

SUPREME COURT OF INDIA

Tika Ram

Vs.

State of Madhya Pradesh

Crl.A.No.701 of 2001

(N. Santosh Hegde and B.P. Singh, JJ.)

14. 01.2003

ORDER

N. Santosh Hegde, J.

1. The appellant herein along with six other accused persons was charged for the offences punishable under Section 302 read with Section 149 and Sections 395, 396 and 397 read with Section 149 IPC by the Sessions Judge, Dewas, Madhya Pradesh in ST No. 28 of 1993.
2. Out of the six accused persons, two of them, namely, Parmalsingh and Jitendra were absconding, hence, their case was separated and the trial proceeded against the four accused persons only. The learned Sessions Judge came to the conclusion that the prosecution has not established the case against A-4, hence, acquitted him of the charges levelled against him. So far as A-1, Samamsingh and A-2, Shivrajsingh are concerned, the learned Sessions Judge came to the conclusion that the prosecution has established the charges levelled against them and taking into consideration the gravity of the offence convicted them for the offence under Section 302 and sentenced them to death and referred the matter to the High Court for confirmation of the sentence. So far as the appellant before us is concerned, the learned Sessions Judge had found him guilty of the offence punishable under Section 302 but taking into consideration his role in the crime sentenced him only to life imprisonment. The said convicted accused filed an appeal before the High Court of M.P. which came to be dismissed. The petition for confirmation of the death sentence referred by the learned Sessions Judge to the High Court also came to be dismissed and the High Court reduced the sentence of death to one of life imprisonment and the appeal filed against the present appellant herein for enhancement of sentence also came to be dismissed confirming the life imprisonment awarded to this accused.
3. A-1 and A-2 who have been convicted by the courts below whose sentences have now been reduced to life imprisonment by the High Court have not filed any appeal while A-3 alone has challenged his conviction in the above appeal.

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4. The prosecution case stated briefly for the purpose of disposal of this appeal that one Madansingh who was a lawyer by profession was residing with his family in Village Sumarakhedi. His youngest son, Mahendrasingh was engaged to be married to Sangita, daughter of A-1 Samamsingh. The said engagement was broken by the family of Sangita because the family of Mahendrasingh belonged to a lower class. However, Mahendrasingh and Sangita eloped and got married in a temple. After their marriage, on the intervention of the elders and well-wishers of both the families the family of Sangita accepted the marriage and even held a function to celebrate the said marriage. After the said celebration, Sangita went with Mahendrasingh to live in her father-in-law's house at Sumarakhedi. The prosecution states that as was the practice in the community to which the families belonged to, A-1 with other elder members of the family went to the house of Madansingh to ask him to send Sangita to their house. It is stated that Sangita apprehended some danger to her life, hence, did not agree to go to the house of her father, consequently Madansingh and other members of the family refused to send Sangita with A-1 and his family members to their house. Being enraged and insulted by this refusal, it is stated that the accused persons shot dead 7 members of the family of Madansingh and injured some others including Sangita. The incident in question was reported to Gulab Singh, the brother of Madansingh who resides in the neighbouring house, by his son. On hearing the news, the said Gulab Singh came to the house of Madansingh and saw some of the accused persons coming down from the first floor of the house armed with firearms. The said Gulab Singh then lodged a police complaint based on which the investigation took place and the accused persons were charge-sheeted and convicted, as stated above. In this appeal on behalf of the appellant, Tika Ram, it is contended that he is in no way connected with the alleged motive of A-1, because he was only an employee of A-1. It is also argued that his name was not mentioned in the FIR lodged by Gulab Singh. It is further argued that though a number of witnesses have been examined by the prosecution, it is only PW 48 who has spoken about the involvement of this accused in the incident, hence, it is not safe to rely on this single witness to convict the appellant. The learned counsel appearing for the appellant also contended that even according to the prosecution the only overt act that is attributed to this accused is that he held one of the victims while the said victim was shot by others, hence, he could not be attributed with the common object of the other accused by invoking Section 149.

4. We have carefully perused the material on record produced by the prosecution as against this appellant and also considered the argument addressed in this appeal. There is no principle in law that evidence of a single witness cannot be relied upon to base a conviction if that evidence is reliable and acceptable. In the instant case the evidence of PW 48 who is the eyewitness to the incident in question establishes the role of this appellant in the incident in question. Both the courts below have considered the evidence of PW 48 and have chosen to place reliance on the same and, in our opinion, rightly so. The argument that the name of this witness (sic accused) is not mentioned in the FIR would not by itself be sufficient to reject the prosecution case as against this accused. It is the case of the prosecution that Gulab Singh, the brother of the deceased having come to know of the incident came to the place of occurrence and having seen only a part of the incident informed the police, therefore, in that process if he failed to mention the name of this appellant, we do not think that circumstance

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alone would not (sic) be sufficient to discard the evidence of PW 48 who has specifically identified this witness (sic accused) and has narrated the role played by this witness (sic accused). Therefore, the complaint made by the learned counsel as to the non-mentioning of the appellant's name in the FIR should be rejected. We also find no force in the argument addressed on behalf of the

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appellant that his role in the incident in question would not attract a punishment under Section 302 read with Section 149. It is clear from the evidence of PW 48 that this appellant had sat on the chest of one of the victims when he was shot by other accused persons, thereby disabling the victim from either defending himself or from running away. This, in our opinion, is sufficient to attract punishment under Section 302 read with Section 149 and the courts below have rightly come to the conclusion that this appellant is also guilty of the offence punishable under Section 302 read with Section 149.

5. For the reasons stated, this appeal fails and the same is dismissed. Criminal Appeals Nos. 702-04 of 2001

6. These appeals are filed by the State seeking enhancement of the sentences awarded against the respondents herein. Learned counsel for the State contended that the incident is so gruesome involving the death of 7 innocent persons and hence for good reasons the learned Sessions Judge awarded death sentence in regard to Respondents 1 and 2. He also contended that even the 3rd respondent ought to have been awarded the same sentence. Learned counsel submitted that the High Court has erred in reducing the sentence of death to life imprisonment without properly appreciating the nature of the act committed by the respondents herein.

7. We have perused the judgment of the two courts below and we are in agreement with the finding of the High Court that the incident in question cannot be termed as rarest of the rare case requiring the maximum punishment of death. We are also in agreement with the High Court that there was an element of provocation by the family of the deceased leading to the incident in question. Therefore, we find no ground in appeals filed by the State seeking enhancement of the sentence. For the said reasons these appeals fail and the same are dismissed.