

# **SUPREME COURT OF INDIA**

Bahadur Singh

Vs.

State of Madhya Pradesh

Crl.A.Nos.1095-1097 of 2011

(Jagdish Singh Khehar and C.Nagappan JJ.)

03.06.2014

## **JUDGMENT**

### **C. NAGAPPAN, J.**

1. These three appeals are preferred against the common judgment dated 16.7.2009 passed by the High Court of Madhya Pradesh Bench at Indore in Criminal Appeal Nos. 1288 of 2006, 1362 of 2006 and 1408 of 2006.

2. The appellants herein are five in number and were charged along with ten other accused on the allegation that they armed with deadly weapons indulged in rioting and in furtherance of their common object committed the murder of Babulal and caused simple injury to Bhanwar in Sessions case no.193 of 2005 on the file of Additional Sessions Judge, Ratlam, Madhya Pradesh. The Trial Court acquitted two of the accused persons and convicted the remaining thirteen accused for the offence under Section 302 read with Section 149 IPC and sentenced each of them to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- each in default to suffer three months rigorous imprisonment each. It also convicted them for offence under Section 148 IPC and sentenced each of them to undergo rigorous imprisonment for two years. Challenging the conviction and sentence all the convicted accused preferred six appeals. The High Court confirmed the conviction and sentence of five accused by dismissing their appeals and acquitted the remaining eight accused by allowing their appeals. Aggrieved by the confirmation of their conviction and sentence

the said five accused have preferred the present appeals.

3. The prosecution case in brief is stated thus: PW7 Shanti Lal, deceased Babu Lal and Shiv Narayan are brothers and on 7.8.2005 at 6.30 p.m. they had gone to work in their field situated at a distance from their village Dudhia. In the evening at 6.30 p.m. they along with their servant PW1 Bhanwar while returning to their house Babu Lal was riding his motorcycle and PW7 Shanti Lal, Shiv Narayan and Bhanwar were following him on another motorcycle. On the way motorcycle of Babu Lal went out of order and he was trying to restart it, at that moment all the accused armed with dharia, axe, sword, balam and lathies surrounded Babu Lal and the accused persons Aziz son of Wali Mohammad and Aziz son of Jan Mohammad, Bahadur Singh, Madan and Dinesh attacked Babu Lal by dharia. PW7 Shanti Lal and Shiv Narayan tried to save Babu Lal but the accused threatened to attack them if they come near. Servant PW1 Bhanwar proceeded towards Babu Lal and he was assaulted by lathi by accused Chand Mohammad and he ran away. All the accused fled towards village Ranayara. PW7 Shanti Lal and Shiv Narayan went near Babu Lal and found him dead. They returned to the village and PW7 Shanti Lal went to Police Station Aalot and lodged complaint at 7.20 p.m. PW17 Town Inspector P.K. Sharma registered the case and Exh.P28 is the First Information Report. He took up the investigation and went to occurrence place and prepared Exh.29 Spot Map. He conducted inquest and prepared Exh.P18 Inquest Report. He sent the body for post-mortem. PW16 Dr. Prakash conducted autopsy on the body at Civil Hospital, Aalot at 8.30 a.m. on 8.8.2005 and found 32 incised wounds and 3 abrasions on the body and expressed opinion that the death has occurred due to shock and excessive external haemorrhage due to injury to neck, vessels, air passage and vital parts like brain, 12-18 hours prior to post-mortem. Exh.P38 is the Post Mortem Report issued by him. PW16 Dr. Prakash also examined PW1 Bhanwar and Exh.P46 is the MLC Report issued by him.

4. PW17 Inspector Sharma arrested the accused and on their disclosure statements he recovered the weapons used in the occurrence. He also seized the blood strained earth from the occurrence place, the clothes of the deceased and other articles. He sent the weapons with Exh.P43 query to Doctor for opinion and obtained the same. He sent the seized articles to Forensic Science Laboratory with Exh.P44 requisition. He completed the investigation and filed the final report against the accused.

5. The prosecution examined PWs 1 to 17 and marked documents to prove the

charges. The defence examined DW1 on their side. The Trial Court acquitted two of the accused and convicted the remaining thirteen accused and sentenced them as stated earlier. The High Court confirmed the conviction and sentence imposed on five accused by dismissing their appeals and acquitted the remaining eight accused by allowing their appeals. Challenging their conviction and sentence the five accused have preferred these appeals.

6. The learned senior counsel appearing for the appellants contended that PW7 Shanti Lal could not have witnessed the occurrence and his presence in the occurrence place is doubtful and his conduct in not going to rescue of the deceased is not natural and no reliance can be placed on his testimony and the First Information Report has been brought into existence by putting ante dated and the presence of some of the accused has been doubted by the High Court and that would affect this substratum of the prosecution case and the conviction and the sentence imposed on the appellants are liable to be set aside. Per contra, the learned counsel appearing for the respondent-State contended that the deceased and PW7 Shanti Lal went to their agricultural field on the occurrence day and in the evening while returning to their house on motorcycles the appellants armed with deadly weapons surrounded Babu Lal and attacked him and due to their threat PW7 Shanti Lal could not go near and his presence in the occurrence place cannot be doubted and the complaint was also lodged by him at police station within one hour after the occurrence and all the appellants had taken part in the brutal attack made on the deceased and the conviction and the sentence imposed on them is sustainable.

7. The prosecution case is that the appellants in furtherance of their common object committed the murder of Babu Lal by attacking him with dharia, axe and sword. The prosecution examined PW7 Shanti Lal as having witnessed the occurrence. PW7 Shanti Lal is the younger brother of Babu Lal and he has testified that on 7.8.2005 he, his brother Babu Lal and Shiv Narayan along with their servant Bhanwar were coming back from the agricultural field at about 6.30 p.m. and his brother Babu Lal was proceeding alone on his motorcycle and he, Shiv Narayan and servant Bhanwar were coming behind him on another motorcycle and the motorcycle of Babu Lal got stopped all of a sudden and he was trying to get it restarted and at that moment all the appellants holding axe, dharia and sword emerged from the adjoining field and attacked Babu Lal indiscriminately with their weapons and they also threatened him and others not to come forward lest they would also be killed and servant Bhanwar

moved forward and he was assaulted and he ran away and after the attack the appellants fled towards Ranayara village. It is the further testimony of PW7 Shanti Lal that they went near and found Babu Lal lying dead in pool of blood and they went to their house in the village and then he went to police station, Aalot on motorcycle and lodged complaint at 7.20 p.m. and PW17 Inspector P.K. Sharma registered the case in Exh.P28 the First Information Report.

8. It is not in dispute that Babu Lal and his brothers were jointly cultivating the land situated at a distance from their village Dudhia. The contention of the learned senior counsel appearing for the appellants is that PW7 Shanti Lal was residing in Aalot and was not in the company of the deceased on the occurrence day and he could not have witnessed the occurrence. In the cross-examination PW7 Shanti Lal has specifically stated that he has a Kirana shop and a house at Aalot and he used to come to Aalot in morning and return to village in the evening and whenever there was work in the agricultural field, he used to stay in the village. On the date of occurrence all the three brothers along with their servant Bhanwar went to their field for spraying pesticides and while they were returning home in the evening, the occurrence had taken place. The testimony of PW7 Shanti Lal that he stayed back in the village on the occurrence day on account of agricultural work is natural and cannot be doubted.

9. Babu Lal was intercepted and attacked by the appellants armed with deadly weapons and on seeing the same, PW7 Shanti Lal and Shiv Narayan shouted at them and they were threatened not to come near lest they would also be killed and on account of fear they did not attempt to rescue Babu Lal at the time of occurrence. In fact, they also witnessed the attack made by the assailants on servant Bhanwar and in such circumstances, the conduct of PW7 Shanti Lal in not going near his brother Babu Lal during the occurrence due to fear is quite natural and the contention raised by the appellants cannot be accepted. The other contention that non examination of Shiv Narayan affects the prosecution case is also devoid of merit. PW7 Shanti Lal withstood the lengthy cross-examination and nothing could be elicited to discredit his testimony. We are satisfied that the testimony of PW7 Shanti Lal is natural, trustworthy and credible and has rightly been relied on by the Courts below.

10. The occurrence took place at 6.30p.m. on 7.8.2005 and PW7 Shanti Lal lodged the complaint at 7.20 p.m. in Police Station, Aalot. According to Investigation Officer PW17 P.K. Sharma the copy of F.I.R. could not be sent in the night and it was

despatched next day to the Court. The High Court held that in the totality of the circumstances of the case there was no inordinate delay in sending the F.I.R. to the Court. We concur with the view of the High Court.

11. Babu Lal died of homicidal violence is evident from the medical evidence adduced by the prosecution. The autopsy was conducted by PW16 Dr. Prakash and according to him there were 32 incised wounds and 3 abrasions on the body and the death has occurred due to shock and excessive external haemorrhage due to injury to neck, vessels, air passage and vital parts like brain. Exh.P38 is the Post Mortem Report issued by him. It is clear that Babu Lal suffered a violent death on account of multiple injuries.

12. The appellants on their arrest gave information which led to the recovery of weapons used by them during the occurrence. PW2 Rameshwar, PW5 Pare Singh and PW6 Jagdish have testified that the appellants in their presence gave individual information and took and produced the weapons from the hidden place and they came to be recovered by the investigation officer. The said weapons were shown to PW16 Dr. Prakash and he has also expressed opinion that the injuries found on the dead body could have been caused by those weapons.

13. There was also motive for the occurrence. There was a bomb explosion on the day of Holika Dahan which led to the arrest of the accused, who is also one of the accused in the present case and they were having grudge that at the instance of Babu Lal they were implicated in the said case. Besides the above there was enmity on account of election to Shikshak Palak Sangh and meeting of Nirman Samiti in the village which culminated in the present occurrence.

14. The High Court after careful and close scrutiny of the evidence entertained doubt with regard to the participation of eight of the accused on account of absence of overt act attributable to them and gave them benefit of doubt and acquitted them. The ocular testimony of PW7 Shanti Lal about the attack made by the appellants herein on Babu Lal is corroborated by the medical evidence and the recovery of weapons pursuant to the information furnished by them. In our considered view the conviction and sentence imposed on the appellants does not call for any interference.

15. There are no merits in the appeals and the same are dismissed.