

VD
ITEM NO.101
(PH)

COURT NO.9

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 NO(s). 2420-2421 OF 2010

OM PRAKASH & ETC. ETC.

Appellant (s)

VERSUS

STATE OF M.P.

Respondent(s)

(With appln(s) for bail, permission to file additional documents, exemption from filing O.T. and office report)

WITH APPEAL(CRL) NO. 1045 of 2011

(With appln(s) for bail)

Date: 27/03/2014 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Appellant(s) Mr. Sushil Kumar Jain, Sr. Adv.
Mr. Puneet Jain, Adv.
Ms. Chhaya Kirti, Adv.
Mr. Vimal Kumar Jain, Adv.
for Ms. Pratibha Jain, Adv.

For Respondent(s) Mr. Naveen Sharma, Adv.
Ms. Swati B. Sharma, Adv.
for Mr. Mishra Saurabh, Adv.

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

The appeals are dismissed in terms of the signed order.

| (Usha Bhardwaj) | | (Indu Satija) |
|A.R.-cum-P.S. | |Assistant Registrar |

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2420-2421 OF 2010

|Om Prakash & etc. etc.

|.. Appellants |

Versus

|State of M.P.

|.. Respondent |

WITH CRIMINAL APPEAL NO.1045 OF 2011

O R D E R

Both the appeals arise out of the common judgment and therefore they have been heard together and are being disposed of by this order.

Altogether 51 persons were held guilty under Section 148, 435, 436, 302, 323 and 149 of Indian Penal Code. They preferred appeal and the High Court by a common judgment affirmed their conviction, aforesaid, including for offence under Section 302/149 of the Indian Penal Code.

According to the prosecution on 23rd January, 1997 at about 8 P.M. a large number of accused came to the house of Ramgopal (deceased)

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and pelted stones. It is further alleged that the motorcycle and tractor were set ablaze by those accused. So far as these appellants are concerned they are alleged to have entered into the house, dragged Ramgopal and caused injuries to him with sword, katarna trident and axe etc. Ramgopal died of the injuries sustained by him. The Trial Court on appraisal of the evidence came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt. For coming to the aforesaid conclusion the Trial Court has relied on the evidence of PW-1 Badam Singh, PW-6 Bharat Singh, PW-8 Mohan Singh, PW-9 Komal Bai and PW-17 Toran Singh, who had also sustained, injuries in the occurrence. On appeal the High Court reappraised the evidence and acquitted the other accused persons for offence under Section 302/149 of the Indian Penal Code on its finding that those accused persons did not share the common object with these appellants. So far as these appellants are concerned, the High Court held that they were the members of a smaller

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unlawful assembly and their object was to kill Ramgopal and in furtherance of their common object they had inflicted injuries on the person of the deceased.

Mr.Sushil Kumar Jain, learned senior counsel appearing on behalf of the appellants submits that the evidence of the eye-witnesses are not fit to be accepted. He points out that their evidence during trial are not in conformity with what they had stated

during the course of investigation. Further, their statements were recorded after a long delay. He further points out that the statements of many of the witnesses were recorded during the investigation more than once but those have been withheld. Accordingly he submits that the evidence of eye-witnesses are fit to be rejected. We do not find any substance in the submission of the learned senior counsel for the appellants. There is a large number of witnesses who have supported the case of the

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prosecution. Many of them i.e. PW-1 Badam Singh, PW-6 Bharat Singh, PW-8 Mohan Singh, PW-9 Komal Bai and PW-17 Toran Singh are injured witnesses. The very fact that they had sustained injuries in the occurrence lend support to their claim that they are eye-witnesses to the occurrence. Minor omission here and there will not render their evidence unworthy of reliance.

Mr. Jain, then submits that the evidence of the eye-witnesses are not corroborated by the evidence of doctor who had conducted postmortem examination. We do not find any substance in this submission of Mr. Jain also. PW-5 Dr. S.S. Kushwaha had conducted the postmortem examination on the dead body of Ramgopal. He had found a large number of injuries on his person including the fracture of ribs. In his evidence he has stated that the weapon i.e. Farsa, sword and axe were not sharp and blunt. When we appreciate his evidence in the light of what he had stated in regard to the weapon used in the crime, it cannot

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be said that the eye-witnesses account are not supported by the evidence of the doctor.

Mr. Jain lastly submits that other accused persons have been acquitted of the charge under Section 302/149 of the Indian Penal Code and these appellants also deserve to be given the same benefit. This aspect of the matter has been considered by the High Court and it has found that the other members of the unlawful assembly who have been acquitted under Section 302/149 of Indian Penal Code they did not share the common object, as that of these appellants to cause the death of Ramgopal. For the said purpose the High Court has referred to the evidence of the eye-witnesses, including the injured witnesses who have stated that these appellants entered into the house, dragged Ramgopal and thereafter they assaulted him. No such allegation is attributed to those, who have been acquitted of charge under Section 302/149 of Indian Penal Code. In the face of it, we are of the opinion that the High Court

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had rightly made distinction between the case of the appellants and other accused.

We are of the opinion that the Trial Court on proper appreciation of evidence had held the appellants guilty which has rightly been affirmed by the High Court.

Hence, we do not find any merit in these appeals and they are dismissed accordingly.

.....J.
[CHANDRAMAULI KR.PRASAD]

.....J.
[PINAKI CHANDRA GHOSE]

NEW DELHI,
MARCH 27, 2014.