

Alma and others,

Vs

State of M.P.

Criminal Appeal No. 4 of 1980

(A. M. Ahmadi, V. Ramaswami, K. Ramaswamy JJ)

26.04.1991

ORDER

1. On the morning of July 2, 1977 Hari Singh, since deceased, had gone to his field and had sown jawar. Later the three appellants and 9 others are stated to have ploughed his field in his absence. When the deceased returned to his field in the afternoon he saw the appellants and his companions ploughing his field. He was advised to report the matter to the police. At about 2 p.m. he left for the police station. While he was passing by a place known as 'Sukha Jhore' the appellants and his companions attacked him. He ran into the field of P.W. 7 Rati Ram where he was overtaken and belaboured to death. The deceased had as many as 16 injuries on his person as is evident from the evidence of P.W. 10 Dr. Hari Om Singh who performed the autopsy on the next day. It may here be mentioned that according to the medical evidence all the injuries were possible by hard and blunt weapons.

2. The First Information Report was lodged at about mid-night by P.W. 1 Gurobai, the wife of the deceased. P. W. 4 Jaswant Singh and P.W. 6 Paramjeet kaur, the son and daughter of the deceased were cited as eye-witnesses along with P.W.1. In addition, thereto P.W. 7 Rati Ram, P.W. 8 Jorsingh, P.W. 9 Tophansingh and P.W. 11 Baldeva who had their fields in the neighbourhood were also cited as eye-witnesses to the occurrence. In all 12 persons were put up for trial before the Additional Sessions Juge, Guna (M P).

3. Out of the 12 accused persons two namely Raju alias Rajinder and Jagdish were acquitted as their names did not figure in the FIR. The trial Court convicted the remaining 10 persons under Ss. 148, 149 and 302 of the Penal Code and sentenced them to life imprisonment. These 10 persons challenged their conviction and sentence in the High Court. The High Court came to the conclusion that the prosecution evidence established the participation of the present 3 appellants but not the others. The High Court, therefore, confirmed the conviction of present 3 appellants and acquitted the 7 others, against which acquittal the State has not preferred any appeal. We are, therefore, concerned with the question whether the High Court was justified in confirming the conviction of the appellants before us.

4. The learned counsel for the appellants pointed out that the trial Court based its conviction on the evidence of the wife, son and daughter of the deceased who claimed to be eye-witnesses to the occurrence. The trial Court discarded the evidence of P.Ws. 7, 8,9 and 11 on the ground that they had turned hostile and had not supported the prosecution version. It is, therefore, pointed out that since the High Court had come to the conclusion that P.Ws. 1, 4 and 6 were not eye-witnesses to the occurrence as they were not present when the incident took place, there was no dependable evidence to convict the present appellants. The High Court, however, came to the conclusion that P.Ws. 7 and

8, though treated hostile in regard to the other acquitted persons could be relied upon so far as the involvement of the present appellants is concerned. The High Court, however, did not think it wise to place reliance on the evidence of P.W. 9 and P.W. 11 as they did not specifically implicate the appellants by name and their evidence was of a general nature, in that, they had seen the deceased being assaulted by 3 or 4 persons. Counsel for the appellant, therefore, submitted that the conviction of the appellant is solely based on the testimony of two hostile witnesses P.Ws. 7 and 8. He further pointed out that the prosecution had tried to pin down these witnesses by getting their statements recorded under S. 164, Cr. P.C. Lastly, he contended that there was an effort on the part of the prosecution to implicate as many as 12 persons and when 9 of them were acquitted by the two Courts below it would be hazardous to place implicit reliance on the evidence of P.Ws. 7 and 8. In any case, submitted counsel, the appellants were entitled to benefit of doubt and deserve to be acquitted.

5. We have carefully considered the evidence of P.Ws. 7 and 8. Both of them have fields in the neighbourhood of the place of incident. It was the month of July and, therefore, the presence of agriculturists in their fields is natural. They state that when they were working in their fields they saw the 3 appellants, Raju and Jagdish belabouring the deceased with lathis and luhangis. Thus according to their evidence they had seen only 5 persons assaulting the deceased. Out of these 5 persons two, namely, Raju and Jagdish came to be acquitted by the trial Court on the ground that their names did not figure in the FIR. Counsel for the appellants, therefore, submitted that part of the prosecution story unfolded by these two witnesses was found to be unacceptable and, therefore, it would not be prudent to place- implicit reliance on their testimony in regard to the involvement of present 3 appellants. We see no merit in this submission. In the first place it must be realised that these two witnesses were not prepared to involve all the 12 persons. They stated in no uncertain terms that only 5 persons, the 3 appellant, Raju and Jagdish, had assaulted the deceased. They also were, honest enough to admit that P.Ws. 1, 4 and 6 were not at the scene of occurrence when the incident occurred and that they had come there after the assailants had run away. It would, therefore, appear that they were not prepared to toe the prosecution line and give false evidence. The acquittal of Raju and Jagdish on the technical ground that their names did not figure in the FIR can have no reflection so far as the credibility of P.Ws. 7 and 8 is concerned. We have carefully examined their evidence and we find that they are truthful witnesses who were not prepared to falsely implicate the other 7 persons which led the learned Public Prosecutor to treat them as hostile. The other 7 persons have already been acquitted by the High Court. P.W. 9 and P.W. 11 also lend corroboration when they say that they had seen 3 or 4 persons assaulting the deceased from their fields. It is a different matter they could not name them. Having carefully scrutinised the evidence of P.W. 7 and P.W. 8 we do not think that the High Court committed any error in placing reliance on their testimony. They were natural witnesses. They are independent witnesses. They have no reason to falsely implicate the appellants, at least none has been suggested. We, therefore, see no reason to interfere with the order of conviction recorded by both the Courts below. The submission that the conviction could not be sustained with the aid of S. 34, I.P.C. Of course the High Court has recorded the conviction with the aid of S. 149 as it came to the conclusion that at least 5 persons were involved.

6. Therefore, we see no merit in the appeal. In the result the appeal fails and is dismissed.

Appeal dismissed.

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