

Prabhu and others

Vs

State of M.P.

Criminal Appeal No. 489 of 1979

(A.M. Ahmadi, V. Ramaswami, M. Fathima Beevi JJ)

20.02.1991

JUDGMENT

1. Six persons were put up for trial for the murder of one Kamal Singh of village Khamkheda. The incident occurred on 11 th October, 1971 at about 6.00 p.m. when the deceased was returning to his village from his field with his cattle. While he was passing by Prabhu's field, the latter abused him and asked him not to take his cattle by the side of his field. This led to the two grappling with each other and on seeing this his four brothers and father, Kanhaiya, went to his aid. They were armed with sticks and piranas. They belaboured the deceased to death there and then.

Out of the six persons put up for trial, the trial Court acquitted Kanhaiya and Sheocharan. Prabhu and his three brothers were, however, convicted under Section 302/34, I.P.C. and were sentenced to suffer rigorous imprisonment for life. The convicted accused preferred an appeal to the High Court. The High Court on a re-appreciation of the evidence of the prosecution witnesses upheld the conviction and sentence awarded to the said four persons by the trial Court. The convicted accused have, therefore approached this Court under Article 136 of the Constitution

2. The prosecution case rests on the oral testimony of five eye-witnesses. PW 2 Nanhusingh, PW 3 - Gabru, PW 6 Jagannatti, PW 7 -- Laxminarayan and PW 8 - Nandu. PW 2 filed the First Information Report which was recorded by PW 14 Mohd. Ashraf. The trial Court accepted the evidence of the aforesaid five eye-witnesses which stood corroborated by the evidence of PW 10 - Abdul Hafiz to whom PW 2 had disclosed the names of the assailants immediately after the incident. So far as the evidence of PW 8 is concerned, the learned trial Judge observed that even if his evidence is omitted from consideration there is sufficient evidence on record to conclude that the appellants were the assailants who had caused numerous injuries to the deceased. The High Court in turn reappreciated the evidence of the eye-witnesses and summed it up in paragraph 19 of the judgment. It too came to the conclusion that the direct testimony of the eye-witnesses fully established the fact that the assault was launched by the appellants with sticks and piranas. The High Court also came to the conclusion that they beat him to death. Both the Courts have come to the conclusion that having regard to the number of injuries inflicted on the deceased it was not possible to uphold the contention that there was no intention to kill.

3. We have heard counsel on both sides and have carefully perused the judgments of the trial Court as well as the High Court. We are satisfied beyond any manner of doubt that there is ample oral evidence on the record of the case to come to the conclusion that the appellants had assaulted the deceased with sticks and piranas till he died. We also find that the evidence of the eye-witnesses is corroborated by PW 10 who had given the names of the appellants and one another in his statement recorded by the police. The contradiction was brought on record for the limited purpose of showing

that the names of two persons had not been given by the witness. Be that as it may, the substantive evidence of PW 10 clearly shows that immediately after the incident PW 2 went to him and informed him about the incident and divulged the names of the assailants also. We are, therefore, satisfied that the conclusion recorded by both the Courts below regarding the participation of the appellants in the commission of the crime is unassailable.

4. Counsel for the appellants, however, contended that the offence made out is culpable homicide not amounting to murder as the quarrel had taken place rather suddenly and the three brothers had run to the aid of the appellant, Prabhu, when they saw him and the deceased grappling in the former's field. The evidence of PW 4, Dr. C. K. Dafal, however, shows that the deceased was belaboured mercilessly. There were innumerable contusions on the entire body of the deceased from head to toe. The wrist, humerus, etc. were fractured and the whole body was full of rod-marks. There were several contused lacerated wounds on the entire face and the left eye was bleeding. The totality of the injuries caused to the victim clearly supports the finding of both the Courts below that the appellants went on belabouring the deceased till he died on the spot. In the circumstances, we do not think that we can uphold the contention that the appellants did not intend to cause the murder of the deceased.

5. In the result, we see no substance in this appeal and dismiss the same. The appellants will surrender to the bail.

Appeal dismissed.

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