

# SUPREME COURT OF INDIA

Mal Singh

Vs.

State of M.P.

Crl.A.No.946 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

28.04.2009

## JUDGMENT

### **Dr.Arijit Pasayat, J.**

1. Delay condoned. Leave granted. Challenge in this appeal is to the judgment of the Division Bench of Madhya Pradesh High Court at Indore affirming the conviction of the appellant recorded by the learned Additional Sessions Judge, Kukshi ( District Dhar) in Sessions Trial No. 90/2000. One of the co- accused person Nanki Bai was acquitted. The accused were convicted for offences punishable under Sec.302 read with Sec.34 and Sec.307 read with Sec.34 of the *Indian Penal Code, 1860* (in short 'the IPC'). They were also convicted in terms of Sec.323 read with Sec.34 IPC. The latter two convictions were recorded as the accused persons inflicted injuries to Thavlibai PW.3 and Thakur Singh PW.2. Prosecution version in a nutshell is as follows: On 9/12/1999 at 7.40 p.m., FIR (Ex.p/9) was lodged by Thakur Singh at 9.35 a.m.

2. While the mother of the complainant Thakur Singh and his father Jogadia were sitting on their 'otla' outside the house, the accused persons approached towards the deceased and the witnesses stating that their mother Thavlibai was engaged in witchcraft, started beating the deceased Jogadia and his wife Thavlibai. When witnesses tried to save them, they were also extended the same treatment, with the result Thavlibai, after sustaining injuries over her head and mouth, became unconscious and Jogadia succumbed to the injuries. After so assaulting the deceased and his wife, the accused persons fled away. As the complainant Thakur Singh was injured, he was sent for medical examination under Requisition Ex.P/1, and Thavlibai under Ex.p/2. After examination of their injuries, Dr. S.L. Mujalda (PW.1) issued injury reports Exs.P/3 and P/4. The investigating officer proceeded to the spot and took samples of blood stained and plain earth as also the blood stains lying on the ground. Inquest was held and inquest memo Ex.P/16 was prepared. The body was forwarded to the hospital for autopsy and Dr. S.L. Mujalda (PW.1), after autopsy, issued post-mortem report Ex.P/6.

3. According to the testimony of the said Doctor and his report Ex.P/6, the following external injuries were found on the body of the deceased. 1Contusion wound 6 cm. x 3 cm at root of

nose. Fracture of Nasal bone; 2Laceration wound 4 cm x 3 cm on front of head at left side of the mid line; 3Laceration wound 8 cm x 3 cm at the top of the head (skull) fracture of skull bone at the parietal area, fracture simple; 4Laceration wound 4 cm x 5 cm at right side of the head at front area; 5Laceration wound 6 cm x 4 cm at occipital area of head. The Dr. S.L.Mujalda (PW 1) opined that death occurred on account of haemorrhagic shock due to head injury. The accused were arrested and the seized articles were sent for examination to the Forensic Science Laboratory. After completion of the investigation charge-sheet was filed. The accused persons pleaded innocence. The trial Court hold them guilty. Three appellants before the High Court i.e. Mal Singh, Lal Singh and Juansingh were convicted by the trial Court while Nanki Bai was acquitted.

4. The trial Court referred to the evidences of PWs. 2,3,4,5 and 6 who claimed to be eye witnesses. The trial Court placed reliance on these witnesses and recorded conviction. Before the High Court the main question raised related to the applicability of Sec.34 IPC. The trial Court found that Sec.34 had clear application. The impugned judgment of the trial Court was in question before the High Court. In case of the present appellant the conviction under Section 302 read with Sec.34 was altered and the appellant was convicted in terms of Sec.302. The other two appellants Lal Singh and Juansingh were acquitted of the charge under Secs. 323/34 IPC. The accused Juansingh was convicted in terms of Sec.325 in place of Sec.307 read with Sec.34 IPC. This alteration was done primarily on analysis of the evidence produced qua the accused and co-accused Lal Singh and Juansingh. In support of the appeal learned counsel for the appellant submitted that the role was attributed to three accused persons and not to the appellant alone. When the co-accused were acquitted the appellant should not have been convicted.

5. Alternatively it is pleaded that the case is not covered under Sec.302 IPC. The evidence of one of the eye witnesses i.e. PW.3 who also suffered injuries was to effect that the appellant hit the deceased with stones which hit him on the skull. It was also pointed out in evidence that Mal Singh also threw 10-12 stones in all at the deceased and Juansingh also hit the deceased with stones. The report of the Doctor (PW.2) shows that there was fracture of skull bone. There was also fracture of the nasal bone. There was lacerated wound on the right side of the head at front area and lacerated wound at occipital area of the head. These injuries clearly show that the murder was clearly intended. That being so, the conclusion of the High Court does not warrant interference. Hence, the appeal is dismissed. We record our appreciation to the assistance rendered by Ms. Indira Sawhney who appeared as amicus curiae.