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Cr1.A.No. 655 OF 2004

ITEM NO.103

COURT NO.9

SECTION IIA

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. 655 OF 2004

BABU LAL & ORS.

Appellant (s)

VERSUS

STATE OF M.P.

Respondent(s)

(With appln(s) for exemption from filing O.T. and office report )

Date: 17/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN KUMAR

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)Dr. T.N. Singh, Sr.Adv.

Mr. Lakhan Singh Chauhan,Adv.

Dr. Kailash Chand,Adv.

For Respondent(s)Ms. Vibha Datta Makhija,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

(Neena Verma) (Vijay Aggarwal)

Court Master

Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.655 OF 2004

Babu Lal and Ors.

...Appellants

Versus

State of Madhya Pradesh

...Respondent

O R D E R

25 persons were put on trial for offences under Sections 148, 302/149 and 323/149 IPC. Out of these 25 persons, 4 were acquitted by the Trial Court. This leaves 21 persons who were convicted by the Trial Court. Out of the 21 convicted accused, only 19 preferred appeals to the High Court of Madhya Pradesh, Bench at Gwalior. The High Court dismissed the appeal and maintained the judgment of conviction passed by the Trial Court. Out of the 21 convicted accused, 19 filed special leave petitions before this Court seeking leave to appeal against the judgment o

f the High Court. They also prayed for exemption from surrendering. However, this Court rejected the application for exemption from surrendering. Out of the 19 applicants, only 8 surrendered. In view of this, the special leave petition filed on behalf of 11 accused who did not surrender, was dismissed. Thus, leave to appeal was granted only to the 8 remaining accused who had surrendered. It is the appeal of these 8 accused which is for hearing before us. We have heard learned counsel for the parties at length.

The prosecution case, in short is that on 06.11.1986 at about 4.00 PM, PW-2 Ramgopal, PW-4 Raghuvver and one Ram Dayal were working in the fields. At that time, all the accused armed with pharsi, gandasi, lathi and ballam reached the agricultural fields and exhorted "catch them and don't allow them to run". On hearing this exhortation, PW-4 Raghuvver, PW-2 Ramgopal and Ramdayal ran from the spot. They were chased by the accused. On the way, Ramprasad who was grazing cattle in the field and who is a brother of the deceased was beaten by the accused. After beating Ramprasad, the accused ran after PW-2 Ramgopal, PW-4 Raghuvver and Ramdayal. While running, they met deceased Mathura Lal on the field of Koka Buddha. Mathura Lal was the father of PW-4 Raghuvver and brother of PW-2 Ramgopal. Mathura Lal was also Patel of the village.

PW-2 Ramgopal told Mathura Lal that Khumansingh along with 25-26 persons was coming to kill them. At the same time, the accused reached the spot and started beating Mathura Lal which resulted ultimately in death of Mathura Lal.

Before the Trial Court, prosecution examined several witnesses, out of whom PW-2 Ramgopal, PW-4 Raghuvver and PW-1 Narayani Bai are the eye-witnesses. Defence also examined DW-1 Santara Bai who is also said to be an eye-witness. Besides this, the prosecution examined the I.O. as well as the medical evidence. On the basis of the evidence on record, the Trial Court came to the finding of conviction qua 21 accused persons out of the 25 who had been put to trial. Four persons who were acquitted are: A-6, A-8, A-21 and A-22. The reasons for acquittal of these four accused are: as far as A-21 and A-22 are concerned, their names were not in the FIR and are said to have been added therein subsequently. Therefore, the Trial Court gave them benefit of doubt. So far as A-6 and A-8 are concerned, they were given benefit of doubt for the reason that in evidence, they were ascribed the role of having used ballams to hit the deceased whereas as per the medical evidence, there were no injuries attributable to ballams on the body of the deceased.

The High Court re-appraised the evidence on the basis of arguments advanced by learned counsel for the parties before it and ultimately confirmed the conviction recorded by the Trial Court.

The learned counsel for the appellants has mainly raised the following points in support of his plea that the appellants ought to be acquitted:

A) Eye-witnesses, PW-2 Ramgopal and PW-4 Raghuvver ought not to be believed. Their statements do not inspire confidence.

B) Non-examination of Ramprasad, brother of the deceased who was also an injured witness.

C) The courts below failed to consider the statements of DW-1 Santara Bai.

A. So far as the contention of the learned counsel for the appellant regarding rejection of the evidence of the eye-witnesses, i.e. PW-2 Ramgopal and PW-4 Raghuvver is concerned, we are unable to accept the same. We have been taken through the statements of both the witnesses. We find them coherent, consistent and a cogent piece of evidence. The presence of these two witnesses on the scene of occurrence cannot be doubted. They are also injured witnesses. The third eye-witness i.e. PW-1, who is admittedly an independent witness has also mentioned their presence. The said two witnesses have gone on to give details of names of all the appellants and the role played by them individually in the incident. The version of the incident given by the two tallies. Therefore, there is no reason to doubt the veracity of statements of these two witnesses. In addition to the statement of these two eye-witnesses, we have the statement of another eye-witness, namely, Narayani Bai, PW-1, who is a totally independent witness. She has also given details of the incident which occurred before her eyes. She has even gone to the extent of deposing that the accused persons were present in court and she could identify them. She may not remember names of all of them, yet she recognized all of them. Therefore, the evidence of these three witnesses cannot be doubted in any manner. Another important aspect is that the medical evidence led by the prosecution in the present case fully supports the evidence of these eye-witnesses. In our view, the statements of these eye-witnesses completely seal the fate of the case of the appellants.

B. Non-examination of Ramprasad:

It appears that Ramprasad was also beaten in the course of the incident and since he had been beaten, we are informed, a case under Section 307 IPC was also registered against the accused. On account of his failure to appear, the said case failed. Non-appearance of Ramprasad, therefore, cannot be given such an importance as may lead to throwing doubts about the prosecution case which, in our view, otherwise stands proved. Secondly, Ramprasad does not appear to be an eye-witness. Raghuvver and Ramgopal, the two eye-witnesses have said that when Ramprasad was being beaten, they went towards Mathura Lal who was coming from the side of Jhagar village. Therefore, it may be that Ramprasad did not proceed to the spot where actually Mathura Lal was beaten by the accused persons and he did not witness that part of the incident. Thus, non-examination of Ramprasad cannot be said to be fatal to the case of the prosecution.

C.Non-consideration of evidence of Santara Bai, DW-1:

Santara Bai was produced as a defence witness. As a matter of fact, the Trial Court has noticed the evidence of Santara Bai. Her statement is in line with the defence case which was being put to the prosecution witnesses. Therefore, her statement does not inspire confidence particularly in view of the testimony of other eye-witnesses to which reference has already been made.

The result is that we find no merit in this appeal. The same is, accordingly, dismissed.

.....J.

( ARUN KUMAR )

.....J.

( P.P. NAOLEKAR )

New Delhi,  
February 17, 2005.