[2025] 4 S.C.R. 144 : 2025 INSC 377

State of Madhya Pradesh
v.
Shyamlal & Ors.

(Criminal Appeal No. 1254 of 2024)

20 March 2025

[Abhay S. Oka,* Ahsanuddin Amanullah and Augustine George Masih, JJ.]

Issue for Consideration

The High Court converted the conviction of respondents u/s.302 of IPC into the second part of s.304 of the IPC. Whether the judgment of the High Court requires interference.

Headnotes†

Penal Code, 1860 – s.302 and second part of s.304 – The case of the prosecution was that the accused, with a common intention and object, came together and assaulted PW-1, PW-2, PW-3, PW-11, PW-12 and the deceased, on 01.11.1989 – The Trial Court convicted the respondents for the offences punishable u/s.147 and ss.452, 302, 325, and 323 r/w. s.149 of the IPC – By the impugned judgment, the High Court proceeded to set aside the conviction of the respondents for the offences punishable u/s.302 r/w. s.149 of the IPC – The High Court converted the conviction u/s. 302 into the second part of s.304 of the IPC – Correctness:

Held: The deceased was not admitted on the day of incident – In the impugned judgment, the High Court observed that the deceased complained of headache and was treated in the district hospital for twelve days and was discharged – While returning home along with PW-4, he again complained of a headache and was, therefore, admitted to the hospital, where he died on 15.11.1989 – Thus, the death was fifteen days after the incident – The post-mortem report records that the cause of death was asphyxia, but the exact cause of death could not be ascertained – Neither the cause of death mentioned in the post-mortem report nor the evidence of PW-17 prove that the injuries inflicted upon the deceased resulted in his death – The medical evidence creates a serious doubt as to whether

* Author

injuries allegedly inflicted by the respondents caused the death of victim – Therefore, there is a serious doubt whether even s.304 of the IPC could have been applied, as the medical opinion does not support the theory of homicidal death of the deceased – That is why it is not possible to interfere with the judgment of the High Court directing that the respondents-accused should be let off for the offence u/s. 304, r/w. s.149 of the IPC, on the sentence that has been undergone – When the High Court decided the appeal in 2017, the incident was already twenty-eight years old – When this Court is deciding this appeal of the year 2024 (arising out of a special leave petition of the year of 2018), the incident is almost thirty-six years old – When the judgment of the High Court was delivered, at least five accused were above seventy years of age, and one of them was of the age of about eighty years – A substantial amount of Rs.16,000/- each has been imposed by the High Court by way of fine – Therefore, it will not be appropriate to interfere with the impugned judgment of the High Court. [Paras 12, 13 and 14]

Appeals – Appeals against conviction – Old age of accused – Long lapse of time from commission of offence – Where accused is on bail – Priority to the appeals:

Held: The old age of the accused and the long lapse of time from the commission of the offence can always be a ground available to give some priority to the appeals against conviction of the accused on bail – If the appeals against conviction where the accused are on bail and especially where a life sentence has been imposed are heard after a decade or more from its filing, if the appeal is dismissed, the question arises of sending the accused back to jail after a long period of more than a decade – Therefore, it is desirable that certain categories of appeals against conviction where the accused are on bail should be given priority. [Para 15]

Case Law Cited

Ahmed Hussein Vali Mohammed Saiyed & Anr. v. State of Gujarat **[2009] 8 SCR 719 : (2009) 7 SCC 254;** *Fatta & Ors. v. State of U.P.* **(1979) SCC (crl) 629 – referred to.**

List of Acts

Penal Code, 1860.

List of Keywords

Second part of s.304 IPC; Pendency of very old criminal appeals; Accused in prison; Accused on bail; Old age of accused; Long lapse of time from commission of offence; Life sentence.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1254 of 2024

From the Judgment and Order dated 24.08.2017 of the High Court of M.P. Principal Seat At Jabalpur in CRA No. 554 of 1994

Appearances for Parties

Advs. for the Appellant:
Pashupathi Nath Razdan, Padmesh Mishra, Ms. Maitreyee Jagat Joshi, Ms. Akanksha Tomar, Argha Roy.

Adv. for the Respondents:
Mrs. Yugandhara Pawar Jha.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECTS

1. The present appeal is preferred by the State Government. The respondents were tried for the offences punishable under Sections 147, 452, 302, 325, and 323 read with Section 149 of the Indian Penal Code, 1860 (for short, 'the IPC'). The Trial Court held the respondents accused as guilty. The Trial Court convicted the respondents for the offences punishable under Section 147 and Sections 452, 302, 325, and 323 read with Section 149 of the IPC. For the offences punishable under Section 302 read with Section 149 of the IPC, they were sentenced to undergo life imprisonment. For other offences, separate punishments were imposed, which were ordered to run concurrently.

2. Respondents preferred an appeal before the High Court of Madhya Pradesh at Jabalpur. By the impugned judgment dated 24th August

2017, the High Court proceeded to set aside the conviction of the respondents for the offences punishable under Section 302 read with Section 149 of the IPC. The High Court converted the conviction under Section 302 into the second part of Section 304 of the IPC. The conviction for the other offences was confirmed. The High Court noted that the incident was of the year 1989. The first respondent, Shyamlal, was nearly eighty years old, and four other respondents were also above the age of seventy. The respondents were let off by the High Court with the sentence already undergone. A fine of Rs.16,000/- (Rupees sixteen thousand) each was imposed on the respondents out of which, a sum of Rs.1,00,000/- (Rupees one lakh) was ordered to be paid to the family of the deceased and a compensation of Rs.10,000/- (Rupees ten thousand) each to PW-12 (Chiranjeev) and PW-2 (Ramadhar).

3. The incident is of 1st November 1989 which happened at about 4 pm. It is alleged that the respondents, with a common intention and object, got together and assaulted PW-1 (Siroman), PW-2 (Ramadhar), PW-3 (Haripal), PW-11 (Jageshwar), PW-12 (Chiranjeev), and the deceased-Laxman. It is alleged that PW-1 had cut the tail of a buffalo belonging to the respondents. According to the prosecution's case, the respondents first attacked PW-1, PW-3, and PW-11 while they were working in the field. Thereafter, PW-1 ran away. The respondents chased him and dragged PW-2, PW-12, and the deceased-Laxman out of their houses and assaulted them.

4. PW-1, PW-3 and PW-11 suffered simple injuries. In the case of PW-2 (Ramadhar), the assault by the respondents resulted in the fracture of the ulna bone of the right hand. As regards the PW-12 (Chiranjeev), as a result of injuries inflicted by the respondents, he suffered a fracture of the radius and ulna bones of the left hand. The deceased-Laxman was initially examined by the doctors and was discharged after treatment. But, on 2nd November 1989, he complained of vomiting, headache, and dizziness. He was admitted to the district hospital Chhatarpur and was discharged on 15th November 1989. While returning home from the hospital on 15th November 1989, his condition deteriorated, and he complained of severe headache. He was admitted to the Chandla Hospital, where he died on the same night. It is the case of the prosecution that the respondent nos. 3 and 4 (accused nos. 3 and 5, respectively) had ballams, and the remaining accused had sticks in their hands. The

prosecution examined twenty-one witnesses, including the injured eyewitnesses.

SUBMISSIONS

5. The learned counsel appearing for the appellant-State pointed out that even assuming that the offence under the second part of Section 304 of the IPC was made out, the respondents were let off with undergone sentence of only seventy-six days. He submitted that conversion of the offence punishable under Section 302 into an offence under the second part of Section 304 of the IPC was not justified. Only because there was a time gap of fifteen days from the date of assault to the date of death of the deceased, it cannot be said that the offence punishable under Section 302 of the IPC was not proved. The learned counsel submitted that the attack by the respondents was so brutal that the cumulative number of injuries inflicted by them on the eyewitnesses and the deceased was more than thirty-five, which were grievous in nature. He pointed out that the evidence of PW-17 Dr Baburam Arya, who examined the deceased shows that serious injuries were caused to the occipital bone of the deceased-Laxman. According to the post-mortem notes, the deceased suffered internal injuries on account of a blow delivered by the respondents. The learned counsel submitted that there was intention and knowledge on the respondents' part; hence, conviction under Section 302 of the IPC ought to have been confirmed.

6. The learned counsel submitted that it is well settled that one of the prime objectives of the criminal law is to impose adequate, just and proportionate punishment commensurate with the gravity and nature of the crime and the manner in which the offence was committed. In any event, punishment should not be so lenient that it shocks the conscience of the Court. He relied upon a decision of this Court in the case of ***Ahmed Hussein Vali Mohammed Saiyed & Anr. v. State of Gujarat***[1] and in particular, paragraph 99, which reads thus:

> **"99.** Finally, one more argument was advanced about the award of sentence to Liyakat Hussein alias Master Khudabax Shaikh (A-1). The object of awarding appropriate sentence should be to protect the society and to deter the

1 (2009) 7 SCC 254

> criminal from achieving the avowed object to (*sic* break the) law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system."

The learned counsel, therefore, submitted that the impugned judgment of the High Court cannot be sustained.

7. The learned counsel appointed to espouse the respondents' cause invited our attention to the findings recorded by the High Court and, in particular, what is held in paragraph 16. She pointed out that PW-17 (Dr Baburam Arya) had submitted a report stating that the deceased-Laxman had suffered simple injuries.

8. The learned counsel also invited our attention to the cause of death mentioned in the post-mortem notes. It records that the deceased-Laxman died on account of asphyxia and that the cause of death was not discernible. Moreover, there was no evidence of internal damage to any of the organs. No chemical or poison was detected in viscera sent for chemical examination. The High Court, therefore, concluded that the injuries inflicted by the respondents on the deceased were simple in nature, and there was no intention to commit murder. The learned counsel submitted that since the incident was of the year 1989 and since all the accused were 70 to 80 years old, the High Court imposed the punishment to the extent already undergone. She submitted that, after all, this Court was dealing with the incident that took place thirty-six years ago.

CONSIDERATION OF SUBMISSIONS

9. We have perused the notes of evidence of material prosecution witnesses, especially the injured ones. Initially, there were eight accused. Accused no.4 died during the pendency of the appeal before the High Court. As stated earlier, the case of the prosecution

is that the accused, with a common intention and object, came together and assaulted PW-1 (Siroman), PW-2 (Ramadhar), PW-3 (Haripal), PW-11 (Jageshwar), PW-12 (Chiranjeev) and the deceased, on 1st November 1989 at about 4 pm. The accused were under the impression that PW-1 had cut the tail of a buffalo belonging to the respondents-accused. The case of the prosecution is that, initially, the respondents-accused attacked PW-1, PW-3 and PW-11 when they were working in the field. When PW-1 tried to run away, the respondents-accused dragged PW-2 (Ramadhar), PW-12 (Chiranjeev) and the deceased-Laxman out of their houses and again assaulted them. PW-3 (Haripal) and PW-11 (Jageshwar) sustained simple injuries. On the other hand, the injuries suffered by PW-2 and PW-12 were grievous injuries which resulted in fractures.

10. As stated earlier, the conviction of the respondents-accused has been brought down from Section 302 to second part of Section 304 of the IPC. The High Court has noted that the incident was of 1st November 1989. The Trial Court convicted the respondents-accused on 25th April 1994. The appeal against conviction remained pending for twenty-one years. It is pointed out that the respondents were on bail during the trial and the appeal. That is one circumstance taken into consideration by the High Court. The other circumstance considered is that when the High Court dealt with the appeal, the incident was twenty-eight years old. Four accused were approximately seventy years of age, and one was nearly eighty years of age, and that is the reason why the respondents have been let off on the sentence undergone by the High court, and a fine was imposed. While imposing the fine, the High Court relied upon a decision of this Court in the case of ***Fatta & Ors. v. State of U. P.***[2]. The judgment, which consists of only two paragraphs, reads thus:

> "In this appeal by special leave, the learned counsel for the appellant has pressed the appeal only on the question of the applicability of Section 302 read with Section 149 IPC to the appellants other than Ramakant Rai. It was urged that according to the findings of the Court below, the occurrence took place in the disputed field which was claimed by both the parties. According to the prosecution

2 (1979) SCC (crl) 629

case, the field in question was in the possession of the deceased Janardan and PW 1 and they had sown Arhar crop and had come to harvest the same. At that time the accused in a body arrived at the scene variously armed, with a view to dispossess the prosecution party by force. There was exchange of brickbats and ultimately one of the accused Ram Sewak who was armed with a gun, fired a shot which hit the right eye of Janardan as a result of which he fell down and died instantaneously. The appellant Ramakant Rai is said to have provided a cartridge to Ram Sewak before he fired the gun. In these circumstances, therefore, the conclusion is inescapable that Ram Sewak and Ramakant Rai had undoubtedly the common intention to cause murder of the deceased. As regards others, on the materials, we are satisfied that the occurrence took place over the possession of land claimed by both the parties. Apart from Ramakant Rai and Ram Sevak no other person of the Assembly took part in the assault on the deceased. Although some of the appellants were armed with pharsa and spear and one of the appellants with a pistol, but none of these weapons were used. In the circumstances of the present case, there can be no doubt that the appellants had gone armed in order to dispossess the prosecution party and cause such injury as may be necessary for achieving that object. But the evidence does not show that all the appellants shared the common object of committing the murder of Janardan. It is true that the mere fact that no overt act has been attributed to the members of the unlawful assembly, is not sufficient to disprove the charge under Section 149 IPC. But this question depends on the facts of each case. In the instant case, we are satisfied that at the most the appellants other than Ram Sewak and Ramakant Rai had merely the intention to cause an offence under Section 325 IPC and were, therefore, guilty of offence under Section 325/149 as also of rioting. **The other question that has to be determined is as to what sentence should be awarded to the appellants. The appellants have served only 3 to 4 months and have been on bail throughout. It would not be conducive in the interest of justice to send them back to jail after a**

lapse of 10 years. On the other hand, if the family of the deceased is heavily compensated, that will serve the socio-economic purpose which the modern trend of the policy of sentencing required. For these reasons, therefore, we alter the conviction of the appellants except Ramakant Rai from one under Section 302/149 to Section 325/149 and reduce the sentence to the period already served. In lieu of sentence remitted, we impose a fine of Rs 5000 on each of the appellants in default to two years' RI. The entire fine, if realised, shall be paid to PW 1, the widow of Janardan. The sentence under Section 147 is also reduced to the period already undergone.

2. As regards Ramakant Rai, there is evidence of the eyewitnesses that he was the person who supplied cartridge to Ram Sewak in order to shoot Janardan. In these circumstances, Ramakant Rai is convicted under Section 302/34 and his sentence of life imprisonment is upheld under this section. With this modification, the appeal is dismissed. Fine to be paid in six months. After the fine is paid, the appellants shall be discharged from bail bonds."

(emphasis added)

11. We have examined the evidence. We have perused the post-mortem notes of the deceased. PW-17 (Dr Baburam Arya) was working as an Assistant Surgeon in the hospital at Chandla at the relevant time. On 2nd November 1989, the injured witnesses, as well as the deceased Laxman, were brought before him for medical examination. As stated by him, the deceased-Laxman suffered the following injuries:

"Laxman had the following injuries on his body:-

1. Lacerated wound 4×.5×.5 cm, was on the back side of the middle of the skull.

2. Lacerated wound 2×.5×.5 cm, on the left elbow.

3. Lacerated wound 2×.5×.5 cm, on the upper one/third part of the first forearm.

4. Swelling 5 cm in circumference in the right forearm.

> **5.** Lacerated wound 2×.2 cm in the middle of the left foot. The patient complained of pain in the injury about. Later on said that it was not lacerated wound, it was just a scratch.
>
> **6.** Lacerated wound, 3×.5×.5 cm, in a horizontal shape on the right eyebrow.
>
> **7.** Lacerated wound 2.5×.3 cm to the depth of the skin, in line with the nose.
>
> **8.** Lacerated wound 3×.3 cm on the right side of the nose to the depth of skin.
>
> .. .."

12. His evidence makes it clear that the deceased was not admitted to the hospital on the date of the incident. He stated that at 6 pm on 2nd November 1989, the deceased came to him and complained of nausea and vomiting sensation as well as headache. He stated that there was swelling on the right side of his face and the right side of his nose. After treatment, he was referred to the district hospital at Chattarpur for further treatment. It appears that he died in the night of 15th November 1989. In paragraph 5 of the impugned judgment, the High Court observed that the deceased was treated in the district hospital for twelve days and was discharged. While returning home along with PW-4, he again complained of a headache and was, therefore, admitted to the hospital at Chandla, where he died on 15th November 1989. Thus, the death was fifteen days after the incident. The post-mortem report records that the cause of death was asphyxia, but the exact cause of death could not be ascertained. Therefore, viscera was sent for chemical examination. The report of the State Forensic Laboratory dated 27th January 1990 records that any chemical or poison was not present in the viscera of lungs, liver, spleen, kidney, brain, heart, stomach, and intestine of the deceased-Laxman. That rules out the possibility of poisoning. What is important here is what PW-17 (Dr Baburam Arya) stated in his examination-in-chief. In paragraph 18, he stated:

> **"18.** All the injuries were before death. **Laxman had died due to suffocation. It was difficult to give a definite reason**."
>
> (emphasis added)

Therefore, neither the cause of death mentioned in the post-mortem report nor the evidence of PW-17 prove that the injuries inflicted upon the deceased resulted in his death. Moreover, the death occurred 15 days after the incident.

13. We are conscious of the fact that there is no appeal preferred by the accused. But the fact remains that the medical evidence creates a serious doubt as to whether injuries allegedly inflicted by the respondents caused the death of Laxman. Therefore, there is a serious doubt whether even Section 304 of the IPC could have been applied, as the medical opinion does not support the theory of homicidal death of the deceased. That is why it is not possible to interfere with the judgment of the High Court directing that the respondents-accused should be let off for the offence under Section 304, read with Section 149 of the IPC, on the sentence that has been undergone. As noted earlier, when the High Court decided the appeal in 2017, the incident was already twenty-eight years old. When we are deciding this appeal of the year 2024 (arising out of a special leave petition of the year of 2018), the incident is almost thirty-six years old.

14. When the judgment of the High Court was delivered, at least five accused were above seventy years of age, and one of them was of the age of about eighty years. A substantial amount of Rs.16,000/- each has been imposed by the High Court by way of fine. Therefore, it will not be appropriate to interfere with the impugned judgment of the High Court.

POST SCRIPT

15. In all the major High Courts in our country, there is a huge pendency of criminal appeals against conviction and acquittal. Considering the pendency of very old criminal appeals, priority is usually given to the hearing of the appeals where the accused are in prison. The appeals against conviction where the accused are on bail take a backseat. However, a right balance has to be struck by taking up for hearing even some of the old criminal appeals against conviction where accused are on bail. The old age of the accused and the long lapse of time from the commission of the offence can always be a ground available to give some priority to the appeals against conviction of the accused on bail. If the appeals against conviction

where the accused are on bail and especially where a life sentence has been imposed are heard after a decade or more from its filing, if the appeal is dismissed, the question arises of sending the accused back to jail after a long period of more than a decade. Therefore, it is desirable that certain categories of appeals against conviction where the accused are on bail should be given priority.

16. The appeal is dismissed.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Ankit Gyan