

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.19 OF 2009

KEHAR SINGH KOURAV & ORS.

APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH

RESPONDENT(S)

O R D E R

1. Heard counsel for the parties.

2. We have perused the relevant records and the judgments of both the Courts below. In our opinion, no fault can be found with the conclusion reached by the two Courts below about the involvement of the accused-appellants in the commission of crime in question.

3. Appeal filed by accused No.1, Balwan Singh Kourav, is already rejected in terms of order dated 26<sup>th</sup> September, 2008 at special leave petition stage.

4. We are informed that accused No.6, Bhuwan Lal alias Mukkaddin Kourav, has since expired and

his appeal, therefore, stands abated. As a result, this appeal is pursued only on behalf of accused Nos. 2 to 5 (Kehar Singh Kourav, Kailash Singh Kourav, Bhaiyaji Kourav and Ramswaroop Kourav). Indeed, the evidence would suggest that they were wielding *lathi* unlike *kulhari* possessed by accused No.1, who inflicted injuries on the deceased. At the same time, accused Nos. 2 to 5 also caused injuries which have come on record in evidence.

5. The argument of the accused-appellants that PW-1 is not a reliable witness does not commend us. On the other hand, we are inclined to affirm the analysis of the said evidence done by the Trial Court and upheld by the High Court. The said witness appears to be a natural witness and being a child witness had deposed about the events as unfolded at the relevant time. Her presence at the relevant time is corroborated from the factual position stated in the F.I.R. that she was present along with the complainant. In addition, there is dying declaration, which has been accepted by the Trial Court and also by the High Court naming the

accused-appellants as assailants. The dying declaration corroborates the evidence of PW-1, who is a child witness.

6. Much emphasis was placed on the factum of non-examination of the complainant-Hoti Lal. This plea has been carefully dealt with by the Trial Court as well as the High Court. It has come on record that after the incident and before the recording of evidence would commence, Hoti Lal became victim of mental illness and mentally deranged. He had gone missing and could not be traced. The Trial Court had issued arrest warrant against him but that could not be executed by the police. Eventually, the Court accepted the stand of the Investigating Officer (Prosecution) that Hoti Lal cannot be produced before the Court and not available to give his evidence.

7. In our opinion, no fault can be found with the findings and conclusion recorded by the two Courts below. Hence, this appeal must fail and is dismissed accordingly.

8. The accused-appellants are on bail and, hence, their bail bonds stand cancelled and they are directed to surrender before the jail authority within four weeks from today.

....., J.  
(A.M. KHANWILKAR)

....., J.  
(DINESH MAHESHWARI)

NEW DELHI  
AUGUST 21, 2019

ITEM NO.104

COURT NO.9

SECTION II-A

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). 19/2009

KEHAR SINGH KOURAV &amp; ORS.

Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

Date : 21-08-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s)      Mr. Suryanarayana Singh, Sr. Adv.  
                                 Mr. Shiv Sagar Tiwari, Adv.  
                                 Ms. Kaveri Vats, Adv.  
                                 Mr. Dharmendra Kumar Sinha, AOR

For Respondent(s)    Mr. Imtiaz Ahmed, Adv.  
                                 Mr. Rahul Kaushik, AOR

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

The appeal is dismissed in terms of the  
signed order.

In view of the above, pending applications,  
if any, shall stand disposed of.

(NEETU KHAJURIA)  
COURT MASTER

(VIDYA NEGI)  
COURT MASTER

(Signed order is placed on the file.)