 also stabbed the deceased but she did not see where the blow fell. In cross-examination she stated that she was not in her 'proper senses' when she was examined by the police and so she did not tell the police that A-1 had stabbed the deceased. She was unable to say whether A-2 stabbed the deceased in the abdomen though she was positive that A-2 stabbed the deceased.

6. P.W. 4 deposed that A-1 stabbed the deceased in the abdomen while A-2 stabbed him between the back and the hip. In his cross-examination he first admitted that he had not stated before the police that A-1 had stabbed the deceased but, later, said that he had said so but he did not know why it was not recorded. He denied that he had stated before the police that A-2 had stabbed the deceased in the abdomen but his earlier statement to that effect was shown to him and later proved by the investigating officer.

7. There were thus four versions of the attack on the deceased. According to the version given in the First Information Report A-1 stabbed the deceased in the abdomen and as a result of the stab the intestines came out. No part was attributed to A-2. According to the version given by P.Ws. 2, 3 and 4 before the Police it was A-2 and not A-1 that stabbed the deceased in the abdomen. The statement of P.W. 1 before the Police also showed that it was A-2 that stabbed the deceased in the abdomen but he offered the explanation which we have already mentioned. The version of P.Ws. 1, 2 and 4 in their evidence in Court in chief examination was that A-1 stabbed the deceased in the abdomen, while A-2 also gave a stab which according to P.Ws. 2 and 4 fell on the hip. The version of P.W. 3 in Court, on the other hand, was that it was A-1 that stabbed the deceased on the hip while A-2 gave the other stab which necessarily meant that A-2 stabbed in the abdomen.

8. In this state of evidence the learned Sessions Judge was unable to find definitely whether it was A-1 or A-2 that was responsible for the fatal injury though he found that either both or one of them had stabbed the deceased. He, however, found that A-1 and A-2 throughout acted in unison indicating that they shared the common intention of causing grievous hurt though not to cause

death. The learned Sessions Judge, having regard to the various circumstances of the case, came to the conclusion that the common object of the unlawful assembly was not to cause death but only to cause grievous hurt. He, therefore, convicted the appellants in the manner mentioned at the outset. The High Court took the view that the common object of the unlawful assembly was "to inflict injuries resulting in the death of the deceased". The High Court also found that it was A-1 that caused the fatal injury. In regard to the contradiction between the evidence in Court and the statement before the Police as to who was responsible for the fatal injury the High Court accepted the explanation of P.W. 1 but failed to notice that no explanation was forthcoming in the case of the other prosecution witnesses. In the result the High Court convicted and sentenced the appellants as aforesaid.

9. Shri B. P. Singh, learned counsel for the appellants in a pointed and succinct argument questioned the findings of the High Court on the two principal issues as to who was responsible for the fatal injury and what was the common object of the unlawful assembly. He took us through the relevant portions of the evidence and the two judgments to substantiate his submissions on these two issues.

10. The incident appears to be the consequence of some exchange of abuse between a few youngmen. The evidence shows that though two of the appellants were stated to be armed with knives, the others were either unarmed or had sticks with them. The evidence also shows that the principal target was P.W. 1 and not the deceased. It is also seen from the evidence that when the deceased was alleged to be stabbed by A-1 and A-2, the other accused were at some distance. In fact P. W. 2 even stated in his evidence that the rest of the accused not only did not have any hand in the stabbing of the deceased but did not even share the intention to stab him. P.W. 2, a direct witness who saw the occurrence from start to finish and who actually intervened in the course of the assault was certainly in a position to tell the Court what he thought of the conduct of the accused. In the circumstances we do not think that the view taken by the learned Sessions Judge that the common object of the unlawful assembly could at the worst have been to cause a grievous hurt was unreasonable. Nor are we in a position to say that the view of the learned Sessions Judge on the question as to whether A-1 or A-2 was responsible for the fatal injury was unreasonable. We have already mentioned that there were at least four versions as to the stabbing of the deceased. Though P.W. 1 attempted some explanation of the contradiction between his evidence before the Court and statement to the police, no explanation at all was forthcoming from the other witnesses, regarding similar contradiction. While we are not in a position to give a definite finding as to whether A-1 or A-2 was responsible for the fatal injury, we do agree with the learned Sessions Judge that A-1 and A-2 acted in unison and shared the common intention of causing grievous hurt to the deceased. Having regard to the trivial nature of the origin of the dispute and having regard to the circumstance that P.W. 1 and not the deceased was the target of the attack, we do not think that we will be justified in holding that A-1 and A-2 shared the common intention of causing the death of the deceased. We, therefore, set aside the judgment of the High Court except to the extent indicated hereafter. A-1 and A-2 are convicted under Section 326 read with Section 34 while A-3, A-4 and A-5 are convicted under Section 326 read with Section 149, for the injuries caused to the deceased. A-1 and A-2 are also convicted under Section 148 and A-3, A-4 and A-5 under Section 147 Indian Penal Code. The convictions for the injuries caused to the prosecution witnesses are maintained. In regard to the sentences to be imposed Shri B. P. Singh brought to our notice that A-1 and A-2 have already served a term of about six years in prison and that the rest of the accused have also served a term of

a few weeks. We think that the ends of justice will be met if the sentence imposed on A-1 and A-2 for the offence under Section 326 read with Section 34 is reduced to the period already undergone by them. In regard to the other offences their sentences are maintained but the sentences will run concurrently with the sentence imposed under Section 326 read with Section 34. The sentences imposed on A-3, A-4 and A-5 for the several offences for which they have been convicted are reduced to the period of imprisonment already suffered by them. The appeal is allowed as indicated above. The bail bonds will be cancelled.

Order accordingly.