

STATE OF M.P.

v.

SUGHAR SINGH & ORS.

(Criminal Appeal Nos. 1362-1363 of 2004)

NOVEMBER 7, 2008

**[DR. ARIJIT PASAYAT, C.K. THAKKER AND
LOKESHWAR SINGH PANTA, JJ.]**

Penal Code, 1860:

ss. 304 (part II) r/w s.149 and ss. 148 and 324/149 – Accused attacking the complainant and his companion in order to prevent their cattle from being taken to cattle pond – Incident, resulting in death of one of the victims and injuries to the other – Conviction by trial court u/ss 302/149, 148 and 324/149 – Acquittal by High Court – HELD: High Court committed an error in ordering acquittal on the ground of inconsistency in medical evidence and eye-witness account – Prosecution witnesses have clearly deposed about participation of the accused in the crime – Injuries sustained by victims have been clearly established – However, in view of nature of injuries and totality of facts and circumstances, the offence committed is culpable homicide not amounting to murder – Judgment and order of acquittal passed by High Court set aside – Accused convicted u/s 304 (part II) r/w s.149 IPC and sentenced to six years rigorous imprisonment – Conviction and sentences u/ss 148, 324/149 as recorded by trial court also restored.

The respondents were prosecuted for commission of offences punishable u/ss 302/149, 324/149, 147, 148 and 406 IPC. The prosecution case was that while PW-2 and his companion were guarding their crop, some cattle from the neighbouring village entered their fields at about 3-4 A.M. They surrounded and started taking the cattle to

- A cattle pond. At that time the accused appeared armed with 'farsa', 'ballam', 'lathi' etc. and attacked PW-2 and his companion. On the shouts of the injured, PWs 8 to 10 and another person who were also guarding their crops reached the spot. The accused left the place taking away the cattle with them. An FIR was lodged. The injured were medically examined at the Primary Health Centre. Since the condition of the companion of PW-2 was critical, he was referred to the District Hospital. However, he died on the way. The trial court convicted the accused u/s 302/149 and sentenced them to imprisonment for life. They were further convicted u/s 324/149 and s.148 and each of them was sentenced to two years rigorous imprisonment under each count. However, the High Court acquitted all of them of all the charges holding that there was inconsistency between the eye-witness account and the medical evidence. Aggrieved, the State filed the appeals.

Allowing the appeals in part, the Court

- E HELD: 1.1. As far as the contradictions in the deposition of eye witnesses and medical evidence is concerned, the High Court was not right in coming to the conclusion that medical evidence did not support the version of eye-witnesses. It is clearly established from the evidence of PW-2, who was injured during the incident, and other eye-witnesses PWs 4 and 8 that the prosecution witnesses were in their fields protecting the crop in the early morning and the cattle entered the fields. PW-2 and the deceased wanted to take the cattle to cattle pond. The said act enraged the accused and they attacked PW-2 and the deceased causing injuries to them. There was no reason to disbelieve the evidence of prosecution witnesses. The prosecution witnesses have supported the case of the prosecution with regard to the incident as also participation of the accused. [Para 13]
- H [731-G-H; 732-A-C]

1.2. Injuries sustained by the deceased and PW2 have been clearly established. The main reason weighed with the High Court was that the doctor, PW-1, had opined that he did not find any incise wound on the head of the deceased. However, PW5, the doctor, who had examined the deceased immediately after the incident and referred him to the District Hospital, had stated that there were two incise injuries, one of which was on the middle of the head. In fact, when a question was put to PW-1 in the cross-examination, he stated, "after dressing, it is difficult to tell about the nature of injuries". In view of the explanation, it was clear that the High Court committed an error in ordering acquittal on the ground of inconsistency in medical evidence and version of eye-witnesses. [Para 14] [732-C, F]

2. Considering the nature of injuries caused to the deceased, and totality of facts and circumstances, the case does not fall within the definition of 'murder' as defined in Section 300, punishable u/s 302, IPC, but is a case of culpable homicide not amounting to murder punishable u/s 304 (part-II) IPC. It has also come in evidence that the incident took place 'all of a sudden'. When the accused saw that the deceased and PW-2 were taking cattle to cattle pond, the accused with a view to prevent them from doing so attacked them. [Para 17 and 18] [733-F-H]

3. The judgment of the High Court is set aside. The conviction of the respondents for an offence punishable u/s 302 read with Section 149, IPC recorded by the trial Court is modified to an order of conviction u/s 304 part-II read with s.149, IPC. The accused are ordered to undergo rigorous imprisonment for six years. The order of the trial court convicting the accused u/s 148, IPC as also u/s 324 read with s.149, IPC for causing grievous hurt to PW2 and sentencing them in respect of both the

A offences is restored. [Para 19] [734-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1362-1363 of 2004.

B From the final Order and Judgment dated 3.1.2003 of the High Court of Madhya Pradesh, Bench at Gwalior in CrI. Appeal Nos. 242 and 253 of 1991.

Vibha Datta Makhija for the Appellant.

C Naresh Kaushik and Lalita Kaushik for the Respondents.

The Judgment of the Court was delivered by

D C.K. THAKKER, J. 1. Both these appeals arise out of common judgment and order passed by the High Court of Madhya Pradesh (Gwalior Bench) dated January 3, 2003 in Criminal Appeal Nos. 242 of 1991 and 253 of 1991. By the said order, the High Court allowed the appeal filed by the accused and set aside the order of conviction and sentence recorded by the Additional Sessions Judge, Shivpuri dated **E** October 14, 1991 in Sessions Case No. 29 of 1990.

2. The case of the prosecution is that on October 20, 1989 Balkishan (hereinafter referred to as 'the deceased') and PW 2 Sarvan Lal were guarding their Jowar crop and for the said purpose they had stayed during night time in their field. Their **F** neighbour farmers, namely, Ramprasad (PW8), Ramsingh (PW9) and Raghunath (PW10) were also guarding over their respective crops and were in the huts constructed in their fields. According to the prosecution, at about 3-4 a.m. early in the morning, cattle of village Nehgawan started grazing the Jowar **G** crop of the deceased. Deceased Balkishan and Sarvan Lal (PW2) surrounded the cattle and started taking them to cattle pond. At that time, all accused persons who were residents of village Nehgawan appeared on the spot. They were armed with lethal weapons, like farsa, ballam, luhangi, lathi, etc. They **H** attacked Balkishan and Sarvan Lal and caused injuries to them.

On the shouts of injured Balkishan and Sarvanlal, Ram Singh, Raghu Nath, Ram Prasad and Ram Niwas reached there and saved Balkishan and Sarvan Lal. The accused did not allow the cattle to be taken to cattle pond and took away with them. While leaving the place, they threatened deceased Balkishan and Sarvan Lal of their lives.

3. Immediately after the incident, deceased Balkishan and Sarvan Lal went to thana and lodged First Information Report (FIR) at Police Station Rannod. The incident was narrated by deceased Balkishan and Case No. 57 of 1989 of was registered against the accused for offences punishable under Sections 147, 148, 149, 323, 324 and 406 of the Indian Penal Code, 1860 (IPC). Both the injured were then taken to Primary Health Centre, Rannod for medical examination. Dr. Suresh Majeji (PW5) examined Balksihan. He also examined Sarvan Lal. Since the condition of Balkishan was critical, he was taken to District Hospital, Shivpuri. On the way, however, Balkishan died. Postmortem of Balkishan was performed by Dr. G.D. Agrawal (PW 1) on the next day i.e. on October 21, 1989. Usual investigation was carried out, accused were arrested, weapons were recovered at their instance and charge was framed against the accused. They denied having committed any offence and claimed to be tried.

4. The learned Additional Sessions Judge, Shivpuri believed the evidence of PW 2 Sarvan Lal, PW 4 Ram Niwas, PW 8 Ram Prasad, (eye witnesses) and PW 1 Dr. G.D. Agarwal, convicted all the accused for an offence punishable under Sections 143, 302 read with 149 and 324 read with 149, 148, IPC for forming unlawful assembly and for causing death of Balkishan and for causing grievous hurt to Sarvan Lal in furtherance of common object. They were accordingly punished for the offence punishable under Section 302 read with Section 149, IPC for which they were ordered to undergo rigorous imprisonment for life. For the offence punishable under Section 324 read with Section 149, IPC, they were ordered to undergo

A imprisonment for two years. Similarly, for an offence under Section 148, IPC, they were ordered to undergo rigorous imprisonment for two years.

B 5. Being aggrieved by the judgment and order passed by the trial Court, the respondent-herein preferred appeals. As stated above, the High Court, vide its judgment and order dated January 3, 2003, set aside the order of conviction and sentence recorded by the trial Court and acquitted all the accused mainly on the ground that there was inconsistency between the evidence of eye-witnesses and medical evidence.

C 6. The State has challenged the order of acquittal recorded by the High Court.

D 7. Notice was issued by this Court on March 19, 2004. Leave was granted on November 19, 2004. The matter has now been placed before us for final hearing.

8. We have heard learned counsel for the parties.

E 9. The learned counsel for the State contended that the High Court was wholly wrong in allowing the appeal filed by the accused and in acquitting them for the offences with which they were charged and convicted by the trial Court. It was submitted that the trial Court, after properly appreciating the evidence of prosecution witnesses, held that the incident in question was proved, all the accused were members of unlawful assembly, they attacked deceased Balkishan and Sarvan Lal. Several injuries were caused to deceased Balkishan and injured Sarvan Lal. Participation of accused persons was proved beyond reasonable doubt from the evidence of prosecution witnesses, namely, PW2-Sarvan Lal-injured eye-witness and PW 4 Ram Niwas, and PW8-Ram Prasad (other eye-witnesses). Injuries caused to deceased Balkishan and injured Sarvan Lal were proved by medical examination. The prosecution evidence also went to show that the accused had committed the above offences in furtherance of common object of unlawful assembly

H

as deceased Balkishan and Sarvan Lal were taking cattle of the accused to cattle pond. The accused did not allow the cattle to be taken to cattle pond and attacked deceased Balkishan and Sarvan Lal with lethal weapons. There was no inconsistency in the evidence of eye-witnesses and medical evidence. The trial Court considered the evidence of eye-witnesses. It also considered medical evidence and held that the incident and participation of the accused was clearly proved.

10. The High Court disbelieved the prosecution case on incorrect appreciation of evidence and set aside the order of conviction. The impugned order of the High Court, hence, deserves to be set aside by allowing the appeal and by restoring the order of conviction and sentence recorded by the trial Court.

11. The learned counsel for the respondents-accused, on the other hand, supported the order passed by the High Court. It was submitted that taking into account inconsistencies and contradictions in the testimony of prosecution witnesses, the High Court extended benefit of doubt to the accused and there is no reason to interfere with the said finding. It was also submitted that even if this Court feels that two views are possible, benefit of doubt ought to be extended to the accused and not to the prosecution. In any case, in exercise of power under Article 136 of the Constitution, this Court may not interfere with the order of acquittal recorded by the High Court and the appeals may be dismissed.

12. Having heard learned counsel for the parties, in our opinion, the appeals deserve to be partly allowed.

13. As far as the contradictions in the deposition of eye witnesses and medical evidence is concerned, in our opinion, the High Court was not right in coming to the conclusion that medical evidence did not support the version of eye-witnesses. It is clearly established from the evidence of injured eye-witness, PW2-Sarvan Lal and PWs 4 and 8 Ram Niwas and Ram

- A Prasad that the prosecution witnesses were in their fields protecting the crop of Jowar in the early morning of October 20, 1989 and the cattle entered the fields. Deceased Balkishan and injured PW2-Sarvan Lal wanted to take them to cattle pond. The said act enraged the accused and they attacked Balkishan and Sarvan Lal which resulted in the death of Balkishan and caused serious injuries to PW2-Sarvan Lal. There was no reason to disbelieve the evidence of prosecution witnesses. PW2-Sarvan Lal was injured during the same incident. The prosecution witnesses have supported the case of the prosecution with regard to the incident as also participation of the accused.

14. Injuries sustained by deceased Balkishan and injured Sarvan Lal-PW2 have been clearly established. The main reason weighed with the High Court was that PW1-Dr. G.D. Agrawal (PW 1) had found seven injuries on the body of the deceased and he had opined that the injuries were caused by hard and blunt substance. PW1-Dr. G.D. Agrawal did not find any incise wound on the head of the deceased. PW5-Dr. Suresh Majeji who had examined the deceased immediately after the incident and advised him to be taken to the District Hospital had stated that there were two incise injuries, one on the middle of the head and the other on the medial aspect of lower 1/3" of the right leg. According to the High Court, therefore, medical evidence was not consistent with the prosecution evidence and the benefit of doubt should be given to the accused.

15. In our opinion, the High Court was not right in acquitting the accused on the ground that there was inconsistency in the medical evidence and medical evidence is not in accord with ocular evidence of the prosecution witnesses. Dr. Suresh Majeji (PW5), in his sworn testimony stated that he applied stitches on the wounds of the deceased. Since his condition was serious, he was advised to go to District Hospital but before the deceased reached there, he died. In fact, when a question was put to PW1-Dr. G.D. Agrawal in the cross-examination on

behalf of the accused regarding injuries sustained by deceased Balkishan, the latter replied that he did not find incise wound either on the forehead or at the right thigh. He, however, stated; "After dressing, it is difficult to tell about the nature of injuries". In view of the above explanation, it was clear that the High Court committed an error in ordering acquittal on the ground of inconsistency in medical evidence and version of eye-witnesses. To that extent, therefore, the decision of the High Court deserves to be interfered with.

16. As far as injuries to the deceased Balkishan are concerned, he had the following injuries;

- (1) Incised wound 1' x 1/2" x 1/4" on the middle of the head. Margin clean cut well defined.
- (2) No injury seen on the left lower limb.
- (3) Incised wound d1"x1/4"x1" deep on the medial aspect of lower 1/3" of the right leg. Margin clean cut bleeding present, whole lower left leg below knee joint to be left ankle joint.
- (4) Multiple contusions 4"x2 and 5"x2 were present on the back. Bluish red colour.

17. It has also come in evidence that the incident took place 'all of a sudden'. When the accused saw that deceased Balkishan and Sarvan Lal were taking cattle to cattle pond, they wanted both of them not to do so and with a view to prevent them from taking cattle to cattle pond, the accused attacked them.

18. Considering the nature of injuries, and totality of facts and circumstances, we are of the view that the case does not fall within the definition of 'murder' as defined in Section 300, IPC punishable under Section 302, IPC, but in a case of culpable homicide, not amounting to murder punishable under Section 304 II, IPC.

- A 19. For the foregoing reasons, in our opinion, the appeals deserve to be partly allowed and are allowed by setting aside the order of acquittal recorded by the High Court. We, therefore, convict the respondents-accused. The conviction of the respondents for an offence punishable under Section 302 read with Section 149, IPC recorded by the trial Court for causing death of deceased Balkishan is modified to an order of conviction punishable under Section 304, Part II read with Section 149, IPC. The accused are ordered to undergo rigorous imprisonment for six years. Conviction under Section 148, IPC as also under Section 326 read with Section 149, IPC for causing grievous hurt to PW2 Sarvan Lal is maintained in view of the fact that the High Court was not right in interfering with the order passed by the trial Court. The sentence awarded on the accused in respect of both the offences also calls for no interference.
- D

20. The appeals are partly allowed and the accused are convicted for the offence punishable under Section 304, Part II read with Section 149, IPC and they are ordered to undergo rigorous imprisonment for six years. Since the order of acquittal was recorded by the High Court, the respondents-accused are ordered to surrender to undergo the remaining period of sentence. It is needless to clarify that the period during which the accused had remained in jail will be adjusted.
- E

- F 21. Ordered accordingly.

R.P.

Appeals partly allowed.