

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1300 OF 2004

HARISINGH & ORS.

Appellant (s)

VERSUS

STATE OF M.P.

Respondent(s)

O R D E R

Eleven accused persons were tried by the Court of Sessions, Ujjain in Madhya Pradesh

alleging that they formed themselves into an unlawful assembly and caused the death of one Abdul

Gaffar and also committed attempt to murder one Anwar Khan. They were charged for offences under

Sections 148, 302/149, in the alternative under Sections 302, 307, 323 read with Section 149 of the IPC.

The Trial Court was pleased to acquit all the accused and aggrieved by the same, the State preferred an

appeal before the High Court and the Division Bench of the High Court of Madhya Pradesh granted

leave to appeal only in respect of the acquittal of three accused persons. As regards other accused

persons, leave to appeal was not granted and the same was not further challenged by the State and it

had become final. The High Court, by the impugned judgment, reversed the acquittal of the three

accused and found them guilty of offence under Section 302 read with Section 34 of the IPC. That is

under challenge before us.

The prosecution case is that on 11th October, 1993 at about 8.00 a.m. PW 19- Anwar, PW

20 -Amjad were going along with their father Abdul Gaffar, the deceased to harvest the soybean crop.

PW 22 Hannan, the servant was also with them. When they reached near a "khal" (a trench) the eleven

accused persons emerged from the bush and started assaulting the deceased Abdul Gaffar. The

prosecution alleged that the accused, Hari Singh, s/o. Bhanwarsingh (since acquitted) fired a gun

towards Abdul Gaffar and he sustained injury on the right shoulder and fell down. Hari Singh, the

2

present appellant, who was armed with a gun handed over his gun to another accused Sodansingh,

s/o. Balusingh and took a farsi and inflicted a blow on the right hand of the deceased Abdul Gaffar. The

right hand was thus severed from the body of the deceased. Then another accused caught hold of the

left hand of the deceased Abdul Gaffar and the appellant Dinesh inflicted a blow of farsi on the left

hand of the deceased and thereafter the accused Sodansingh inflicted a blow with farsi on the neck of

Abdul Gaffar and his neck was almost cut off. PW 19 Anwar Khan cried out, then one of the accused

Kamalsingh beat him with a stick and he sustained injuries on his stomach and head. He cried and ran

away then Hari Singh, the appellant, fired a shot at him but he saved himself by hiding in soybean crop.

PWs 19, 20 and 22 came back to their house and narrated the incident to their mother Resham Khan,

uncle Abdul Jabbar (PW 14, Mehmood and others. They went to the place of the incident and to

ok the

dead body in a tractor and brought it to the police station. PW 19 gave the FI statement at about 9.30

a.m. to the police wherein he mentioned the names of ten accused persons.

PW 23 took over the investigation. He sent the dead body to the hospital for post-mortem

examination and Exh.P-1 was the requisition sent by him. PW 1, the doctor, examined the dead body of

the deceased Abdul Gaffar and noticed that the deceased had sustained as many as 16 injuries. He

noticed that the deceased had multiple punctured wounds on the right shoulder, there were incised

wounds over occipital region of head, there were lacerated wounds on the scalp, incised wounds on the

scalpular region and there were abrasions on the various parts of the body and his both hands were

found cut off. The doctor also noticed that there was blood and mud on his clothes. In the post-mortem

report, he indicated that there was rigor mortis on both limbs.

On the side of the prosecution, PWs 1 to 23 were examined, out of them PWs 19, 20 and 22

were eye-witnesses. The learned Sessions Judge held that the prosecution had failed to prove the case

beyond reasonable doubt and held that the accused were not guilty. For arriving at this conclusion the

learned Sessions Judge found that Exh.D-14 was not in consonance with Exh.P-22, the FIR and the FIR

must have been later concocted and there were material alterations therein. The learned Sessions Judge

was also of the view that in Exh.P-22 Section 302 alone was mentioned as the offence committed and,

therefore, there could not have been more accused as alleged by the prosecution. The S

essions Judge

also held that PW 1, the doctor, who conducted the post-mortem examination deposed that the death

had occurred within 24 hours and this witness had also given evidence to the effect that rigor mortis was

present on the dead body and therefore, the incident must have occurred on 10.10.1993 and not on

11.10.1993. The evidence of the doctor was discussed in detail and undue importance was given to the

opinion expressed by the doctor and held that the incident could not have happened on 11.10.1993 as

alleged by the prosecution. It was also held that from the evidence of PWs 14, 20, 6 and 3 it was clear

that Abdul Gaffar was a history sheeter and he had been convicted in other criminal cases and that

there was no motive for the accused persons to cause the death of Abdul Gaffar as there was no

evidence to show that any previous enmity between them and the offence must have been done by some

others. The Sessions Judge held that it was not certain as to where the incident had taken place i.e.

whether near "khal" or "khai" and there was change of place of incident and in view of that matter

the Sessions Judge had not believed the prosecution case. The evidence of the three eye-witnesses was

discarded on the ground that they were interested witnesses as they were related to the accused and the

prosecution failed to produce independent witnesses.

4

The High Court reapprised the evidence and held that the evidence of three eye-witnesses

were acceptable and even though they are interested witnesses, the reason for discarding the evidence of

these three eye-witnesses was not correct and even if there were houses in the near vicinity of the place of

occurrence there was no evidence to show that any one else saw the incident. It may be noticed that

the investigating officer was not asked as to whether there were any persons available in the locality at

the time of the incident. He was also not asked as to whether he had questioned any witnesses who were

staying nearby. There is no evidence to show that there were any other independent witnesses to prove

the occurrence. As regards the evidence of these three eye-witnesses the High Court held that they have

given a consistent version of the incident. One of the eye witnesses (PW 19) was injured and a doctor

was examined to prove his injuries. He had also deposed that the injuries must have happened within 24

hours and when PW 19 was examined there was not even a suggestion that he had sustained injury in

some other incident. So his presence at the time of the incident is undisputable.

Learned senior counsel for the appellant contended that the prosecution evidence is highly

improbable for various other reasons. It was contended that the prosecution failed to establish that

there was a motive on the part of the accused and the prosecution had not even stated that there was any

proximate cause for the appellant to commit the offence. It was submitted that if at all the motive was

there it was the deceased Abdul Gaffar and his parties as his brother was murdered in a previous

incident and many of the accused who were arrayed as accused in the present case were accused in that

case. It was also submitted that these appellants were not aware of the movement of the deceased Abdul

Gaffar and therefore, they would not have been waiting in the bush to pounce upon them. We do not

find any force in this contention. In the previous case some of the accused were arrayed as accused and

they allegedly killed the brother of the present deceased. It is clear that there was a dispute between

these two groups and the present murder also could have been done in furtherance of the previous

enmity. When there is direct evidence of eye-witnesses, the motive or the proximate cause is not of

much consideration. The cardinal question is whether these eye-witnesses can be believed or not.

It is true that in an appeal against acquittal, if two views are possible and a reasonable

5

view had been taken by the Sessions Court, the High Court should reverse the acquittal. It is equally

true that by the acquittal of the accused the presumption that they were innocent is further

strengthened and the Appellate Court would be slow in reversing the finding of acquittal unless the

finding of the Sessions Court is perverse or unreasonable. Counsel for the appellant contended that

these principles had been violated by the Appellate Court while reversing the acquittal of the Trial

Court. However, we are not inclined to accept the contention advanced by the appellant's counsel. The

Sessions Judge clearly erred in finding that the incident happened on the previous day. Of course PW

1 the doctor had given in his evidence had cast some suspicion, but in the face of clear evidence of these

witnesses it is difficult to hold that the incident happened on 10.10.1993 rather on 11.10.1993. PW 1

stated in his post-mortem certificate that the rigor mortis was present in the limbs but at the time of

evidence he gave evidence by saying that the rigor mortis was present on the whole body. This was

contrary to what he had stated in the post-mortem report. Moreover, in the post-mortem report itself it

is stated that there was blood on the wounds and the death occurred within 24 hours. Moreover, the

body itself was sent to examination at 10.00 a.m. on 11.10.1993 and all contemporaneous records were

prepared on 11.10.1993 and in the face of these documents and the evidence of all witnesses, we are

surprised as to how the Sessions Judge came to the conclusion that the incident had happened on

10.10.1993. It is clear that the opinion arrived at by the Sessions Judge was clearly perverse,

unreasonable and against evidence adduced by the prosecution and the High Court was justified in

reversing that finding.

The learned Sessions Judge also took the view that Exh.D-14 which is alleged to be the

report sent to the Magistrate contained some mistake and this was also taken as a ground to hold that

the entire incident happened on 10.10.1993 rather on 11.10.1993. This finding also is clearly perverse

and unreasonable.

The counsel for the appellant lastly contended that the charge sheet was framed against the

appellant under Section 302 read with Section 149 but they were convicted under Section 302 read with

Section 34. In this case, according to prosecution there was other accused who participated in the

incident and the prosecution also gave evidence to that effect. Moreover, the prosecution case is that

all these present appellants came to the place of incident armed with deadly weapons and they started

attacking the deceased and one had completely cut the neck and two others chopped off both hands. In

these circumstances, the common intention of these three appellants could be discerned from these

circumstances and we do not think that the appellants are in any way prejudiced by the fact that they

were convicted for the offence under Section 302 read with Section 34. We find no merit in the

contentions advanced by the appellants' counsel.

The appeal is without any merit and is dismissed accordingly.

.....J.

(K.G. BALAKRISHNAN)

.....J.

(D.M. DHARMADHIKARI)

NEW DELHI;

10TH AUGUST, 2005

7

ITEM NO.101(P.H.)

COURT NO.5

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). 1300 OF 2004

HARISINGH & ORS.

Appellant (s)

VERSUS

STATE OF M.P.

Respondent(s)

(With office report )

Date: 10/08/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant(s)

Mr.S.R.Bajwa, Sr.Adv.

M/s.Surender Kr.Sharma,

A.P.Dhamija, R.C.Joshi, Ram Niwas,

H.D.Thanvi, Sharad Singhania,

Punit Jain, Sushil Kr.Sharma,Adv.

for Ms. Pratibha Jain,Adv.

For Respondent(s)

Mr.Alok Bhachawat, Adv.

Ms. Vibha Datta Makhija,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

(G.V.Ramana)

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rt Master

Court Master

Cou

(Signed order is placed on the file)