

CASE NO. :  
Appeal (crl.) 341 of 2001  
PETITIONER:  
Bharosi & Ors.  
Vs.

RESPONDENT:  
State of M.P.  
DATE OF JUDGMENT: 12/09/2002 BENCH:  
DORAISWAMY RAJU & SHIVARAJ V. PATIL.  
JUDGMENT:

J U D G M E N T

Shivaraj V. Patil J.

The appellants were tried for offences under Sections 147, 148 and 302 IPC on the allegations that about four months prior to the incident, some quarrel had taken place between the deceased Baburam and the appellant No. 4 Dataram in relation to raising of boundary wall. On 12.4.1983 at about 7.00 P.M. the deceased accompanied by Ramhet, had gone to Vidyaram (PW-8) to engage some labourers for cutting crop in his field and while returning from the house of Vidyaram, when the deceased came near the Chabutra of appellant No. 4, he shouted to the remaining accused who were there that the deceased was their enemy and he should not be allowed to go and kill him. The appellant No. 6 Ramjilal assaulted the deceased with the lathi on his head. When he fell down on the ground, all the appellants assaulted him. In spite of Ramhet intervening, the appellants did not stop assaulting. When they found that the deceased had died, the appellants dragged his body from the spot to place near Tiwaria of appellant No. 1 Bharosi. Thereafter, they ran away. Bachchulal (PW-10), brother of the deceased lodged first information report. The incident was witnessed by Vidyaram (PW-8) and Kalicharan (PW-13).

The trial court did not believe the evidence of eye-witnesses Vidyaram (PW-8) and Kalicharan (PW-13); found certain discrepancies in the statements of witnesses; doubted the evidence of eye-witnesses to have identified the accused in darkness; consequently, the appellants were acquitted by the trial court giving benefit of doubt. On appeal by the State, the High Court upset the order of acquittal recorded by the trial court and held the appellants guilty of the offences under Sections 147, 302 read with Section 149 IPC and sentenced all the appellants to rigorous imprisonment for one year under Section 147 and for imprisonment of life under Section 302 read with Section 149 IPC. Both the sentences were to run concurrently. Hence, this appeal to this Court.

The learned senior counsel for the appellants contended that the High Court was not right and justified in interfering with the order of acquittal passed by the Sessions Court merely because one other view was possible; the evidence of eye-witnesses Vidyaram (PW-8) and Kalicharan (PW-13) being that of interested witnesses, the trial court was right in not

relying on them and the High Court committed an error in accepting their evidence for convicting the appellants. According to the learned senior counsel, there were material discrepancies in the statement of witnesses which seriously affected the prosecution case. Further, the so-called eye-witnesses could not identify the appellants in the darkness. The learned senior counsel added that in the absence of any pre-meditation or common object, the High Court was not right and justified in convicting all the appellants applying Section 149 IPC. On the other hand, the learned counsel for the State made submissions in support of the impugned judgment and order contending that the view taken by the trial court to acquit the appellants was not a reasonable view having regard to the evidence placed on record.

We have carefully considered the submissions made by the learned counsel for the parties.

Out of the eye-witnesses, Ramhet died before he could be examined in the trial court. PW-8 Vidyaram has testified that he witnessed the whole incident. He has also stated in his evidence that PW-13, Kalicharan was also seeing the incident from distance. He narrated about the incident to Bachchulal (PW-10), the brother of the deceased and also told about the same to Ram Kumar @ Pappu (PW-11) and Bhagwati (PW-2) (sons of the deceased). He has spoken about the motive as to earlier quarrel between the deceased and the accused persons with regard to construction of boundary wall. He has also stated that at the time of incident, there was slight darkness but the faces of the people could be seen in that light.

PW-13, Kalicharan also supported the prosecution case by saying that he saw the incident from the house of Kunji and that PW-8 Vidyaram and Ramhet also saw the incident. He has further stated that PWs 11 and 12 (sons of the deceased) also came to the spot. Bachchulal (PW-10) brother of the deceased has stated that Vidyaram (PW-8) informed him that his brother was killed by the accused persons. The testimony of PW-11 and PW-12 support the testimony of PW-8 and PW-10 that they also went to the spot.

Dr. H.S. Sharma, (PW-1) who conducted the post-mortem found 10 injuries on the body of the deceased and opined that cause of death was head injury which might have been caused by lathi. It is the testimony of PW-8 that Ramjilal (appellant No. 6) hit the deceased on his head. Weapons were also recovered at the disclosure of the accused and the accused were absconding after the incident.

The trial court did not place reliance on the evidence of eye-witnesses PW-8 and PW-11 on the ground that Pw-8 is the brother of the deceased and PW-13 is the servant of another brother of the deceased and as such they were interested witnesses and that their conduct was unnatural. The trial court found fault with the prosecution for not examining one Jagdish stating that although Vidyaram had stated that 15 to 20 minutes before the incident, he had seen Kalicharan and jagdish. It found that the conduct of Vidyaram (PW-8)

was unnatural as he made no efforts to save the deceased. The learned Sessions Judge also concluded that PW-8 could not see the incident from the place having regard to the spot map (Exbt. P-14). He doubted the possibility of identifying the accused because of darkness. The trial court noticed certain discrepancies in the statement of witnesses. For these reasons ultimately, the learned Sessions Judge acquitted the accused.

There is no difficulty in accepting the proposition that the order of acquittal cannot be lightly reversed merely because High Court could take a different view; but in this case, in our view, the High Court was quite justified in setting aside the order of acquittal although we do not agree with the High Court in applying Section 149 IPC so as to convict all the appellants for offences under Section 302 IPC. But in this case having regard to the evidence, we have no hesitation in holding that the view taken by the trial court was not a reasonable but an untenable. The appreciation of the evidence by the trial court was not objective and appropriate keeping in view the broad probabilities of the case and nature of the evidence. The High Court in a case like this was fully justified in setting aside the order of acquittal recorded by the trial court by dislodging the reasons given by the trial court for acquittal. The High Court has taken pains to say that merely because PW-8 is the brother of the deceased and PW-13 was servant of another brother of the deceased, their evidence could not be discarded when their evidence was corroborated and supported by the evidence of other witnesses as noticed above. Merely because Jagdish, one of the eye-witnesses was not examined, that itself could not be put against the prosecution when two eye-witnesses were examined, who fully supported the prosecution case. The High Court was right in saying that there was nothing unnatural when PW-8 did not make efforts to save the deceased when the accused were six in number armed with lathis and had attacked the deceased and as it was neither safe nor desirable for the witness to endanger his life. It is in the evidence that the dead body was removed from the place of occurrence to near the kutty machine of appellant No. 1. In that view, the High Court was right in saying that the trial court was wrong in observing that PW-8 could not witness the incident from the place where he was standing. Similarly, as to the identification of the appellants in darkness, the trial court was wrong as found by the High Court. PW-8 has specifically stated that although it was a little dark, still the faces of the appellants could be identified, more so when they were known to the witnesses. The trial court also committed the error in giving undue importance to minor discrepancies that too in regard to the subsequent events and not relating to the actual incident. In this regard, the High Court has observed that such discrepancies are bound to occur in the statements of truthful witnesses. The doctor has found 10 injuries on the body of the deceased and his opinion was that cause of death was due to head injury caused by lathi. The High Court, while appreciating the evidence of interested witnesses, has kept in view the principles stated by this Court in the case of Angnoo and others versus

State of Uttar Pradesh (AIR 1971 SC 296). In relation to the identification of the accused in the darkness, the High Court has clearly stated that in the month of April, the sun sets at about 7.00 P.M. in the evening, the accused were known to the witnesses and could be identified even in faint darkness. Here again, the High Court has relied upon the decision of this Court in the case of Nathuni Yadav & Ors. Vs. State of Bihar & Another (1998 (9) SCC 238). The High Court has also noticed that the enmity between the deceased and the appellants was not disputed.

Thus, having dealt with various aspects, the High Court reversed the order of acquittal and held the appellants guilty and rightly so in our opinion. However, in the absence of any evidence to demonstrate the common object of the appellants in killing the deceased, we find it difficult to sustain the conviction of all the accused under Section 302 read with Section 149 IPC. It is clear from the evidence that it is appellant No. 6 who hit the deceased with lathi on his head and on that account the deceased died. Dr. H.S. Sharma, PW-1, has categorically opined that the cause of death of the deceased was due to this head injury. There is nothing in evidence to indicate that the deceased was to go to the place of incident on the date of occurrence at the given time. The appellants even as per the prosecution case had lathis in their hands. Having regard to the nature of injuries other than the head injury and the parts of the body on which the injuries were caused, it could not be said that the appellants 1 to 5 either had intention or knowledge to kill the deceased. Appellants 3 and 6 are the sons of appellant No. 1 and appellant No. 2 is the brother of appellant No. 1. Appellants 4 and 5 belong to different family. The appellants 1 to 5 could be held guilty for an offence under Section 147 having regard to their individual acts and not for an offence under Section 302 IPC as there was no common object to attract Section 149 IPC.

Thus having considered all aspects, we hold the appellant No. 6 Ramjilal guilty for an offence under Section 302 IPC and uphold the conviction and sentence passed against him by the High Court for imprisonment for life and set aside the conviction and sentence as far as appellants 1 to 5 are concerned for an offence under Section 302 IPC. We uphold the conviction and sentence of appellants 1 to 5 for an offence under Section 147 and sentence them for imprisonment already undergone. The appellants 1 to 5 shall be set at liberty forthwith if not required in any other case. The appellant No. 6 Ramjilal shall remain in jail to serve the remaining sentence.

The appeal stands disposed of in the above terms modifying the impugned judgment and order of the High Court to that extent.