A STATE OF RAJASTHAN

v.

MOHAN LAL & ORS.

(Criminal Appeal No. 316 of 2005)

MARCH 23, 2012

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[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

Penal Code, 1860 - ss. 148, 302/149, 323, 324/149 and 325 - Prosecution under - Conviction by trial court - High Court C *acquitting the accused u/s. 302/149 and convicting them under rest of the provisions - On appeal, held: High Court was justified in holding that the injuries were simple in nature on non-vital parts of the body and were not sufficient to cause death - Prosecution failed to establish the charge of murder* D *beyond reasonable doubt - Sentence for the period already undergone is also justified.*

The respondents accused were prosecuted u/ss. 148, 302/149, 323, 324/149 and 325 IPC for having caused death of one person and causing injury to another. Trial E **Court convicted the accused under all the provisions. On appeal, High Court partly allowed the appeal. It convicted the accused u/ss. 148, 323, 324/149 and 325 IPC, while acquitted them u/s. 302/149 IPC holding that the injuries were simple in nature on non-vital parts of the body and** F **thus were not sufficient to cause death in the ordinary course of nature. Hence, the present appeal.**

Dismissing the appeal, the Court

G **HELD: 1.1 The High Court was justified in holding that the prosecution had not been able to establish the charge of murder beyond a reasonable doubt. The High Court has correctly observed that8 the deposition of (PW-13) had clearly established that the injuries sustained by the**

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deceased were all simple in nature inflicted upon non-vital parts of the body. It is also difficult to attribute any knowledge to the accused that the injuries inflicted by them were likely to cause death, the same being simple in nature. The doctor had also clearly admitted in cross-examination that no finding was recorded in the post-mortem report Exh.P-21 that the injuries in question were sufficient in the ordinary course of nature to cause death. There was, in that view of the matter and in the absence of any other evidence to support the charge levelled against the accused, no reason to find them guilty of murder. [Paras 6 and 8] [569-C-E]

1.2 The trial court had placed heavy reliance upon the presence of blood clots below the scalp and inside the middle portion of the skull of the deceased to come to the conclusion that the death may have been caused by the injuries on the head which is a vital part of the body. The trial court failed to note that there was no external injury reported by the doctor on any part of the head. If the respondents really intended to commit the murder of the deceased and if they were armed with weapons like 'lathis' and 'dhariyas' of which the latter is a sharp-edged weapon, it is difficult to appreciate why they would not have attacked on any vital part of his body. The absence of any injury on any vital part and particularly the absence of external injury on the skull clearly show that the accused had not intended to cause the death of the deceased nor caused any bodily injury as was likely to cause death. [Para 7] [569-F-H; 570-A]

2. On the question of sentence, there is no compelling reason to interfere. The incident in question is more than 12 years old. The respondents have already suffered incarceration for four years which should suffice having regard to the totality of the circumstances in which

A **the incident in question appears to have taken place. [Para 8] [570-C-D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 316 of 2005.

B From the Judgment & Order dated 02.12.2003 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 509 of 2001.

Ansar Ahmad Chaudhary for the Appellant.

C V.J. Francis, Anupam Mishra for the Respondents.

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. This appeal by special leave assails D the correctness of the judgment and order dated 2nd December, 2003 passed by the High Court of Judicature for Rajasthan at Jodhpur whereby Criminal Appeal No.509 of 2001 filed by the respondents against their conviction and sentence for offences punishable under sections 148, 302/149, 323, 324/ E 149 and 325 of the IPC has been partly allowed and while setting aside the conviction and sentence of the respondents under Section 302/149, affirmed their conviction for the remaining offences with the direction that the period already undergone by them shall suffice.

F 2. The facts giving rise to the filing of the charge-sheet against the respondents, their trial and conviction as also the filing of the appeal before the High Court have been set out at considerable length in the impugned judgment passed by the High Court. We need not therefore re-count the same over G again except to the extent the same is absolutely necessary to understand the genesis of the prosecution case and the submissions made before us at the bar. Suffice it to say that Shambhu Lal (PW-1), Piru (PW-7) and Lalu (deceased) all real brothers and residents of village Sewana in the State of

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Rajasthan were on their way back from the house of one Arjunsha Ghanava on 23rd January, 2000 at about 9.10 p.m., when they were attacked by the respondents Mohan Lal, Nathu, Suraj Mal, Laxman, Kalu and Balu Ram, also residents of village Sewana. The accused were, according to the prosecution, armed with lathis, and dhariyas (Scythes) which they used freely to cause injuries to the deceased and Shambu Lal (PW-1). The prosecution case is that Piru (PW-7) somehow managed to escape from the clutches of the respondents and rushed to the Police Station to lodge an oral report at about 11.30 p.m., on the basis whereof the police registered a case for offences punishable under Sections 147, 148, 149, 307, 323 and 341 of the IPC, and hurried to the place of occurrence to take the injured Shambhu and Lalu to Pratapgarh Hospital where Lalu succumbed to his injuries on 24th January, 2000 at about 6.30 a.m.

A charge under Section 302 IPC was accordingly added by the police who completed the investigation and filed a challan before the jurisdictional Judicial Magistrate. The respondents were committed to face trial to the Sessions Judge at Pratapgarh who made over the case to Additional Sessions Judge (Fast Track) before whom the respondents pleaded not guilty and claimed a trial.

In support of its case, the prosecution examined as many as 17 witnesses including the Doctor who conducted the post-mortem examination of the deceased. The accused examined Vajeram in defence apart from getting Exh.D-1 to D-6 marked at the trial.

3. The Trial Court eventually came to the conclusion that the prosecution had succeeded in proving its case. All the accused-respondents were sentenced to undergo life imprisonment for offences of murder of deceased Lalu. In addition they were also sentenced to undergo imprisonment that ranged between one year to three years for offences punishable under Sections 323, 324 ad 325 of the IPC. A fine of Rs.1500/

A - in total and a sentence in default was also imposed upon them.

4. Aggrieved by the Judgment and order passed by the Sessions Judge, the appellants preferred Criminal Appeal No.509 of 2001 before the High Court which has been partly allowed by the High Court by the judgment and order impugned B in this appeal. The High Court upon a fresh appraisal of the evidence adduced by the prosecution and the defence came to the conclusion that the former had failed to establish the charge under Section 302 read with Section 149 of the IPC framed against the respondents. The High Court observed: C

> "In the instant case from the deposition of Dr.Mathur, it is more than clear that all the injuries found on the persons of the deceased were simple in nature. Three injuries were found by pointed object and other were abrasions. It is not D in dispute that the three injuries found on the person of Piru were all simple in nature and by blunt object. The injured Shambhu Lal received two grievous injuries on left wrist and right leg by blunt object and one simple injury on left little finger by sharp object."

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5. The High Court has on the above basis acquitted the respondents of the charge of murder but upheld their conviction for the remaining offences. On the question of sentence, the High Court found that the respondents have been in custody with effect from 24th January, 2000 and accordingly sentenced F them to the period already undergone. The High Court observed:

> "Consequently, the appeal is allowed in part. The appellants are acquitted of the charge punishable under G Section 302/149 of the I.P.C. Regarding other offences the findings of guilt arrived at by the learned trial Court is maintained. So far as the question of sentence is concerned, the Appellants are in custody w.e.f. 24.1.2000. In the totality of circumstances, we are of the view that in H the circumstances of the case a sentence of imprisonment

already undergone would meet the ends of justice. Consequently, the sentence awarded to the appellants is modified to the extent that they are awarded the sentence already undergone by them. The judgment of the learned Court shall stand modified accordingly. The appeal is disposed of in the manner indicated above. The appellants shall be released forthwith, if not needed in connection with any other case."

6. We have heard learned counsel for the parties at some length and perused the record. The High Court was, in our opinion, justified in holding that the prosecution had not been able to establish the charge of murder beyond a reasonable doubt. The High Court has correctly observed that the deposition of Dr. Narendra Swarup Mathur (PW-13) had clearly established that the injuries sustained by the deceased were all simple in nature inflicted upon non-vital parts of the body. The doctor had also clearly admitted in cross-examination that no finding was recorded in the post- mortem report Exh.P-21 that the injuries in question were sufficient in the ordinary course of nature to cause death. There was, in that view of the matter and in the absence of any other evidence to support the charge levelled against the respondents, no reason to find them guilty of murder.

7. It is noteworthy that the Trial court had placed heavy reliance upon the presence of blood clots below the scalp and inside the middle portion of the skull of the deceased to come to the conclusion that the death may have been caused by the injuries on the head which is a vital part of the body. The Trial Court obviously failed to note that there was no external injury reported by the doctor on any part of the head. If the respondents really intended to commit the murder of the deceased and if they were armed with weapons like Lathis and Dhariyas of which the latter is a sharp-edged weapon, it is difficult to appreciate why they would not have attacked any vital part of his body. The absence of any injury on any vital part and

A particularly the absence of external injury on the skull clearly show that the accused had not intended to cause the death of the deceased nor caused any bodily injury as was likely to cause death.

B 8. It is also difficult to attribute any knowledge to the respondents that the injuries inflicted by them were likely to cause death, the same being simple in nature. Even the doctor who conducted the post-mortem did not certify the injuries to be sufficient to cause death in the ordinary course. Such being the state of evidence, the High Court was, in our view, justified C in allowing the appeal of the respondents in part and acquitting them of the charge of the murder while maintaining their conviction for the remaining offences with which they were charged. Even on the question of sentence, we do not see any compelling reason to interfere. The incident in question is more D than 12 years old. The respondents have already suffered incarceration for four years which should suffice having regard to the totality of the circumstances in which the incident in question appears to have taken place.

E 9. In the result, this appeal fails and is hereby dismissed.

K.K.T. Appeal dismissed.