

SUPREME COURT OF INDIA

Panna Lal

Vs.

State of

Crl.A.No.1453 of 2009

(Dipak Misra and Uday Umesh Lalit JJ.)

23.03.2015

JUDGMENT

UDAY UMESH LALIT, J.

1. This appeal arises out of judgment and order dated 10.05.2007 passed by the High Court of Madhya Pradesh, Bench at Indore, in Criminal Appeal No.1256 of 1997, affirming the judgment and order dated 11.12.1997 of the learned Additional District Judge, Sardarpur, District Dhar in Sessions Case No.46 of 1996.

2. The present Appellant Nos.1 to 4 and one juvenile were alleged to have committed offences under Sections 147, 148, 302/149 and 323/149 of the Indian Penal Code by causing murder of one Ramkunwarbai and for having caused hurt to Girdhari (PW-1), Satyanarayan (PW-2) and Hariram (PW-5). At the stage of trial the case of juvenile was separated and directed to be dealt with by the Juvenile Court. The present appellants were convicted for the offences with which they were charged and sentenced to suffer (i) one year simple imprisonment under Section 147 IPC (ii) two years simple imprisonment under Section 148 IPC (iii) life imprisonment for the offence punishable under Section 302/149 IPC and to pay fine of Rs.1,000/-, in default whereof to suffer simple imprisonment of one year and (iv) simple imprisonment of six months under Section 323/149 IPC. The judgment and order of conviction and sentence passed by the learned Additional District Judge having been affirmed by the judgment under appeal, the same is under challenge in this appeal by special leave filed by the present appellants.

3. During the pendency of this appeal, in view of the certificate regarding his age, Appellant No.4, was ordered to be released on bail vide order dated 23.02.2011. It

may be noted that according to the certificate said Appellant No.4 was also a juvenile as on the date of offence.

4. According to the prosecution, Panna Lal, Anandi Lal and Uday Singh i.e. appellants Nos.1, 2 and 3 herein are sons of Ranchhod. Said Ranchhod had one more son, namely Shankar, whose whereabouts were not known. The deceased Ramkunwarbai was wife of said Shankar. It is alleged that there was a dispute between the parties regarding shares in the land of Ranchhod. It is alleged that on 10.10.1995 at about 2030 hrs. said Ramkunwarbai along with Girdhari (PW-1), Satyanarayan (PW-2), Bhura (PW-3) and other persons went to collect the crop of soyabain which was already harvested. When this party was about 300 feet away from the disputed field, the accused party came armed with lathis, sword and other weapons of offence and obstructed them. It is further alleged that a dispute arose and accused party struck blows on the deceased Ramkunwarbai, who died instantaneously. Girdhari, Satyanarayan and Hariram also suffered injuries in the transaction/ altercation. Girdhari rushed to the Police Station Amjhera, District Dhar at about 2330 hrs and lodged FIR (Ext.P/1). Dr. R.L. Patidar (PW-8) examined the injured persons. The post-mortem on the body of Ramkunwarbai was performed by Dr. Ashutosh Sharma (PW-15), who found the following ante-mortem injuries:

"Injury No.1 : Cut wound on the right side of frontal brain above the eyebrow which was from the middle of frontal brain to the right ear, size - 15 x 4 cm x bone deep on which blood had clotted and between both sides of wound there was gap.

Injury No.2: Cut wound on the right side of skull from parietal bone to temporal bone. Size - 15 x 4 cm x bone deep, from this wound brain was coming out.

Injury No.3: Right upper jaw was fully broken and the entire mouth was filled with blood.

Injury No.4: On the right side of the back from shoulder to groin (kulha) many blue marks.

Injury No.5: Lacerated wound - on the right ear, size 3X x cm the sides of which were irregular, on which there was clot of blood.

Injury No.6: Lacerated wound - on the left 'pinna' size 2 x 2 cm cm on which there was clot of blood.

Injury No.7: Bone was broken on the right side of the skull."

According to the doctor the cause of death was shock due to extensive loss of blood because of injuries on vital parts of the body.

5. After investigation was complete, the charge-sheet was filed and on committal of the case charges were framed by the Trial Court to which the accused pleaded not guilty and claimed that they were falsely prosecuted. According to them the land belonged to them. Appellant No.4 had pleaded that on the date of incident he was not on the spot. The remaining accused claimed that the disputed land was in their possession, that they had sown soyabin and had cut the same which was lying in the field, that the complainant party wanted to take away the soyabin forcibly, that the complainant party was armed with deadly weapons and that when the accused party asked them not to take away the crop, the complainant party assaulted the accused party.

6. Relying on the testimony of Girdhari (PW-1), Satyanarayan (PW-2), Bhura (PW-3), Luna (PW-4) and Hariram (PW-5) the learned trial court found that the prosecution had successfully proved charges against the persons accused and passed the order of conviction and sentence as mentioned hereinabove. The appellants being aggrieved, preferred criminal appeal No.1256 of 1997 before the High Court.

7. It was submitted on behalf of the appellants that in the civil litigation at an interim stage the land in dispute was found to be in possession of the appellants accused; that the complainant party had no right to enter on the land; that the appellants-accused were justified in exercising the right of private defence; that the complainant party had opened the assault in which the accused had also sustained the injuries; and that the prosecution had failed to explain the injuries on the person of the accused-appellants. After considering the entirety of the matter, the High Court found that the complainant party was about 300 feet away from the disputed land and as such no right of private defence arose in favour of the accused. It was further found that the accused had not shown that there was any injury on the person of the accused. Considering the evidence on record and believing the testimony of eye-witnesses, some of whom were injured, the High Court affirmed the view taken by the trial court and dismissed the appeal.

8. The certificate, on the basis of which Appellant No.4 was ordered to be released on bail, not having been seriously disputed, we declare him to be a juvenile on the date the offence was committed and deem it proper to separate his case to be dealt with by the Juvenile Court in appropriate proceedings. The order of sentence as against him is ineffective as a result of Section 7A of the Juvenile Justice (Care for Protection of Children) Act, 2000. As regards the other accused, we do not find any material and reason to differ from the view taken by the courts below. It was submitted by Mr. Shashindra Tripathi, learned counsel appearing for the accused-appellants that they were within their rights in exercising the right of private defence. Ms. Bansuri Swaraj, learned counsel appearing for the respondent-State, on the other hand, emphasized the fact that the incident in question had occurred 300 feet away from the disputed land and also stressed on the nature of injuries suffered by the deceased Ramkunwarbai. We find force in her submissions. The injuries show that the skull was broken as a result of injuries from a sharp cutting weapon and the bone matter had come out through the gaping wound. Considering the matter in its entire perspective we find that the present appellants Nos.1, 2 and 3 are guilty of the offences with which they are charged.

9. We thus confirm the order of conviction and sentence passed by the courts below as against Appellant Nos.1, 2 and 3 and dismiss their appeal.