

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 887 OF 2009

TILAK RAJ ETC. ETC. ... Appellants

VERSUS

STATE OF HIMACHAL PRADESH ... Respondent

WITH

CRIMINAL APPEAL NO. 2257 OF 2009

AND

CRIMINAL APPEAL NOS. \_\_\_\_\_ OF 2019  
(Arising out of SLP (Cr1) Nos.6199 of 2011 and 1328 of 2012)

O R D E R

Leave granted in the special leave petitions.

The appellants stand convicted under Section 304 Part II read with Section 149 of the Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for a period of five years along with fine and a default stipulation.

The deceased is stated to have been assaulted by the appellants around 12:00 p.m. in the intervening night of 23.6.1997 / 24.6.1997, with kicks and fists.

Learned counsel for the appellants submitted that the appellant Tilak Raj has not been named in the first information

report. The appellants are related to each other and have all been falsely implicated on account of a dispute between the deceased and acquitted accused Janki Dass regarding the forcible ouster by the deceased of the Gorkha Chowkidar engaged by the latter, but was residing in the orchard of the deceased. Appellants Prem Singh and Pradeep Singh have been falsely implicated on the basis of a wrong parentage which makes their identification doubtful. PW-1, in her deposition has merely suspected the appellants. PW-4, a minor witness, admits having been tutored by PW-1. The post-mortem was conducted approximately 16 hours after the occurrence. The doctor PW-11 has opined that death had occurred approximately 24 to 36 hours ago, which suggests that the assault may have taken place in another manner at an earlier point of time, by some others. The doctor had further opined that the assault may have been made by a stick. But according to the prosecution assault was made by kicks and fists only. The Gorkha-Chowkidar has not been examined and neither has his statement been recorded under Section 161 of the Code of Criminal Procedure. Despite the fact that there was a village fair in the vicinity, statement of no independent witness has been recorded. The appellants deserve acquittal on benefit of doubt.

Learned counsel for the State submitted that PW-1 is the wife of the deceased and PW-4 is his son. The appellants were known to the witnesses since earlier. There was light available when the assault took place. It was a moonlight night, making identification

possible when the deceased was dragged to the orchard. The fact that the doctor PW-11 may have opined that the assault was possible with a stick is hardly relevant in the nature of the allegations made and the manner of assault.

We have considered the respective submissions and have been taken through the evidence along with the orders of the trial Court and the High Court. In a dispute arising out of accommodation provided in the premises of the deceased to the Gorkha employed by Janki Dass whose orchard was in the vicinity, the latter and his son Bhagat Singh, who has also been acquitted, are stated to have come and threatened the deceased earlier in the day. At around midnight, the appellants are stated to have come and called out the deceased. PW-1 switched on the light and when the deceased stepped on to the verandah, he was caught hold of by appellant Hira Singh and dragged into the courtyard when all the appellants are stated to have assaulted and dragged the deceased near the orchard and left him where he was expired.

The first information report has been lodged at 7.30 a.m. on 24.6.1997 by PW-2, the brother of the deceased. The FIR is not based on an eye-witness account by PW-2 but on hearsay, as informed by PW-1. An FIR is not required to contain a detailed graphic narration of every minute detail of the incident that takes place. It is only an intimation given to the police that a crime has taken place. Thereafter, the investigation follows. Therefore, not much can be made out of the fact that the appellant Tilak Raj has not

been mentioned in the first information report. Additionally, we find that there is reference to an unknown person in the F.I.R and who had initially called out to the deceased when he stepped out and was assaulted. In the circumstances the naming of the appellant Tilak Raj by PW-1 subsequently is considered sufficient explanation in the facts of the case.

PW-1 and PW-4, in their statement, have specifically named the appellants as the assailants. Both the witnesses are the wife and son of the deceased, the latter being about thirteen years of age at the time of occurrence. They would be the persons who would be most concerned to ensure that the real culprits are booked rather than to depose falsely implicating others even while the real assailants who had made the assault in their presence, are allowed to go free. We find no reason to doubt the evidence of these two witnesses merely because they happen to be related to the deceased. The fact that the village fair may have been going on in the vicinity is hardly relevant considering the fact that the assault has taken place virtually at the doorstep of the house of the deceased at the dead of night when no independent witness may have been available. The fact that the appellants were known to the witnesses since earlier, being residents of the same locality, the availability of light at the verandah when the deceased opened the door of his house on the calling of the appellants, followed by the availability of moonlight when the deceased was dragged to the

orchard, leaves us convinced that the identification of the appellants as the assailants is not in doubt.

The deposition of the witnesses has been recorded nearly three years after the incident. It is not possible for the human mind to retain a photographic image or memory of every minute detail that may have taken place on the date of occurrence, at this late point of time. Minor inconsistencies and contradictions, therefore, are considered irrelevant.

The fact that the doctor may have opined that death may have taken place 24 to 36 hours earlier and which is not in consonance with the duration of time when the post-mortem was done after the assault, is a matter of approximate opinion and nothing much turns on the same so as to discredit the prosecution case from its base entirely. Similarly, the fact that the statement of the Chowkidar may not have been recorded by the Police and neither was he examined as a prosecution witness during the trial is hardly considered relevant once we have arrived at the conclusion that PW-1 and PW-4 are reliable witnesses and there was no occasion for them to falsely implicate the appellants.

The assault is stated to have been made by kicks and fists. It caused multiple injuries including laceration and hemorrhage of the right kidney which was sufficient to cause death as opined by the doctor PW-11. Apart from the same multiple injuries were found on the person of the deceased. The voluntary opinion of the doctor

that the injury may have been caused by a stick and upon which the learned counsel for the appellant laid much emphasis to urge that the real genesis of the occurrence appears to have been concealed by the prosecution does not appeal to us. An assault made by kicks and fists would be akin to that made by a hard blunt substance. Therefore the injuries found on the person of the deceased could well have been caused by a lathi or by fists and kicks. In absence of any plea taken before the Trial Court or the High Court with regard to the wrong parentage of appellants Prem Singh and Pradeep Singh to suggest false implication, we are not inclined to consider the same.

We, therefore, find no reason to interfere. The appeals are dismissed.

A statement was made that appellant Hira Singh has served out the full period of sentence. If that be correct, he is not required to surrender. The remaining appellants are directed to surrender forthwith to serve out the remaining period of their sentence.

....., J.  
(Navin Sinha)

....., J.  
(Indira Banerjee)

New Delhi;  
August 7, 2019.

ITEM NO.105

COURT NO.12

SECTION II-C

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 887/2009

TILAK RAJ

Appellant(s)

VERSUS

THE STATE OF HIMACHAL PRADESH

Respondent(s)

WITH

CrI.A. No. 2257/2009 (II-C)

SLP(CrI) No. 6199/2011 (II-C)

(FOR GRANT OF BAIL ON IA 16382/2011 IA No. 16382/2011 - GRANT OF BAIL)

SLP(CrI) No. 1328/2012 (II-C)

( FOR CONDONATION OF DELAY IN FILING ON IA 1051/2012 FOR Exemption from filing certified copy ON IA 5311/2012 FOR EXEMPTION FROM FILING O.T. ON IA 5312/2012 FOR GRANT OF BAIL ON IA 5313/2012 IA No. 1051/2012 - CONDONATION OF DELAY IN FILING IA No. 5311/2012 - Exemption from filing certified copy IA No. 5312/2012 - EXEMPTION FROM FILING O.T. IA No. 5313/2012 - GRANT OF BAIL)

Date : 07-08-2019 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE NAVIN SINHA  
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Appellant(s) Mr. V. N. Raghupathy, AOR  
Mr. Manendra Pal Gupta, Adv.

For Respondent(s) Mr. Abhinav Mukerji, AAG  
Ms. Purnima Krishna, Adv.  
Mr. Bihu Sharma, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

leave granted in the special leave petitions.

The appeals are dismissed in terms of the signed order.

(GULSHAN KUMAR ARORA)  
COURT MASTER

(SAROJ KUMARI GAUR)  
COURT MASTER

(Signed order is placed on the file)