

ON

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 215 OF 2005

STATE OF RAJASTHAN

...APPELLANT

VERSUS

MOHARU & ANR.

...RESPONDENTS

ORDER

The respondents Moharu @ Moharsingh and Jaila are original accused nos. 3 and 1 respectively. For convenience, we shall refer to them by their names. They were tried along with three other accused by the Sessions Court, Alwar, Rajasthan for offences punishable under Sections 147, 323, Section 323 read with Section 149, Section 302 read with Section 149 of the IPC read with Section 3(2)(v) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act and Section 3(1)(x) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

Shortly stated the case of the prosecution was that on 16/1/1996 deceased Jaisingh was working in his field. Accused Jaila was also grazing his cattle near the river. Buffaloes of Jaila entered the field of deceased Jaisingh. He drove them out and asked accused Jaila not to allow his buffaloes to enter his field. Accused Jaila abused deceased Jaisingh and insulted him by telling him that he belonged to a lower caste. At that time, accused Sheolia, Ramesaria, Moharu and one Mamchand came there. They were armed with lathis and farsies. They abused deceased Jaisingh and started beating him. He fell down. His wife Smt. Chameli tried to intervene in the fight. Accused Ramesaria gave her a lathi blow. Thereafter, the accused ran away. Smt. Chameli went to Police Station, Bansur along with mother of the deceased Smt. Nathodevi. The police came to the scene of offence. Deceased Jaisingh was serious. He was referred to the hospital where he died at about 4.00 a.m. On 17/1/1996 at 8.00 a.m., Lalchand, brother of deceased Jaisingh lodged the FIR at P.S., Bansur. On the basis of the FIR investigation started and the accused came to be charged as aforesaid.

In support of its case, the prosecution examined inter alia the complainant PW-1 Lalchand, PW-4 Smt. Chameli, wife of deceased Jaisingh and PW-6 Smt. Nathodevi, the mother of the deceased. The accused denied the prosecution story. They stated that they have been falsely implicated in the case due to previous enmity. The trial court convicted accused Moharu for the offence under Section 302 of the Indian Penal Code and sentenced him to life imprisonment. The Trial Court convicted accused Jaila under Section 3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. He was sentenced to undergo imprisonment for six months and a fine of Rs. 200/-. Being aggrieved by their conviction and sentence, accused Moharu and Jaila preferred an appeal to the Rajasthan High Court. By the impugned order, the Rajasthan High Court acquitted them and hence, this appeal by the State.

We have heard learned counsel for the State of Rajasthan. Counsel strenuously submitted that the High Court ought not to have placed reliance on diary entries Exhibit D-6 and Exhibit D-7 because PW-4 Smt. Chameli and PW-6 Smt. Nathodevi stated that they had given the names of the accused to the police, but the names were not noted down. Counsel submitted that PW-4 Smt. Chameli and PW-6 Smt. Nathodevi are rustic women who were in a state of shock after the brutal attack on deceased Jaisingh and, therefore, it appears that they were unable to communicate the entire incident to the

police properly. They appeared to be traumatized and, therefore, assuming they had not given the names of assailants to the police that should not be taken against them. Counsel submitted that the delay in filing the FIR should not be taken against the prosecution. Counsel submitted that it is not easy for villagers to reach a police station. Moreover, relatives of deceased Jaisingh were under a shock. Counsel submitted that in the facts of this case, delay in lodging the FIR does not have any adverse impact on the prosecution case. In this connection, she relied on Dalip Singh & Ors. v. State of Punjab (AIR 1953 SC 364). So far as injuries are concerned, she submitted that though it is the case of the witnesses that farsi was used, the injuries seemed to have been caused by the blunt side of the weapon. Therefore, there is no inconsistency between the medical evidence and the eye witness account. Counsel contended that the impugned order, therefore, be set aside.

On the other hand, Mr. Brajesh Kumar Singh, learned advocate appearing for respondent no. 1 and Mr. Amar Deep Sharma, learned advocate who was requested to assist the Court as amicus curiae for respondent no. 2 submitted that the impugned judgment is well reasoned. The view taken by the High Court is a reasonably possible view and does not merit any interference from this Court. Counsel submitted that there is 20 hours delay in lodging the FIR which makes the prosecution story doubtful. The conduct of PW-4 Smt. Chameli and PW-6 Smt. Nathodevi in not mentioning the names of the respondents as assailants of deceased Jaisingh is significant. It casts a shadow of doubt on the prosecution story. Counsel submitted that in the circumstances the appeal deserves to be dismissed.

The prosecution case is that PW-4 Smt. Chameli and PW-6 Smt. Nathodevi witnessed the incident. PW-4 Smt. Chameli is the wife and PW-6 Smt. Nathodevi is the mother of deceased Jaisingh. If they had really witnessed the incident, it is inconceivable that they would not name the assailants to the police. However, traumatized they may be, they would never allow the real assailants escape the clutches of law. The diary entries Ex. D-6 and D-7 clearly state that they were repeatedly asked to name the assailants but they did not name them. It is true that in the court they have stated to the contrary but their evidence that the police did not note the names, does not appear to be truthful. Besides 20 hours delay in lodging the FIR makes the prosecution case shaky. Reliance placed by learned counsel for the State on Dalip Singh is misplaced. In that case a FIR was lodged within 6 = hours of the incident. This Court observed that the complainant had to walk part of the distance and rest she covered in a lorry and, therefore, there was no delay as such. In this case, as we have already noted, delay is of 20 hours. Pertinently, PW-1 Lalchand who lodged the FIR and who claims to be an eyewitness has been disbelieved by the trial court. The delay in lodging FIR, therefore, makes the prosecution story suspect. Dalip Singh has no application to this case. PW-2 Ramsingh another eye-witness has also been disbelieved. Moreover, PW-8 Dr. Birbal Yadav who did post-mortem of the deceased stated that the injuries suffered by deceased Jaisingh could be caused by a blunt weapon. Significantly there was no incised or cut wound on deceased Jaisingh. Therefore, the prosecution story that farsi was used by the accused becomes doubtful. PW-4 Smt. Chameli claims that she was injured in the incident. According to PW-8 Dr. Birbal there was a contusion measuring 2cm x 1cm on her right fist and it was a simple injury. Her claim that she was given lathi blows by the accused is, therefore, rightly disbelieved by the trial court. It must also be remembered that on the same evidence three co-accused have been acquitted. In the facts of this case their acquittal assumes importance. We are, therefore, of the opinion that the High Court's view is a reasonably possible view. The impugned order calls for no interference.

The appeal is dismissed.

.....J.  
(RANJANA PRAKASH DESAI)

NEW DELHI  
FEBRUARY 6, 2014

ITEM NO.102                      COURT NO.12                      SECTION II

S U P R E M E   C O U R T   O F   I N D I A  
RECORD OF PROCEEDINGS  
CRIMINAL APPEAL NO(s). 215 OF 2005

STATE OF RAJASTHAN                      Appellant (s)

VERSUS

MOHAURE & ANR.                      Respondent(s)

Date: 06/02/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI  
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s)

Ms. Ruchi Kohli, Adv.  
Ms. Nidhi Jaswal, Adv.  
Mr. Milind Kumar, Adv.

For Respondent(s)

Mr. Brajesh Kumar Singh, Adv.  
Mr. Ashok K. Mahajan, Adv.

For Respondent no.2 Mr. Amar Deep Sharma, Adv.(AC)

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

The Appeal is dismissed in terms of the signed order.

| (Vishal Anand)  
| Court Master

| | (Indu Pokhriyal)  
| | Court Master

(Signed Order is placed on the file)