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RAJA RAM AND ORS.

v.

STATE OF MADHYA PRADESH

FEBRUARY 22, 1994

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[DR. A.S. ANAND AND FAIZAN UDDIN, JJ.]

Indian Penal Code 1860—Sections 302/149 and S.304 Part II/149—Difference between—Accused armed with deadly weapons—Not using the same to cause injuries to deceased—Injuries caused by lathi on non-vital parts of
C *the body—No intention to cause death—Held: Offence falling u/s.304 Part II.*

Criminal Trial—Conviction and sentence—Benefit to the accused not preferring appeal—Held: could be extended if his case is identical to that of the appellants who are granted relief by this Court.

D *Appreciation of evidence—Courts to critically sift evidence—Not to lay too much emphasis on minor discrepancies and contradictions.*

Code of Criminal Procedure 1973—S.154—FIR—Delay in filing of—Anxiety of relatives of victims in arranging first aid—FIR filed after First aid—Held: No delay.

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The appellants alongwith two others were tried for offences u/s. 302 r/ws.149 IPC and Sections 148 and 147 IPC. Some of them were also tried for offences under Sections 323, 325 and 436 IPC. All the accused were acquitted by the trial Court. However, on appeal the High Court set aside the acquittal and convicted and sentenced the accused. Some of the ac-
F **cused were convicted for offences under Sections 323 and 325 IPC as well. Aggrieved by the High Court's judgment, eight of the ten accused preferred the present appeal.**

Allowing the appeal in part, this Court

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HELD: 1.A scrutiny of the evidence on record reveals that the prosecution has successfully established the guilt against the accused, beyond reasonable doubt. The evidence of the eye witnesses is consistent and nothing has been suggested from which any doubt may be cast on their credibility. They have stood the test of cross-examination well. Two of the
H **eye witnesses are stamped witnesses being themselves injured. Indeed, the**

prosecution witnesses have tried to exaggerate to an extent the part played by the accused in the assult but on that ground alone the entire prosecution case cannot be thrown out. The trial court adopted the easy course of throwing out the entire prosecution case without critically sifting the evidence and laid too much emphasis on minor discrepancies and contradictions. The findings of the trial court are conjectural and based on surmises. [117-F-H; 118-A]

2.1. The adverse inference drawn by the trial court from the so called delay in the lodging of the FIR is not at all justified keeping in view the fact that the house had been set on fire and all the inmates suffered injuries. The anxiety of their relations was naturally to provide first aid to them, rather than to rush to the police station to lodge the report. That apart, the lodging of the report at the Police Station at 3.30 P.M. in respect of occurrence which took place at about 11 A.M. cannot be said to be delayed lodging of the report. [118-B-C]

3. From the analysis of the evidence and particularly the trustworthy statement s of PW 1 and PW 7, who were injured during the occurrence, the conviction and the sentence recorded against the appellants by the High Court for an offence under Section 325 in respect of injuries caused to PW 1 as well as the one under Section 323 IPC for causing injuries to PW 7 does not call for any interference. [118-C, D]

4.1. From the medical evidence it is found that no injury whatsoever had been caused to the deceased either by ballam, pharse of even by an axe. So far as the injuries allegedly caused by the country made pistol below the knee near the left foot of the deceased are concerned, they also go to show that the accused party did not intend to cause the murder of the deceased. [118-H, 119-A]

4.2. Keeping in view the ocular testimony and the medical evidence, it cannot be said that the appellants had intended to cause the injuries on the deceased which were sufficient in the ordinary course of nature to cause his death. Therefore, the case of the appellants does not fall within the ambit of any of the four clauses of the definition of murder contained in Section 300 IPC. [119-C]

4.3. However, in causing the injuries the appellants must be attributed the knowledge that by their acts, they were likely to cause the

death of the deceased, though without any intention to cause his death or to cause such bodily injury as is likely to cause his death. The offence, in such a case, would, therefore, be only culpable homicide not amounting to murder as per the third clause of Section 299 IPC, punishable under Section 304 Part II/ 149IPC. The conviction of the appellants for the offence under Section 302/149 IPC is set aside and instead they are convicted for the offence under Section 304 Part II read with Section 149 IPC. [119-F, G; 120-C]

5. It would meet the ends of justice if the appellants are sentenced to suffer rigorous imprisonment for five years each and to pay a fine of Rs.1000 each. [120-C]

6. Of the two accused apart from the appellants, one died in jail and the other has not filed any appeal against his conviction and sentence. However,his case is identical to the case of the appellants and there is no distinguishing feature. Therefore, the benefit of this judgment should also be made available to him. His conviction is also altered from the one under Section 302/149 IPC to one under Section 304 Part II read with Section 149 IPC. He is also sentenced to five years rigorous imprisonment and to pay a fine of Rs. 1000. [120-D, E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 509 of 1992.

From the judgment and Order dated 21.7.92 of the Madhya Pradesh High Court in Crl. A. No. 1326 of 1985.

Rajinder Singh, and Ranjit Kumar for the Appellants.

Randhir jain and Uma Nath Singh for the Respondent.

The Judgment of the Court was delivered by

DR. ANAND, J. This appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970, is directed against the judgment of the High Court of Madhya Pradesh in Criminal Appeal No. 1326 of 1985, vide which the judgment of acquittal recorded in favour of the appellants and two others by the Additional Sessions Judge was set aside.

Ten accused, including the eight appellants (Ram Sahai has not filed any appeal and Uma Shankar has since died in jail) were tried for offences under Section 302 read with Section 149 IPC and Sections 148 and 147 IPC. Appellant Uma Shankar was also tried for an offence under Section 436 IPC. Appellants Raja Ram, Anandi, Ram Jank, Harivansh, Halke and Uma Shankar along with Ram Narayan were also tried for offences under Section 325/149 IPC for causing grievious hurt to Ram Lakhan, while Anandi appellant was charged for an offence under Section 323 IPC for causing simple hurt to Sahodara Bai.

In brief, the prosecution case is that on 23.3.1983 at about 11 a.m. at village Chhigamma Police Station Gunnore, the appellants along with Ram Sahai and Uma Shankar on account of previous enmity, attacked deceased Halde who was sitting in the house of Khajju causing him several injuries to which he succumbed later on. Injuries were also caused to Ram Lakhan PWI and Sahodara Bai PW. First Information Report of the occurrence was lodged at 3.30 p.m. at Police Station Gunnore on 23.2.1984 by Ram Lakhan PWI. The accused party is related *inter se* and the eye-witnesses, who belong to the complainant party are also related *inter se,* except PW2 Vishalya and PW6 Bajju, who in any case turned hostile at the trial.

We have been taken through the evidence recorded in the case by Shri Rajinder Singh, the learned Senior Counsel appearing for the appellants.

From the evidence on record we are satisfied that the account of attack given by the prosecution is substantially correct and the appreciation of evidence by the High Court also does not sufer from any infirmity. Our scrutiny of the evidence on the record reveals, that the prosecution has successfully established the guilt against the appellants and Ram Sahai who has not filed any appeal against his conviction and sentence, beyond a reasonable doubt. The evidence of the eye witnesses PW1, PW3, PW4, PW5, PW7 and PW8 is consistent and nothing has been brought to our notice from which any doubt may be cast on their credibility. They have stood the test of cross-examination well. Two of the eye witnesses are stamped witnesses being themselves injured. Indeed, the prosecution witnesses have tried to exaggerate to an extent the part played by the appellants in the asault but on that ground alone the entire prosecution case cannot be thrown out. It appears to us that the trial court adopted the easy

course of throwing out the entire prosecution case without critically sifting the evidence and laid too much emphasis on minor discrepancies and contradictions. We find ourselves unable to agree with the reasoning of the trial court. The findings of the trial court are conjectural and based on surmises and we have not been able to persuade ourselves to subscribe to those findings. The adverse inference drawn by the trial court from the so called delay in the lodging of the FIR is not at all justified keeping in view the fact that the house of Khajju had been set on fire and besides Halke, Ram Lakhan and Sahodara Bai had all suffered injuries. The anxiety of their relations was naturally to provide first aid to them, rather than to rush to the police station to lodge the report. That apart, the lodging of the report at the Police Station at 3.30 p.m. in respect of occurrence which took place at about 11 A.M. cannot be said to be delayed lodging of the report. From the analysis of the evidence and particularly the trustworthy statements of PW1 and PW7, who were injured during the occurrence, we find that the conviction and the sentence recorded against the appellants by the High Court for an offence under Section 325 in respect of injuries caused to Ram Lakhan PW 1 as well as the one under Section 323 IPC for causing injuries to Sahodara Bai PW7 does not call for any interference. We therefore confirm the conviction and sentence of the appellants for the offences under Sections 325 and 323 IPC as recorded by the High Court.

For causing the death of Halke, the High Court recorded the conviction of the appellants alongwith Ram Sahai and Uma Shankar under Section 302/149 IPC and imposed the sentence of life imprisonment. Mr. Rajinder Singh, learned senior counsel has drawn our attention to the medical evidence as also the prosecution version regarding the weapons with which the appellants had gone armed to assualt the deceased. He argued that whereas, Raja Ram appellant was armed with a ballam, Rama Shankar with a pharsa, Ram Sahi with an axe and Raj Pratap with a country made postol, and others with lathis no deadly weapon was used and therefore the conviction under Section 302/149 IPC, in the facts and circumstances of the case, is not sustainable.

We find from the medical evidence that no injury whatsoever had been caused to the deceased either by ballam, pharsa or even by an axe, So far as the injuries allegedly caused by the country made pistol below the knee near the left foot of the deceased are concerned, they also go to show that the accused party did not intend to cause the murder of Halke

deceased.

Dr. K.M. Ojha PW15 admitted that he could not say with certainty whether the injuries below the knee had been caused by a country made pistol because he did not find any bullet or pallet in the dead body of Halke. It is, therefore, obvious that though the appellants were armed with formidable weapon, including a country made pistol and an axe, they did not use those deadly weapon to cause injuries to the deceased. The injuries were caused to the deceased mainly by lathi blows. None of the injuries was caused on any vital part of the body of the deceased either. Keeping in view the ocular testimony and the medical evidence, we find it difficult to hold that the appellants had intended to cause the injuries on the deceased which were sufficient in the ordinary course of nature to cause his death. As a matter of fact, Dr. Ojha appearing as PW15, did not even state in his evidence that the injuries found on the deceased were suficient in the ordinary course of nature to cause death. On the other hand, he stated that the injuries sustained by Halke could not result in his instant death but that "death was possible due to hoemmrahage within 6 to 18 hours". Had the appellants shared the common intention to cause the death of the deceased, nothing could have prevented them from using the deadly weapon like axe, ballam, pistol etc. and attack the deceased on some vital part of his body? All, but one injury, found on the deceased were, according to medical evidence, simple injuries. Our analysis of the material on record shows that the appellants and their two associates did not intend to cause the death of the deceased. The facts proved by the prosecution and the established circumstances on the record go to show that the case of the appellants does not fall within the ambit of any of the four clauses of the definition of murder contained in Section 300 IPC. However, in causing the injuries as have been been noticed in the post mortem report and deposed to by Dr. Ojha PW15, the appellants must be attributed the knowledge that by their acts, they were likely to cause the death of the deceased, though without any intention to cause his death or to cause such bodily injury as is likely to cause his death. The offence, in such a case, would, therefore, be only culpable homicide not amounting to murder as per the third clause of Section 299 IPC, punishable under Section 304 Part II/149 IPC, We, therefore, are of the opinion that the High Court was not justified in convicting the appellants and two others for the offence under Section 302/149 IPC. They could only be convicted for an offence punishable under Section 304 Part II read with Section 149 IPC. We therefore

A set aside their conviction for the offence under Section 302/149 IPC and instead convict them for the offence under Scetion 304 part II read with Section 149 IPC.

Coming now to the question of sentence. We have already upheld the conviction and sentence recorded against the appellants by the High B Court for the offences under Sections 325 and 323 IPC in respect of the injuries to Ram Lakhan PW1 and Sahodara Bai PW 7. For the offence under Section 304 Part II read with Section 149 IPC in our opinion. it would meet the ends of justice if the appellants are sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs. 1000 each. C In default of payment of fine, the appellants shall suffer further rigorous imprisonment for one year each. Out of the fine, when realised, Rs.2000 would be paid to Ram Lakhan PW1 and the balance of Rs.6000 to the widow of Halke deceased.

Ram Sahai (accused No.4) has not filed any appeal against his D conviction and sentence. However, we find that his case is identical to the case of the appellants and there is no distinguishing feature. In our opinion it is therefore appropriate that the benefit of our judgment should also be made available to Ram Sahai. His conviction is also altered from the one under Section 302/149 IPC to one under Section 304 Part II read with Section 149 IPC. He is also sentenced to five years rigorous imprisonment E and to pay a fine of Rs.1000. In default of payment of fine, he shall suffer further rigorous imprisonment for one year. The fine when realised from Ram Sahai shall be paid to PW7 Sahodara Bai.

With the above modification in the conviction and sentence, the appeal is partly allowed.

G.N. Appeal allowed.