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Cr1.A.No. 496 OF 2003

ITEM No.102

Court No. 5

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL Nos.496 OF 2003

BANWARI LAL Appellant (s)

VERSUS

STATE OF M.P. AND OTHERS Respondent (s)

WITH CRL Appeal No.497/2003

(with officed report)

Date : 16/12/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU

HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. Jitender Sarin, Adv.

Ms. SS Ray, Adv. for

Ms. Rakhi Ray, Adv.

For Respondent (s)Mr. Siddharth Dave, Adv. for

Ms. Vibha Datta Makhija, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties.

The appeals are dismissed in terms of the signed order.

(D.L.Chugh) (Kanwal Singh)

Court Master Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINALL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.496 OF 2003

BANSWARI LALAppellant(s)

versus

WITH

CRIMINAL APPEAL NO.497 OF 2003

O R D E R

The appellant, namely, Banwari Lal, in Criminal Appeal No.496 of 2003 was originally arrayed as Accused No.9 and the appellants, namely, Laxmi Narayan and Hari, in Criminal Appeal No.497 of 2003 were arrayed as Accused Nos.2 and 3 before the First Additional Sessions Judge, Guna, M.P. In ST No.133 of 1987. It is necessary to point out at this stage itself that since the High Court, while dealing with the case of the accused, appears to have proceeded to refer to the accused by the order in which they have been arrayed in the appeal but yet though referred to them in that order as accused ultimately no real mistake or confusion could be said to have resulted on account of the fact that simultaneously the names have been also indicated at all relevant places in the judgment of the High Court.

The occurrence which led to the prosecution resulting in the case before the learned Additional Sessions Judge was the one which took place at about 9.10 PM on 3.8.1987. One Raghuvir (PW 3) was said to be returning home from the market and on the way he met Nanoo Lal (the deceased) who was found coming from the residence side and going to the house of one Durga Lal. PW 3 was said to have had conversation with the deceased and thereafter went home and when he was about to sit to take dinner he heard the screams of Nanoo Lal crying for help stating that the people are killing him, which according to PW 3 made him to come out of the house and see the occurrence in which the accused armed with lathi, luhangi and farsi were found indiscriminately beating the deceased Nanoo Lal. A-2 was said to have been holding farsi in his hand, while A-3 was said to be having an axe, and A-9 (Amrit Lal) was having a luhangi, Babloo (A-11) was said to be holding an iron rod, A-5 (Puran) had fanta danda and the rest of the accused were having said to be lathis in their hand. In the assault, the deceased suffered serious injuries though PW 3 arranged to take him to the police station but and before reaching police station he died and that is how PW 3 who took the injured Nanoo Lal to the police station lodged the FIR. The case was registered under Section 302, 147 and 148 of the Indian Penal Code and after undergoing the formalities of the investigation, charge was laid against the 11 accused under Section 148, 302 read with Section 149 and Section 323 read with Section 149 IPC. The accused denied the charges by pleading not guilty and claimed in their defence that due to enmity, false charges have been framed against them. It appears that A-2 (Laxmi Narayan) had also sustained injuries on his forehead and thigh and he even asserted a claim based on self-defence. After the conclusion of trial and examination of accused under Section 313 of the Code of Criminal Procedure and consideration of the materials on record the learned First Additional Sessions Judge came to the conclusion that A-2 (Laxmi Narayan), A-3 (Hari), A-11 (Babloo), A-9 (Banwari Lal) and A-5 (Puran) had formed themselves into an unlawful assembly in furtherance of their common object of the unlawful assembly and played active role in committing the murder of Nanoo Lal and convicted them for offences punishable under Section 302 read with Section 149 IPC. So far as Chatrey (A-1), Komal (A-4), Shyam Lal (A-6), Ramu (A-7), Amar Lal (A-8) and Raju (A-10) are concerned, the learned trial judge was of the view that they cannot be punished under Section 302 read with Section 149 IPC but as grievous injuries were inflicted on the person of the deceased Nanoo Lal with sharp edged weapon (farsi) these accused were found guilty under Section 326 IPC read with Section 149 IPC; so far as Amar Lal (A-8) is concerned he was in addition held liable under section 323 read with Section 149 IPC for beating Phool Chand. For the conviction so made life imprisonment was imposed for offences under Section 302 read with Section 149 IPC to each one of them convicted therefor and so far as other accused convicted under Section 326 read with Section 149 IPC were concerned they were sentenced to suffer 5 years rigorous imprisonment and A-8 (Amar Lal) was sentenced to a further imprisonment of three months rigorous imprisonment for the conviction under Section 323 IPC.

Aggrieved, the accused pursued the matter on appeal before the High Court of Madhya Pradesh at Gwalior in Criminal Appeal No.277 of 1989. It is seen from the judgment of the High Court that Chatrey who was A-1 before the Sessions Court and Komal (A-4) died during the pendency of the appeal before the High Court. The learned Judges of the Division Bench of the High Court undertook an independent exercise of appreciation of the materials, on record, in the light of the contentions raised for the appellants. The High Court was satisfied that Laxmi Narayan (A-2), Hari (A-3) and Banwari Lal (A-9) were rightly convicted for their involvement under Section 302 IPC, though the court was of the view that instead of Section 149 IPC Section 34 IPC alone applied to the case and thereby sustained their conviction as one under Section 302 IPC read with Section 34 IPC. The evidence of the prosecution witnesses was held sufficient to substantiate the charges against the accused beyond reasonable doubt and further fully stood proved by the recovery of the respective weapons, said to have been made from them. So far

as the other accused are concerned, sustaining the conviction of A-8 under Section 323 IPC alone their conviction under Section 326 read with Section 149 IPC has been set aside and they were acquitted. The State has not come in appeal challenging the same and it in such circumstances the three accused are before this Court in these appeals.

Learned counsel appearing for the appellants vehemently contended that in the absence of proof of the actual genesis of the occurrence or any strong motive for the accused to commit the offence, findings pertaining to the accused who stood acquitted under Section 148 and Section 326 read with Section 149 IPC the accused-appellants equally enure to the benefit of the appellants and they are also entitled to be given the same treatment and deserve acquittal. It was also urged for the appellants that different yard-sticks and standards were applied in appreciating the materials on record with reference to the appellants on the one side and the remaining accused on the other and this resulted in grave injustice. It was also contended that in the medical evidence as to the injuries found as well as the weapons said to have been held by the appellants could not substantiate that the injuries resulting in the death could have been caused by the appellants and the very evidence of the prosecution witnesses stood rendered doubtful with reference to the occurrence as well as the participation of the appellants and therefore they deserve an acquittal.

Per contra, Mr. Siddharth Dave, learned counsel appearing for the respondent-State with equal vehemence not only tried to justify the conviction of the appellants but invited our attention to portions of the judgment of the learned trial judge as also that of the High Court to justify the conviction dehors certain general observations made in the judgment of the High Court as to the genesis or previous enmity or motive.

We have carefully considered the submissions of the learned counsel appearing on either side. In our view, the learned trial judge has specifically noticed about the strained relationship for quite some time between the parties and as a matter of fact the very stand for the defence was that they have been implicated on account of enmity. The injuries sustained by A-2 who projected a defence based on private defence though personal to him, in our view, lend sufficient and proper credence to the prosecution version as to the occurrence. On going through the evidence of the prosecution witnesses on which strong reliance was placed by the courts below, we are satisfied that the findings recorded by the learned trial judge and affirmed by the High Court as to the active role played by the appellants are well merited and sufficiently stood substantiated by overwhelming evidence on record. The grievance sought to be made that different standards and yard-stick has been applied in appreciating the evidence between the set of accused who are the appellants and the remaining accused needs mention to be rejected only and has no merit whatsoever to be countenanced in our hands. Consequently, the appeals are found to be bereft of merits and shall stand dismissed.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)

New Delhi,
December 16, 2003