

Govind And Others vs State Of M.P on 25 November, 1993

Equivalent citations: 1994 AIR 826, 1994 SCC SUPL. (1) 536, AIR 1994 SUPREME COURT 826, 1994 AIR SCW 153, (1994) 1 ALLCRILR 17, 1994 UJ(SC) 1 5, (1993) 4 CURCRIR 470, 1994 CRILR(SC MAH GUJ) 42, 1994 CRILR(SC&MP) 42, 1994 SCC (SUPP) 1 536, 1994 SCC (CRI) 707

Author: N Venkatachala

Bench: N Venkatachala

PETITIONER:
GOVIND AND OTHERS

Vs.

RESPONDENT:
STATE OF M.P.

DATE OF JUDGMENT 25/11/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
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REDDY, K. JAYACHANDRA (J)
VENKATACHALA N. (J)

CITATION:
1994 AIR 826 1994 SCC Supl. (1) 536
JT 1993 Supl. 283 1993 SCALE (4) 525

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K.JAYACHANDRA REDDY, J.- The occurrence, which is the subject-matter of this case, manifests how savage and barbarous human beings can be and to what extent they can be cruel with utter disregard to human life. Kestara is a small village in Durg District with a population of about 300 people. A gruesome massacre took place in the evening of January 24, 1982. 14 persons, men, women, children and even infants belonging to a Satnami family (scheduled caste) of one Gangaprasad were killed. Their house was set on fire. The inmates who

were trying to flee, were caught, killed and thrown into the raging flames. The next morning when the police party arrived, six charred bodies were recovered from the burnt house. The police also found seven partly burnt and brutally cut bodies lying scattered near the house. Later charred skull and bones of one more body were recovered from the house. In respect of this occurrence 44 persons mostly belonging to Rawat caste and some others were prosecuted and two of them were found absconding. One Sadru died during the pendency of the trial. Ultimately 41 accused stood the trial before the learned Sessions Judge, Durg. The case mainly rested on the evidence of PW 7 +From the Judgment and Order dated November 28, 1987 of the Madhya Pradesh High Court in Crl. A. No. 261 of 1983 Bhawanibai and PW 8 Bhagabai, the two ladies eyewitnesses who were also members of that unfortunate family. The trial court was not prepared to place reliance on their evidence and accordingly acquitted all the accused. The State filed an appeal against the order of acquittal. The High Court, however, refused to grant leave as against 10 accused. During the pendency of the State appeal, two accused namely Jhulu and Ghanaram expired and the appeal stood abated as against them. As against the remaining accused, the High Court examined the appeal filed by the State and ultimately convicted 21 of them under Section 148 and sentenced each of them to undergo two years' R.1. They were also convicted under Sections 302/149 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs 2,000 each and they were further convicted under Sections 436/149 IPC and sentenced to 10 years' R.1. The sentences were directed to run concurrently. The acquittal of remaining accused was confirmed by the High Court. Aggrieved by the same, the present appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act has been filed by the 21 convicted accused.

2. There was a long-standing faction between the family of the deceased and the Rawats and Brahmins of Village Kestara. There were criminal as well as other cases filed against the family of the deceased Gangaprasad as well as against Rawats and Brahmins. Proceedings under Sections 107/116 CrPC also were initiated against the adult male members of the deceased family and the Rawats. The fact about enmity between these two rival groups is not in dispute. Because of this enmity between family of the deceased Gangaprasad and the Rawats, there had been a fight between Gangaprasad and his brother on one hand and Ramdayal, Shivprasad and Bijeram on the other hand. As soon as Rawats and Brahmins of the village learnt about this fight, they surrounded the house of deceased Gangaprasad. A haystack was kept outside the house and the house was set on fire by sprinkling kerosene and then throwing burning hay thereon. The inmates who tried to run away, were attacked one by one by sharp weapons. Some children and women were trapped inside the house and some were killed and then thrown into the flames. PW 2, Kotwar Bisahuram who had gone to the neighbouring Village Mutpuri to hear Ramayan was informed about the fight and he rushed to Kestara. On the way he also saw the accused Ramdayal, Bijeram and Shivprasad being taken away in bullock carts. When he reached the village, he found that the house of Gangaprasad was in flames and he also saw the dead bodies. Immediately he set out for reporting the matter to the police station and reached the same at about 10.45 p.m. and lodged the report. At about 11 p.m. the three injured accused Ramdayal, Bijeram and Shivprasad also reached the police station and lodged a report. PW 15, R.P. Gupta, SHO came to the police station and despatched Constable Kamalprasad, PW 27 for keeping guard over the dead bodies and he himself left for Village Kestara at about 4 a.m. He visited the scene of occurrence and held the inquest over the dead bodies. Meanwhile the Circle Inspector, PW 44 took over the investigation. The dead bodies were sent for

postmortem examinations and the Doctors who conducted the postmortem had no difficulty in opining that some of the deceased persons were killed and thrown into the fire and the others got burnt in the fire. The accused pleaded that they were falsely implicated.

3. As already mentioned, the prosecution case rested mainly on the evidence of PWs 7 and 8, the two eyewitnesses. PW 7, a woman aged about 21 years is the widow of deceased Mathuraprasad who was killed in the occurrence. She was married about three years before the date of incident and had a small child aged about 1-1/2 years. She deposed that at about noon on the day of the occurrence, she and her sister-in-law (Jethani) PW 8 had gone to the field for cutting the crop. The other members of the family were in the house. Before sunset she and PW 8 returned towards their house. When they reached the neighbouring badi of Nandlal, they saw a big crowd surrounding their house. She and PW 8 hid themselves behind the boundary wall of the badi and saw the entire incident from there. She identified as many as 20 accused and gave their names. She also identified some more accused in the court and we will refer to these details at a later stage. Regarding the details of the occurrence, PW 7 stated that accused Dindayal was throwing down (Paira) dry stalks of paddy from the heap kept in the courtyard. Accused Nandlal, Motiram, Makhani Pandit and Khilawan Pandit were putting this Paira into their house. Accused Govind and Ambika were pouring kerosene from a container on the Paira. Accused Janak and Thulu were also sprinkling kerosene. Accused Ramachandra and some other persons were setting fire to the kerosene sprinkled. When the house started burning her Jeth (elder brother of the husband) Hemprasad jumped out from the house but accused Kanhaiya, Milan and another attacked him with Farsi and killed him. Soon after her husband Mathuraprasad also jumped from the burning house and accused Feku, Sadru, who died during the pendency of the trial, and Sarwan, the absconding accused attacked him with farsis and killed him. She also saw deceased Rukhmaj son of deceased Gangaprasad running and accused Mantram, Janak, Tanwar and Ramchandra chased him and killed him. When Rukhmaj was pleading for mercy, accused Tanwar inflicted a powerful blow with the Farsi and killed him. Likewise some of the other deceased also were killed. Accused Govind snatched a little child from her mother and gave it to accused Shivprasad who threw her into the burning fire. She also heard Lutu and Jhulu brahmins shouting that Kedar's family has been finished but his daughter Bhagabai is alive and she too must be finished. Saying this they went towards Bhagabai's house. Then PWs 7 and 8 ran towards Village Mutpuri to the house of the mother-in-law and stayed there for the night as it was raining and thereafter they went to Bhilai. PW 7 went to the house of Pilau, her Mama Sasur i.e. brother of her mother-in-law and told him about the massacre. Thereafter she and PW 8 were taken by the police for examination. This witness was subjected to a gruelling cross-examination. Most of the cross examination was with reference to some of the omissions in her earlier statements recorded by the police. Learned counsel appearing for the appellants attacked the evidence of PWs 7 and 8 in general by contending that if they were anywhere near the place of occurrence, the assailants in the mob would not have spared them and it is more probable that they were in the fields and they came only after the occurrence and therefore their identification of any of the assailants cannot be accepted. We are unable to agree. We have gone through their evidence. If PWs 7 and 8 were not present, they would not have been in a position to give details of the occurrence. Both of them also have stated that hearing the cries, they rushed from the fields which is more natural and they also deposed that they were hiding themselves behind the boundary wall of the badi, about three feet high and from there they witnessed the occurrence. It must also be noticed

that the occurrence must have taken place for quite some time and therefore there would not have been any difficulty for these witnesses to identify the assailants.

4. We shall now consider the so-called discrepancies in the evidence of PW 7. PW 7 admitted that she did not give many details of the occurrence in her statement under Section 161 CrPC and in her statement under Section 164 CrPC. But that by itself is not a ground to reject her evidence. PW 7 witnessed this ghastly occurrence and even if she has failed to mention some details, that by itself is not of much significance. The main question would be as to how many of the assailants had been identified by her. We find that in the cross examination for instance in Ex. D-2 and Ex. D-3, she stated that she did not name Ramdayal and Bijeram as assailants. To that extent the trial court was right in giving the benefit of doubt to these two accused. But the trial court went to the extent of rejecting her evidence in toto. It is true that some names have been mentioned in her earlier statements, though she deposed in the court that she knew them only by faces. It must be remembered that it was the investigating officer who recorded her statement and there is every likelihood of his having ascertained the names and mentioned them. The witness, as a matter of fact, in her deposition fairly stated that she knew them only by face. It must also be remembered that PW 7 came to the village as a daughter-in-law only three years back and she could not have known the names of all the persons, though she could have known them by face. The whole cross-examination is concentrated only on these omissions.

5. Likewise PW 8, who witnessed the occurrence along with PW 7, has given the details of the occurrence. Learned counsel for the appellants submitted that her evidence also should be rejected on the same grounds. We have gone through the evidence of PW 8 also. On general particulars her evidence is consistent with the evidence of PW 7. Only on certain details there are some variations and that would only go to show that they are not tutored witnesses. We have gone through the reasons given by the learned Sessions Judge for rejecting their evidence and we are of the view that the learned Sessions Judge without a proper scrutiny has rejected their evidence outright on some general grounds which is highly unsound and erroneous. The High Court has considered the evidence of these two witnesses in great detail and has given sufficient, cogent and good reasons for accepting their evidence against some of the accused persons. The High Court by way of scrutiny and on the basis of the identification made by these two witnesses convicted the appellants. The High Court also observed that PWs 7 and 8 were truthful witnesses. But the High Court chose to convict only such of the accused who were identified by both the witnesses.

6. We find a little difficulty in confirming the convictions of all the 21 appellants. PW 1 who is the principal witness, after having given all the details of the occurrence, stated that she identified some of the assailants in the mob who participated and gave 20 names. She has given the names of appellants 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14 and 15. Then from the dock in which the accused were standing, she pointed out towards appellants 7, 16, 17, 18, 19, 20 and 21. Likewise PW 8 also has mentioned names of the assailants and identified them in the court. Admittedly no identification parade was held and these witnesses also were examined at a belated stage and the cross-examination also would show that there were some omissions regarding the names of these appellants in the earlier statements. Therefore we think it may not be safe to convict appellants 7, 16, 17, 18, 19, 20 and 21 whose names were not given by PW 7 and who were only identified for the

first time in the court. So far as the other appellants are concerned, the evidence of PWs 7 and 8 is consistent. Having given their names earlier, they have also identified them in the court. That apart specific overt acts are attributed to most of them. PW 7 deposed that appellant 3 Ramkhilawan, appellant 4, Motiram, and appellant 14 Nandlal entered the house along with others. Appellant 6 Dindayal was throwing down Paira from the heap kept in the courtyard. Appellant 1 Govind poured kerosene. Appellant 2 Thulu and appellant 13, Janak were sprinkling kerosene. Appellant 11 Ramchandra was setting fire to the kerosene sprinkled. When the deceased Hemprasad jumped out from the house, appellant 12 Milan attacked him with a farsi. Appellant 5, Tanwar, appellant 10, Mantram, appellant 11 Ramachandra and appellant 13, Janak chased one of the deceased. Appellant 8, Shivprasad threw the child into the fire. Then appellant 9, Dogaraha and appellant 15 Bisauha alias Bhanu along with another took out the Sadi of Pila Bai and attacked her with farsi and appellant 15 Bisauha killed her ultimately. It can thus be seen that all these persons named by her have been attributed specific overt acts.

7. Learned counsel, however, submitted that appellant 8 Shivprasad was seen going in a cart along with two other injured Ramdayal and Bijeram. Therefore he could not have participated in the occurrence. From the records, we find it difficult to separate the incident in which appellant 8 and two others received injuries from the present one. PW 7 has attributed specific overt acts to appellant 8. Therefore we cannot separate his case. Learned counsel also submitted that there is evidence of PWs 2, 19 and 43 that appellants 1 and 3 were witnessing Ramayan along with appellant 10 and that it was appellant 1 who was organising the Ramayan in the neighbouring village. Therefore they could not have gone to the scene of occurrence and participated in the same. Ramayan was being enacted only in a nearby village and nothing prevented them to come back to the village where the occurrence has taken place. It must also be mentioned that PW 7 has attributed specific overt acts to appellants 1 and 3. The same is corroborated by the evidence of PW 8. In the result the appeal is allowed so far as appellants 7, 16, 17, 18, 19, 20 and 21 are concerned and dismissed in respect of appellants 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14 and

15.