

Jairam and Others

Vs

State of M. P.

Criminal Appeal No. 134 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

09.09.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. This is an appeal under S. 379, Cr. P.C. read with S. 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. There are eight appellants. They were tried for offences punishable under Ss. 148, 302/149, 324 and 447, IPC. The trial court acquitted all of them. The State preferred an appeal and a Division Bench of the High Court reversed the order of acquittal and convicted all of them under S. 302/149, IPC and sentenced each of them to undergo imprisonment for life and under S. 324/149 sentenced to two years R.I. The sentences were directed to run concurrently. The prosecution case is as follows:

2. One Bhagwandas Soni, the deceased in the case was a resident of Village Kanchari. All the accused persons except Harisingh are also resident of the same village. The material witnesses also belong to the same village. The deceased was involved in many cases. There were disputes between them. It is alleged that Bhagwandas Soni was beaten. On 15-10-72 the day of occurrence, P.W. 1 Tulsiram was sitting in his Bada on a cot in front of his house. His brother Radheyshyam P.W. 2 was also sitting and they were making bidis. All of a sudden, A-1 came there armed with a double barrel gun and other accused persons came there armed with Katarnas, sticks etc. and accused Harisingh was armed with a sword. A-1 fired a gun shot towards P.W. 1 who cried for help. At this his elder brother Bhagwandas Soni the deceased ran out of the house. A-1 again fired a second shot on the deceased who fell down. Then father and mother of Tulsiram, P.W. 1 also came out of the house. Then all the accused persons ran away. The deceased who received injuries was alive but was not speaking. Then one Sita Ram, P.W. 25 and others got a bullock-cart and started taking away the deceased to Narayaili. The said cart was being driven by P.W. 25. Ramwatibai, P.W. 10, the mother of the deceased was also sitting in the cart. Harisingh, P.W. 2 was walking behind the cart. Then all the accused again came near the part and A-1 said that the deceased was alive and he should be finished. So saying he fired the gun and P.W. 3 received some injuries. It is then alleged that the deceased was pulled out from the bullock-cart and was thrown on the ground and he was attacked with Farsa, Katarna etc. and with a sword by Harisingh accused. P.W. 10 tried to save her son but she was also struck on the leg by katarna. Thereafter they cut the hand of Bhagwandas Soni, the deceased and took away the same. The accused thereafter ran away from the scene of occurrence. P.W. 1, Tulsiram went and gave a report to the police. P.W. 26, the Investigating Officer registered the crime and sent the dead body for post-mortem. The Doctor, who conducted the post-mortem on the body of the deceased, found as many as 24 injuries. Out of them injuries Nos. 21 to 24 were

gun-shot injuries. The rest were all incised wounds. He examined the severed hand which was produced before him in a decomposed condition after two days. He opined that it was the one that was severed from the body of the deceased. On internal examination he found that the parietal bone was fractured and many gun-shots wounds on the left chest wall and heart was injured and the abdomen was also injured because of the gun-shots injuries. On P.W. 10 the Doctor found two incised injuries on the left leg and on Vinod, P.W. 3 the Doctor found two gunshot injuries. After completion of the investigation the charge-sheet was laid.

3. The accused pleaded not guilty. A-1, however, stated that he and A-5 were going on the road in front of the house of P.W. 1 to their fields. A- 1 was armed with a gun as usual and when they were in front of the house of P.W. 1 and Bhagwandas Soni, the deceased called A-5 by name and asked him why he had not left the service of A-1 A-5 said that he would not leave his service. Thereupon the deceased attacked A-5 with katarna and P.W. 1 assaulted him with a lathi. On this A- 1 enquired as to why he was assaulting his servant A-5 and the deceased said that he should not intervene. When A-1 again intervened the deceased proceeded towards A-1 to assault him with katarna. Thereupon A- I fired into air. Even then the deceased and P.W. 1 did not heed and proceeded towards him and to save his own life he fired towards them and the deceased fell down on the road in front of his house. Then both of them went away to the field. The remaining accused denied their presence at the scene of occurrence and stated that they have been falsely implicated.

4. The trial court pointing out certain discrepancies in the evidence of the eye witnesses including P.Ws. 1, 2, 5 and 10 rejected their evidence as the same does not inspire confidence. The learned Sessions Judge tested the evidence of these eye-witnesses in the light of medical evidence and the circumstantial evidence and held that the prosecution has not properly, explained the injuries on the accused and that the place of occurrence also was in doubt inasmuch as the recovery of pellets was not effected. The learned Judge further observed that the defence version appears to be more probable in view of the fact that there were some injuries on A-5. The Division Bench of the High Court in a detailed judgment considered the entire evidence and examined the reasons given by the trial Court for acquitting the appellants and held that the said reasons are highly unsound and the High Court held that P.W. 1 is an injured witness and his presence could not be doubted and his evidence was amply corroborated by other eye-witnesses as well as the medical evidence and the circumstantial evidence.

5. We have also examined both the judgments and we are inclined to agree with the High Court that the reasons given by the trial court are highly unsound and cannot stand scrutiny.

6. P.W. 1 is no other than the brother of the deceased. He received gun-shot injuries at the hands of A-1 and it is not in dispute. He has given all the details of the occurrence. He gave the earliest report and the version given in Ex. P.1 contains all the details. There are no noticeable inconsistencies or variations. Now coming to the second part of the occurrence he deposed when that they were taking the deceased in the cart all the accused came again and A-1 came and stopped the cart and fired a shot. He also further deposed that all the accused stabbed on other parts of the body. He was cross-examined at length. He admitted in the cross-examination that when the incident took place three years back he was studying in the 8th or 9th class. Coming to the occurrence he asserted in the cross-examination that Bhagwandas Soni, the deceased, came out of the house and A- 1 shot at him as a result of which he died. He denied the defence suggestion that he himself and Bhagwandas Soni, the deceased tried to attack A- 1 after attacking A-5 and in turn A- 1 shot at the deceased. In further cross-examination P.W. 1 has stated that he has not seen incised. wounds on A-5. Some minor discrepancies have been elicited in the cross-examination which in our view would not affect

the veracity of the witness. P.W-2 is another eyewitness and has given all the details of the first part of the occurrence. He was, also a witness to the second part of the occurrence and he was following the cart carrying the deceased. P.W. 5 who is no other than the mother of the deceased. Thus there is ample corroboration to the evidence of P.W. 1 whose presence is not at all doubted at the scene of occurrence.

7. Learned counsel for the appellants submitted that A-1 had the right of private defence as pleaded by him. According to the defence, A-5 was working under A-1 and on the day of occurrence, when A- 1 and A-5 were going on the road, P.W.1 and the deceased attacked A-5 and then tried to attack A- 1. No doubt there are some Injuries on A-5. The Doctor, P.W. 7, noted one incised wound on the occipital bone and other incised wound on the left forearm and two contusions, one on the temporal bone and other on the wrist. Admittedly P.W.1 as well as the deceased received gun-shot injuries at the hands of A-1. Even according to the statement of A- 1 it was P.W.1 who assaulted A-5. Except a mere statement that both of them were proceeding against A-1, we do not find any justification for any apprehension and to shoot at two persons. As a matter of fact, P.W.1 Tulsiram also received serious gun-shot injuries and he was just lucky to survive. Therefore the plea set up by A-1 cannot be accepted and he must be held guilty for causing the death of the deceased and the offence committed by him is one of murder. Now coming to the remaining accused, except A-5 the others have denied their presence. As already mentioned the occurrence was in two parts. The first one was near the house of the deceased and the second one was on the road when the cart which was taking the injured deceased was stopped. According to all these eye-witnesses all the accused inflicted injuries on the deceased and the hand of the deceased also was cut off. The Doctor, who conducted the post-mortem, strangely found except that the gun-shot injuries all other injuries including the cutting of the hand were all post-mortem injuries @page-SC95 which could have been caused between half to one hour after the death. Thus medical evidence clearly establishes that all other injuries other than the gun-shot injuries caused by A-1 were inflicted on a dead body. Even if we accept the evidence of the eyewitnesses it may be that under a mistaken impression that the deceased was still alive, those injuries were caused. There appears to be some exaggeration on the part of P.Ws. so far as this part of the case is concerned. As a matter of fact, P.W. 1 did not even mention the amputation of the hand in Ex. P. 1. Learned counsel for the defence submitted that to make the case appear serious and gruesome these injuries were inflicted on a dead body. In view of this medical evidence it becomes difficult to hold that the accused can be convicted for offence of murder though they inflicted injuries only on a dead person. In the view of the matter it cannot be said that the ingredients of S. 300 are attracted. So far as the first part of the occurrence is concerned, even according to the prosecution case, none of these accused did anything by way of word or deed in which case it cannot be said that they were members of the unlawful assembly with the common object of committing the murder and shared the same along with A-1.

8. Now coming to the second part of the occurrence the evidence is clear and convincing that these accused were present and stopped the cart and some of them inflicted injuries on P.W. 10 and A-1 again fired and P.W. 3 received some pellets injuries. No doubt P.W. 3 did not say that he received injuries because of the firing of the gun by A-1 but there is evidence to show that he did fire even during the second part of the occurrence. That apart there was a serious injury on P.W. 10 the mother of the deceased. The Doctor, who examined her, no doubt, described it as simple but the fact remains that it was caused by the sharp-edged weapon. This only shows that common object of the unlawful assembly was to cause at least hurt or grievous hurt because of the incised injuries caused to P.W. 10 and also that A-1 who was also a member of the unlawful assembly, fired his gun, about which the other members must be attributed the knowledge. In the result A- 1 is convicted under S. 302, I.P.C. and sentenced to imprisonment for life. The conviction of the other accused under S.

302/ 149, I.P.C. and sentence of imprisonment for life thereunder are set aside. Instead they are convicted under S. 326/149, I.P.C. and sentenced to 7 years R.I. The other convictions and sentences are confirmed. The appeal is dismissed as against A-1 and partly allowed as against other accused. Order accordingly.

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