

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).1961/2010

UDAY SINGH

APPELLANT (S)

VERSUS

STATE OF MADHYA PRADESH

RESPONDENT (S)

WITH

Crl.A. No. 1959/2010, Crl.A. No. 1960/2010 & Crl.A. No. 2422/2010

O R D E R

All these appeals are being disposed of by this common judgment as they arise out of the judgment of conviction of the appellants imposed by the learned Additional Sessions Judge, Sehore, in Sessions Trial No. 80/92 and affirmed by the High Court.

It is worthwhile to mention that as many as ten accused persons namely, Makhan(A1), Uday Singh (A2), Mulla (A3), Balram (A4), Vijay Singh (A5), Magan Lal (A6), Ganpat Singh (A7), Ramesh (A8), Narpat Singh @ Takhat Singh (A9) and Kamal Singh (A10) were proceeded against for the offences punishable under Sections 302 read with Sections 149 and 148 of the Indian Penal Code, 1860 ('IPC') and were sentenced to undergo life imprisonment and rigorous imprisonment for a period of 1 year respectively.

In brief, the case of the prosecution is that on 07.10.1991 at 17.00 hours, Batu (PW-1) lodged First Information Report in Police

Station, Ichhawar to the effect that in village Sevania, he along with his three brothers namely, Devi Singh (hereinafter referred to as 'the deceased'), Sitaram and Ram Singh were illegally possessing a piece of Government land for the last several years, which they were using for growing crops and grazing their own cattle. Earlier, the villagers of the Sevania village had also made a complaint to the said effect to the Tehsildar, who had ordered them to vacate the land but they continued to be in possession. It is further alleged that on the day of incident, viz. 07.10.1991, at about 03.00 p.m., the accused persons went to the plot to graze their cattle but the deceased refrained them from doing so by saying that they could graze their cattle only after the standing crop of Jwar (maize) would be harvested. As per the case of the prosecution, the accused persons did not accept the say of the deceased and started beating him. It is the further case of the prosecution that A1 held the deceased and A4 hit him with the lathi and the other accused persons also encircled and started hitting the deceased with lathi, lahangi etc. At that moment, these accused persons were scolding that the deceased should be killed because he happened to harass them.

After completion of the investigation, the police filed charge sheet against the appellants under Sections 148 and 302 read with Section 149 of the IPC to which they pleaded not guilty and claimed trial.

In order to substantiate the charges, the prosecution examined thirteen witnesses, namely, Vasu (PW-1), Ohri Bai (PW-2), Chander

Singh (PW-3), Lohari Singh (PW-4), Kunwar Singh (PW-5), Tulsiram (PW-6), Majan Singh (PW-7), Dr. K.K. Bhargava (PW-8), Babulal (PW-9), Gatvu Singh (PW-10), Surmi Bai (PW-11), Dr.S. Vaish (PW-12) & R.Srivastava (PW-13) and placed documents Ex. P/1 to P/21 on record. In defence, the accused persons examined four witnesses namely Manju @ Mangilal (DW-1), Krishan Kumar (DW-2), Gyan Singh (DW-3) and Bachhanlal Sharma (DW-4).

The trial Court, upon consideration of the evidence and material available on record, by its judgment dated 10.02.1994 in Sessions Trial No.80 of 1992 found the appellants guilty and while convicting them imposed rigorous imprisonment for life apart from a fine of Rs.2,000/- each and in default of payment of fine to undergo rigorous imprisonment for one year for the charge of offence under Section 302 read with Section 149 IPC. For the offence under Section 148 IPC, the appellants were sentenced to undergo one year rigorous imprisonment. It was also directed that the sentences shall run concurrently.

Aggrieved by the order of conviction, the accused persons preferred an appeal before the High Court. The High Court upon re-appreciation of the evidence and the totality of circumstances affirmed the conviction and award of sentence against all the accused persons. Hence, A1, A2, A3, A5, A6, A7, A8, & A10 (appellants herein) are before us in these appeals challenging their conviction and award of sentence affirmed by the High Court under Sections 302/149 and 148 of the IPC.

We have heard learned counsel appearing for the appellants as well as the respondent.

It cannot be disputed that the incident mentioned above occurred on 07.10.1991 in which Devi Singh was murdered. The question is as to whether these appellants are the culprits. Insofar as special leave petition filed by accused Balram (A4) is concerned, that stands dismissed and, therefore, the verdict recording his guilt has attained finality. From the record, we also find that insofar as Makhan Lal (A1) is concerned, he had played a vital/leading role in inflicting the injuries upon the deceased. The findings of the Trial Court, which are upheld by the High Court, are without blemish. Therefore, we dismiss Criminal Appeal No. 1959 of 2010 preferred by Makhan Lal (A1) as well.

When we examine the cases of other appellants, we are constrained to hold that sufficient evidence has not surfaced which could hold them guilty beyond reasonable doubt. We have minutely gone through the statements of PW-1 (Complainant), PW-2 (wife of the deceased), PW-3 & PW-5 (relatives of the deceased) and the statements of PW-6, PW-7 and PW-11. From these statements it becomes clear that the incident happened because of the dispute regarding land. This dispute was with Makhan (A1). On the fateful day, i.e. 07.10.1991, at 03.00 p.m, the deceased was in the field. As per the statements of the aforesaid witnesses, the accused persons came along with their cattle to graze them but the deceased did not allow them to do so saying that there was a standing crop

on the field which will be damaged if cattle grazing is allowed. It is at that stage scuffle took place. Makhan (A1) caught hold of the deceased and Balram (A4) dealt lathi blows. Even as per the prosecution, other accused persons who were standing nearby did not play any role in attacking the deceased. The only role attributed to them was that they shouted 'maro sale ko'. The way the incident happened, it cannot be said that all these accused persons had come with premeditated mind to kill Devi Singh or they had formed unlawful assembly. Ingredients of Section 149 do not get attracted. In Baladin & Ors. vs. State of U.P. [AIR 1956 SC 181], this Court held that mere presence in an assembly does not make such a person a member of an unlawful assembly unless it is shown that he had done some thing or omitted to do some thing which would make him a member of unlawful assembly or unless the case falls under Section 142 of the Indian Penal Code. Merely because some persons assembled, all of them cannot be condemned '*ipso facto*' as being members of that unlawful assembly. It was incumbent upon the prosecution to prove that the commission of the offence was by any member of an unlawful assembly and such offence must have been committed in prosecution of the common object of the unlawful assembly or such that the members of the assembly knew that it was likely to be committed. From the statements of the witnesses, it does not get proved that other members knew that the offence of murder is likely to be committed.

We find that in order to rope the other accused persons, the only act attributed to them, in a casual manner is that they

shouted 'maro sale ko'. Moreover, this mere utterance would not mean that they wanted that Devi Singh is to be killed. It may be exhortation for beating also, in the absence of any overt act. There is yet another important factor, which is ignored by the High Court. There was a serious lacuna in the investigation by the police by not conducting identification parade which caused prejudice to the accused persons. On account of the incident happening in an open field, where there were about 150-160 villagers present at the time of incident, it was necessary for the police to have Test Identification Parade conducted. In Lakhwinder Singh Vs. State of Punjab [2002 (10) SCC 295], this Court held that when eye-witness cannot give the name of the offender but claims that he can identify the offender, it is necessary to hold a Test Identification Parade. In spite of such a statement Test Identification Parade was not conducted.

We, thus, set aside the conviction of other accused persons thereby allowing Criminal Appeal Nos.1961 of 2010, 1960 of 2010 and 2422 of 2010. We direct that the appellants in these appeals shall be released forthwith, if not required in any other case.

.....J.
[A.K. SIKRI]

.....J.
[N.V. RAMANA]

NEW DELHI;
NOVEMBER 09, 2016.

ITEM NO.108

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(s). 1961/2010

UDAY SINGH

Appellant(s)

VERSUS

STATE OF M.P.

Respondent(s)

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

WITH

Crl.A. No. 1959/2010

Crl.A. No. 1960/2010

(Office Report)

Crl.A. No. 2422/2010

(Office Report)

Date : 09/11/2016 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s) Mr. Raj Kishor Choudhary, Adv.

For Respondent(s) Mr. Arjun Garg, Adv.
Mr. Mishra Saurabh, Adv.

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

The criminal Appeal No. 1959 of 2010 is dismissed and Criminal Appeal Nos. 1961, 1960 & 2422 of 2010 are allowed in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(Ashwani Thakur)

(Mala Kumari Sharma)

COURT MASTER

COURT MASTER

(Signed order is placed on the file)