

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 238-239 OF 2012

KAPOOR & ANR. ... APPELLANT(S)

VS.

STATE OF MADHYA PRADESH ... RESPONDENT(S)

O R D E R

1. The present appeals challenge the judgment and order dated 2nd September, 2009 passed by the Division Bench of the High Court to the extent it confirms the conviction of the present appellants for the offence punishable under Section 302 of the Indian Penal Code (For short "the IPC").

2. In a riot case wherein four deaths have occurred originally 30 accused were put to trial before the learned Additional Sessions Judge, Burhanpur in Sessions Trial No.13/96. The learned trial Judge at the conclusion of the trial, convicted 22 accused and acquitted 8 of them. Being aggrieved thereby, the 22 accused filed appeal before the High Court. Out of them, 7 were acquitted by the High Court and conviction of the remaining 15 was confirmed. Being aggrieved thereby, the present appeals.

3. Mr. Raj Kumar Choudhary, learned counsel appearing on behalf of the appellants relying on the judgment of this Court in the case of *Masalti v. State of U.P.* reported in

AIR 1965 SC 202 and *Chandra Shekher Bind & Ors. v. State of Bihar* (2001) 8 SCC 690 submits that in a riot case unless two witnesses identify the accused, the conviction is not sustainable. Learned counsel submits that as a matter of fact, the High court itself, by applying the said test, has acquitted the other accused who were not named by more than one witness. He, therefore submits that conviction insofar as the present appellants is concerned, is not sustainable.

4. Mr. Madhav Gupta, learned counsel appearing on behalf of the respondent-State of Madhya Pradesh submits that no interference is warranted insofar as the conviction of the present appellants is concerned. He submits that the High Court has erroneously applied the test of at least two witnesses naming an accused. He submits that as a matter of fact, the trial Court upon a correct appreciation of evidence has found that the evidence of PW-9 Sopan was trustworthy and reliable and conviction on the basis of his sole testimony was sustainable. Learned counsel relied on the latest judgment of this Court in the case of *Duleshwar & Anr. VS State of M.P. (Now Chhattisgarh)* (2020) 11 SCC 440 wherein this Court found that even in a riot case the conviction on the basis of the testimony of a sole eye-witness is permissible.

5. The learned judges of the Division Bench of the High Court in paragraph 11 observed thus:

"Now we are left with accused Bhaskar, who has been named by only witness Jankiram PW-11. Accused Bajirao has been named by Madhukar PW-12. Iqbal has been named by T.K.Chouhan PW-19. Vishwanath has been named by Arun PW-10 alone. Accused Ravindra has been named by Arun PW-10. Jairam has been named by only witness Arun PW-10. Accused Dhairyasheel has been named by Sopan PW-9. Subjecting choosing of person is not ruled out as election had been held on the same day, some of the witnesses belong to winning candidate group. Thus the question for consideration is whether it would be safe to base the conviction of those accused who have been named by single witness out of 8 witnesses examined by the prosecution."

6. It could thus be seen that the High Court itself has applied the test laid down in *Masalti* (supra) while acquitting the accused who were not named by more than one witness. Insofar as the accused Kapoor is concerned, the High Court has held that Kapoor has been identified by PW-11 Jankiram and PW-12 Madhukar. However, the perusal of evidence of PW-11 Jankiram would reveal that he has not named the accused Kapoor. As such it is only PW-12 Madhukar who has identified the accused Kapoor. The finding in that respect by the High Court is therefore contrary to record.

7. Undisputedly, insofar as the accused Chandrakant is concerned, he has been named by PW-9 Sopan. Learned counsel

for the respondent-State has not been in a position to point out the evidence of any other witness who has implicated the accused Chandrakant.

8. No doubt that the learned counsel is right in relying on the judgment of this Court in *Dhuleshwar's* case supra. However, it is to be noted that there can be no precedent insofar as criminal matters are concerned. A slight distinction in facts would lead to divergent results. In the present case, when the High Court itself has applied the two witness test in respect of several other accused, it could not have applied a different yard-stick so far as the present appellants are concerned. The appeals deserve to be allowed on this short ground.

9. The order of conviction and sentence recorded by the learned Additional Sessions Judge, Burhanpur and the impugned order passed by the High Court confirming the same are quashed and set aside.

10. The appellants are acquitted of the charges convicted for.

11. The bail bonds of the accused stand discharged.

.....J.
[B.R.GAVAI]

.....J.
[VIKRAM NATH]

New Delhi;
February 09, 2023.

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). 238-239/2012

KAPOOR & ANR.

Appellant(s)

VERSUS

STATE OF MADHYA PRADESH

Respondent(s)

Date : 09-02-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s) Mr. Raj Kishor Choudhary, AOR
Mr. Shakeel Ahmed, Adv.
Mr. Rizwan Ahmad, Adv.
Mr. Mohd. Aslam, Adv.
Mr. Anupam Bhati, Adv.
Mr. Nakul Chaudhary, Adv.
Mr. Shaikh Saipan Dastgir, Adv.

For Respondent(s) Mr. Madhav Gupta, Adv.
Mrs. Swarupama Chaturvedi, AOR

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

The appeals are allowed in terms of the signed
order.

Pending application, if any, shall stand disposed
of.

(ANITA MALHOTRA)
AR-CUM-PS

(ANJU KAPOOR)
COURT MASTER

(Signed order is placed on the file)