

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.506 OF 2010

THARMOS & OTHERS

APPELLANT(S)

VERSUS

STATE OF HARYANA

RESPONDENT(S)

O R D E R

The three appellants stand convicted under Sections 302, 325, 323,34 of the Indian Penal Code, 1860 (for short "IPC"). Six of the ten accused were acquitted by the Trial Court. Kulbir has been acquitted by the High Court.

The occurrence is stated to have taken place on 04.02.2003 at 4.30 p.m. The deceased - Pawan Kumar was the brother of PW-7, an eye-witness. PW-8 - Rohtas, the father of PW-7 and the deceased, is an injured witness.

The deceased suffered the following three injuries:

- "1. Swelling with bluish contusion of 3x3 cms present lateral to left eye brow and from of left ear.
2. Swelling of 3x4 cms with bluish contusion present lateral to right eye brow and front of right ear.
3. A swelling of 2x2 cms present on occipital area of scalp.

On dissection, there was clotted blood present underneath the skin and on skull bone. There were multiple fractures on skull bones, specially, in frontal and parietal bones. On further dissection, there was extramural

haematoma of 4x4 cms, in frontal region and 2x1.5 cms in occipital region. On further dissection, there was subdural haematoma of 3x3 cms and 1.5x1.5 cms in frontal & occipital areas. On the basis of the skull, there was about 100 cc of fluid and clotted blood present."

The injuries cumulatively were opined to be sufficient to cause death.

PW-8 suffered ten injuries as follows:

- "1. Lacerated wound of 3 x 5 cm on right side of scalp in frontal area. Advised x-ray.
2. Swelling of 4 x 5 cms on left fore-arm and tenderness was present. Advised x-ray and Ortho surgeon opinion.
3. Swelling of 4 x 2 cms on back of left wrist advised x-ray and ortho. Surgeon opinion.
4. Swelling of 4 x 2 cms on back of left hand. Advised x-ray and ortho. Surgeon opinion.
5. Abrasion of 1 x 1 cm on back of right hand and swelling of right hand. Advised x-ray.
6. Contusion of 8 x 2 cms on left side of back on dorsal area. Advised x-ray.
7. Contusion of 6 x 2 cms on right side of back. Advised x-ray.
8. Contusion of 6 x 4 cms on left side of back on lumber area. Advised x-ray.
9. Contusion of 4 x 2 cms on right shoulder, Advised x-ray.
10. Contusion of 6 x 4 cms on left shoulder, Advised x-ray."

Learned counsel for the appellants submitted that the very genesis of the occurrence is doubtful. The possibility that the assault had taken place by another around 1:30 p.m. and that the deceased along with the injured may have been brought to the hospital at about 2:30 p.m. cannot be completely ruled out. PW-9, ASI Miya Singh deposed that he had received information about the

occurrence at 1.30 p.m. and went to Government Hospital, Bhiwani at 2.30 p.m., but no attendant was found who could tell him about the occurrence.

Relying on the decisions of this Court in Kajal Sen and Ors. v. State of Assam [(2002) 2 SCC 551] and Jagan M. Seshadri v. State of Tamil Nadu [(2002) 9 SCC 639], it was submitted that the prosecution never declared PW-9 as hostile and did not cross-examine him. The evidence of a prosecution witness will bind the prosecution and it cannot therefore wriggle out of the statement with regard to the timing of the occurrence. In view of the discrepancy with regard to the timing of the occurrence, the benefit of doubt must be given to the appellants.

It was next submitted, relying on the evidence of PW-4, the Medical Officer of the Government Hospital, Bhiwani, that the injuries could be possible by a fall and that bluishness on the injuries could have occurred only after twelve hours of the assault which is also suggestive that the occurrence had taken place before 4.30 p.m.

There is no specific allegation against Appellant No.1 of assault on the deceased. Co-accused Kulbir, who is alleged to have assaulted the deceased along with Appellant Nos.2 and 3, has been acquitted on the benefit of doubt. There is no reason why the same benefit should not be extended to the appellants.

Learned counsel for the State emphasised that PW-7 is an eye-witness and PW-8 is an injured witness. Moreover, the witnesses are related to the deceased. There is no reason for them to state falsehood having witnessed the occurrence. Their presence at the time of occurrence and their evidence has remained unscathed. The evidence of PW-9 finds adequate discussion to conclude that he was not speaking the truth intentionally to aid the accused.

We have considered the submissions on behalf of the parties and, for our satisfaction, have also examined the original Trial Court records.

Originally, there were ten accused. PW-8 has suffered ten injuries. The evidence of PWs 7 and 8 with regard to the allegations against acquitted accused Kulbir leaves us with no doubts regarding the manner in which the occurrence may have taken place. Mere absence of any appeal against the acquittals cannot *ipso facto* be of any benefit to the appellants, especially in view of the nature of evidence available against them.

PW-7 has specifically deposed that the assault took place on 04.02.2003 at 4.30 p.m. on a petty dispute with regard to laying of mud and stones on the road in between the house of accused and the injured. The deceased and the injured were taken to the hospital by PW-7. He reached the hospital at 5.30 p.m. and his statement was recorded leading to the institution of the F.I.R. by PW-9 at 7 p.m. at the hospital. The injured was examined at

5.45 p.m. according to the medico-legal examination records proved by the Doctor PW-5.

PW-8 named Appellant Nos.2 and 3 specifically for having assaulted the deceased. Specific accusation of assault was also made by the witness against the acquitted accused Kulbir. The witness then detailed the assaults made on him by different accused which gets corroborated by the number of injuries on his person. We are of the considered opinion that merely because Appellant No.1 may not have assaulted the deceased, but that he assaulted PW-8 with lathi on his left hand cannot enure to his benefit when the conviction is with the aid of Section 34 of IPC. The mob was fully armed with lathis, kulhari, hockey sticks and spear, etc. which is sufficient evidence of the common intention. Overt act has also been specifically attributed to appellant no.1.

PW-4 was a retired Medical Officer of the Government Hospital, Bhiwani. His examination-in-chief was recorded on 02.08.2004. His cross examination was done seven months later on 15.03.2005 when he opined that bluishness of the contusions were likely after twelve hours of the injury. The reasons are obvious. In any event they are mere expressions of opinion without any specific material in support of the opinion. The colour changes of the injuries by hard blunt objects depends on a host of factors such as the physique of the injured, the intensity of the assault etc.

PW-9 deposed that he received a telephonic message regarding admission of the injured in the hospital and he reached the Government Hospital, Bhiwani. The F.I.R. was then recorded by him on the statement of PW-7 on 04.02.2003 at 7 p.m. in the hospital. The injured was unfit to make a statement. The reliance by the appellants on the stray statement in the cross-examination of PW-9 that he received the telephonic message at 1.30 p.m. and reached the hospital at 2.30 p.m. when no attendant of the injured/deceased was found, to suggest that the occurrence had taken place in a different manner by some other at an earlier point of time, merits no consideration at all. PW-9 has led no evidence with regard to any station diary entry made by him after receipt of the telephonic call and before proceeding to the Government Hospital, Bhiwani. The Trial Court has rightly rejected this statement of PW-9 in view of the F.I.R. registered by the same witness. We are satisfied that the statement of PW-9 in his cross-examination has not been made bona fide but is for oblique purposes to help the accused as discussed by the Trial Court. We are also of the considered opinion that the conduct of PW-9 as an official witness, is a matter to be examined by the State authorities on the administrative side in accordance with law and we direct the Director General of Police, Haryana accordingly.

In view of the nature of the evidence available, the stray reliance on the unsubstantiated evidence of PW-9 in the cross-examination finds no support from the precedents cited on behalf of the appellants.

We therefore find no merit in the appeal. The appeal is dismissed.

The appellants are stated to be on bail. Their bail bonds are cancelled and the appellants are directed to surrender forthwith to serve out the remaining period of their sentence.

.....J.  
[Navin Sinha]

.....J.  
[B.R. Gavai]

New Delhi;  
September 24, 2019

ITEM NO.102

COURT NO.12

SECTION II-B

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).506/2010

THARMOS &amp; ORS.

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

Date : 24-09-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE NAVIN SINHA  
HON'BLE MR. JUSTICE B.R. GAVAI

For Appellant(s) Mr. Sanjay Jain, AOR  
Mr. Sudarshan Singh Rawat, Adv.

For Respondent(s) Ms. Bina Madhavan, Adv.  
Mr. S. Udaya Kumar Sagar, Adv.  
Dr. Monika Gusain, 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.

Pending application, if any, stands disposed of.

The appellants are stated to be on bail. Their bail bonds are cancelled and the appellants are directed to surrender forthwith to serve out the remaining period of their sentence.

(SANJAY KUMAR-I)  
AR-CUM-PS

(SAROJ KUMARI GAUR)  
COURT MASTER

(Signed order is placed on the file)