

CASE NO.:  
Appeal (crl.) 1177 of 1997

PETITIONER:  
Narain

RESPONDENT:  
State of Madhya Pradesh

DATE OF JUDGMENT: 04/02/2004

BENCH:  
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:

J U D G M E N T

ARIJIT PASAYAT, J.

Appellant-Narain (hereinafter referred to as 'the accused') questions legality of judgment rendered by a Division Bench of the Madhya Pradesh High Court, which held his conviction for offence punishable under Section 304 Part I of the Indian Penal Code, 1860 (in short 'the IPC') to be in order. Consequentially, sentence of eight years rigorous imprisonment and fine proposed were affirmed.

Eight persons faced trial including the appellant for alleged commission of offences punishable under Sections 148, 302/149, 307/149, 324/149, 323/149 and 450 IPC. The Trial Court held that the accusations were not established. Against rest of the seven while it was established only in respect of appellant relating to the offence for which he has been found guilty. The accused-appellant was made to undergo imprisonment for 8 years and to pay a fine of Rs.5000/- with default stipulation. The order of conviction was questioned by the appellant before the High Court. The State also questioned the legality of the acquittal as directed for rest of the accused. A revision application was filed by the father of the Makhan (hereinafter referred to as 'the deceased') with similar prayers as that of the State.

The prosecution story in brief is as follows:

On 24.2.1986 at about 6.30 a.m. at village Murachh, the informant Halke, alias Laxman (PW-14) had gone to call his labourers who were under a Pipal tree. The accused persons armed with Farsa, ballam, etc. came there and surrounded him. Accused-appellant Narain Singh incited the others to assault him and exhorted that he should not be permitted to escape and should be done to death. Thereafter Narain Singh assaulted Laxman (PW-14) with a Farsa on his head. Tijji Bai (PW-6) came on the spot to save Halke, but she was also assaulted. Thereafter, the accused persons chased the deceased Makhan and assaulted him with Farsa, axe and sticks near the house of Sukka Baniya (DW-2). Parvati Bai (PW-10), Siya Bai (PW-13), Kanchhi Bai and Lalla Bai and Khilan Singh (PW-4) came to the spot in order to save Halke, but they

were also assaulted. Siya Bai (PW-13) and others took deceased Makhan inside the house of Sukka (DW-2) in order to save him, but the accused persons entered the house and assaulted Makhan there also. The report of the incident was lodged on the same day at 11.00 a.m. by Laxman Singh (PW-14), which was recorded as Dehati Nalsi (First information report). On the basis of said report, investigation was undertaken and the accused persons were arrested.

The accused persons pleaded innocence and also took definite stand that on account of enmity and rivalry prosecution witnesses who claimed to be the eyewitnesses and to have sustained injuries assaulted the accused persons and in any event they have acted in exercise of right of private defence. They also stated that true genesis of the occurrence has been suppressed and the occurrence did not take place at the places indicated by the prosecution.

The Trial Court found that the prosecution has not really come out with actual scenario. According to prosecution the occurrence took place at 3 different places. But the evidence was to the contrary. The occurrence took place at a place different from where it was claimed by the prosecution. It also found unexplained discrepancies in the evidence of all the prosecution witnesses and, therefore, held that seven out of the eight accused persons were not guilty. So far as the appellant is concerned, it was held that though the evidence on record indicates that assaults were made by the deceased and some of the prosecution witnesses, on whom, yet the deceased had exceeded his right of private defence, even though the same may have been available to him at some point of time. The High Court confirmed the conclusions and affirmed the conviction and sentence. It dismissed, by a common judgment appeal of the State and revision filed by father of the deceased.

In support of the appeal, learned counsel for the appellant submitted that substratum of prosecution version has been corroded. The Trial Court and the High Court were not justified in convicting the appellant, on the self same evidence which was found to be totally unreliable for seven co-accused persons.

In response, learned counsel for the State submitted that though part of the evidence has been discarded, the residue was sufficient to convict the accused. It was pointed out that the places of occurrence as claimed by the prosecution were really not at a great distance from the place where the occurrence took place according to the Trial Court and the High Court. When the accused-appellant himself took the plea of right of private defence, the courts below were justified in convicting him.

As a rule of universal application it cannot be said that when a portion of the prosecution evidence is discarded as unworthy of credence, there cannot be any conviction. It is always open to the Court to differentiate between an accused who has been convicted and those who have been acquitted. (See *Guru Charan Singh and Another v. State of Punjab* (AIR 1956 SC 460) and *Sucha Singh and Another v. State of Punjab* (2003 (5) Supreme 445). The maxim "Falsus in uno falsus in omnibus" is merely a rule of caution. As has been indicated by this Court in *Sucha Singh's* case (supra), in terms of felicitous metaphor, an attempt has to be made to separate grain from the chaff, truth from

falsehood. When the prosecution is able to establish its case by acceptable evidence, though in part, the accused can be convicted even if the co-accused have been acquitted on the ground that the evidence led was not sufficient to fasten guilt on them. But where the position is such that the evidence is totally unreliable, and it will be impossible to separate truth from falsehood to an extent that they are inextricably mixed up, and in the process of separation an absolute new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and background against which they are made, conviction cannot be made.

In the case at hand it is noticed that the Trial Court analysed the factual position in great detail. According to the prosecution the incident took place at three different places' i.e. first under the Pipal tree where the informant (PW-14) Laxman Singh @ Halka had gone to call his labourers, then on the road in front of the house of Sukka Baniya (DW-2), and thereafter inside the house of (DW-2) where the deceased was taken in order to save him from the assaults. Apart from the alleged first information report, the statement purported to be a dying declaration of PW-14 was recorded by the Nayab Tehsildar and Executive Magistrate (DW-1). In this statement (Exb. P/18) he had stated that while he was sitting along with family members incident took place. But in the first information report, he had stated that he had gone to call the labourers whereupon accused persons came there and assaulted him and others. The Trial Court found that the informant was not a reliable witness, because he even denied to have given the dying declaration, when it was established by the statement of DW-1 that the statement was recorded by him. Injured witnesses Tijji Bai (PW-6), Parvati Bai (PW-10), Siya Bai (PW-13), and Khilan Singh (PW-4) who claimed to be eyewitnesses had given varying versions and their evidence was found unacceptable about the actual occurrence. Their statements in Court were at great variance from what they had stated during investigation. It was also noticed by the Trial Court that from the evidence of the informant (PW-14) it was clear that he had seen actual assault on the deceased. The evidence of so-called eyewitnesses as to where the assaults were made on the body of the deceased was found also to be discrepant and not consistent. One of the prosecution witnesses who claimed to be an eyewitness i.e. (PW-13) admitted in cross-examination that deceased had first assaulted the appellant with lathi on his head. The Trial Court found this to be of significant, but said that though it was probable that the appellant had acted in retaliation, the plea of right of private defence was not acceptable. These findings were confirmed by the High Court.

In view of the findings, the inevitable conclusion is that prosecution has not established its accusations against any of the accused persons including the appellant. It is significant to note that the Trial Court itself observed that the deceased and others assaulted the appellant and he may have acted in retaliation.

The genesis of the incident, the place of incident and the manner in which the incident took place was found not to have been established by cogent and credible prosecution evidence. Therefore, on the peculiar facts of the case and the nature of evidence tendered by the prosecution there is no scope for taking a different view so far as the appellant

is concerned and treat the case against him alone to have been substantiated beyond reasonable doubt. The conclusion arrived at in respect of other accused persons were equally applicable so far as the appellant is concerned.

That being the position, we set aside the conviction as recorded by the Trial Court and affirmed by the High Court. The appeal is allowed. The bail bonds of the appellant be cancelled.

JUDIS