

## IN THE SUPREME COURT OF INDIA

## CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2242 OF 2009

KISAN SINGH

Appellant (s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

O R D E R

We have heard Mr. Ravi Prakash Mehrotra, learned counsel for the appellant.

2. The appellant was convicted for the offence under Section 302 of the Indian Penal Code (IPC) read with Section 34 IPC and awarded life imprisonment by the trial court. He was also found guilty of an offence under Section 353 IPC and awarded suitable sentence.

3. The trial court on consideration of the evidence found that three prosecution witnesses, namely, PW-1, PW-2 and PW-3, had actually seen the incident; they were present on the spot and two of them, PW-2 and PW-3 had actually sustained injuries in the incident. Certain discrepancies pointed out by the defence in the evidence of PW-2 and PW-3 have also been carefully considered by the trial court and ultimately it was found that presence of the accused Kisan Singh (appellant) at the time of the incident was clearly established and that he had exhorted accused No. 1 Gurumitsing to commit murder of Ashok Mahalley.

4. In the appeal, the High Court has also closely scrutinised the evidence of the above three prosecution witnesses. The High Court held that their evidence inspired confidence for more than one reason. In this regard, the High Court considered the matter in para 14 of the judgment thus :

"14. Upon close scrutiny of the evidence of the above three witnesses, we have no hesitation to hold that their evidence inspires confidence for several reasons. First, PW-2, Sambhaji was himself injured and although all the accused have been acquitted for the offence punishable under section 333 read with section 34 of the Indian Penal Code on the ground that the prosecution did not examine the doctor who had examined the said witness and given certificate, the fact remains that the presence of these witnesses on the spot at the time of the commission of the offences cannot be disputed. Moreover, it is pertinent to note that the accused have also not disputed the incident as such but their defence appears to be that the accused were not involved but they have been falsely implicated.

Another important factor which lends credence to the testimonies of these three witnesses is that the first information report was lodged at Ghatanji Police Station at 7 a.m. i.e. within an hour of the incident and that too after deceased Ashok was taken to the hospital since he was having severe bleeding injuries. No doubt, PW-1 Manohar in his evidence has stated that only one of the accused stated take out and assault whereas the other two witnesses have stated that both the accused 2 and 3 stated so. In our opinion, having regard to

the manner in which the sequence of events took place, slight variation in the testimonies of the three witnesses is not fatal to the prosecution case."

5. The High Court, while dealing with the evidence of PW-2 and PW-3, held that their evidence clearly established that the appellant exhorted the other Gurumitsing, he said, 'Nikal ke Mar Sale Ko'. The High Court then concluded in para 16 of the judgment as follows :

"16. .... The evidence brought on record clearly establishes that accused 2 and 3 were very much aware accused no.1 was carrying the knife and accused nos. 2 and 3 having been caught along with accused no.1 with gold ornaments wanted the accused no.1 to kill the person catching him by assaulting him with knife. Thus, common intention on the part of the accused 2 and 3 to commit murder of the person catching accused no.1 is clearly established. ..."

6. It will be thus seen that the trial court as well as the High court have carefully considered the evidence and reached a firm finding that prosecution has been able to prove the common intention on the part of the present appellant in the murder of Ashok Mahalley. We have no justifiable reason to take different view from the two courts as regards the appreciation of evidence.

7. In view of the above, we find no ground for interference in the impugned judgment.

8. Criminal Appeal is, accordingly, dismissed.

.....J.  
( R.M. LODHA )

.....J.  
( MADAN B. LOKUR )

NEW DELHI ; .....J.  
SEPTEMBER 19, 2013 ( KURIAN JOSEPH )

ITEM NO.102 COURT NO.3 SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

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KISAN SINGH Appellant (s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

(With appln(s) for permission to file additional documents  
and with office report)

Date: 19/09/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA  
HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Appellant(s) Mr. Ravi Prakash Mehrotra, Adv. (SCLSC)  
Mr. Abhinav Kumar Malik, Adv.  
Mr. Vibhu Tiwari, Adv.

For Respondent(s) Ms. Asha Gopalan Nair, Adv.  
Mr. Abhishek Kumar Pandey, Adv.

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

Criminal Appeal is dismissed in terms of the signed order.

Pending application, if any, stands disposed of.

| (Rajesh Dham)  
| Court Master

| | (Renu Diwan)  
| | Court Master

(signed order is placed on the file)