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STATE OF M.P.

v.

RAMJI LAL SHARMA & ANR.

(Criminal Appeal No. 293 of 2022)

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MARCH 09, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Penal Code, 1860 – s.302 r/w s.34 – Murder – Common Intention – Trial Court held that all the four accused shared the common intention to kill the deceased, and convicted them u/s.302 r/w s.34 – High Court allowed appeal of accused no.1 and 3 (respondent No.1 and 2), by giving them benefit of doubt and by observing that there was a contradiction in the ocular and medical evidence and therefore their presence itself was doubtful – According to High Court, three eye witnesses stated that respondent No.1 and 2 were having axe in their hands, and they attacked the deceased by their axe, however, as per medical evidence no such injury by axe was found – On appeal by the State, held: On facts, there were no material contradictions as such between ocular and medical evidence, of which benefit of doubt should be given to the accused – Presence of all accused was established and proved and the prosecution was successful in proving that all the accused including respondent No.1 and 2 shared the common intention – Even otherwise, once it was established and proved by the prosecution that all the accused came at the place of incident with a common intention to kill the deceased and as such, they shared the common intention, in that case it was immaterial whether any of the accused who shared the common intention had used any weapon or not and/or any of them caused any injury on the deceased or not – Trial Court rightly convicted all the accused including respondent No.1 and 2 u/s.302 r/w s.34 IPC.

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Allowing the appeal, the Court

HELD:1. According to the High Court, eye witnesses PW1, PW3 and PW5 stated that accused No.1 and 3 were having axe in their hands, they attacked the deceased by their axe, however, as per the medical evidence no such injury by axe is found.

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However, it is required to be noted that PW1, PW3 and PW5 are all eye witnesses to the incident and they are believed so far as the other accused are concerned. It is also to be noted that right from the very beginning of filing/lodging the FIR the names of all the accused were disclosed. Accused No.1 and 3 were also named in the FIR. All the eye witnesses are common in saying that accused No.1 and 3 also came along with other accused. Therefore, their presence has been established and proved by the prosecution. Even on going through the deposition of PW1, his case was that accused No.1 first hit deceased with an axe which was caught by deceased with his hand. If that be so naturally there could not be any injury on the hand of deceased. Even PW5, who is also one of the witnesses, has also deposed and stated even in cross-examination that accused no.1 hit axe and that deceased caught head of axe, therefore, axe could not hit deceased. Therefore, as such it cannot be said that there are any material contradictions in the ocular and the medical evidence of which benefit of doubt should be given to the accused. [Para 4.1][759-A-F]

2 Even otherwise once it has been established and proved by the prosecution that all the accused came at the place of incident with a common intention to kill the deceased and as such, they shared the common intention, in that case it is immaterial whether any of the accused who shared the common intention had used any weapon or not and/or any of them caused any injury on the deceased or not. [Para 4.2][759-F-G]

3. As such the Trial Court gave specific findings on the common intention shared by all the accused to kill the deceased. However, the High Court has not at all considered the aforesaid vital aspect of the case. The High Court has also not discussed and/or re-appreciated the entire evidence on record and has acquitted accused No.1 and 3 by simply observing that there are contradictions in the ocular and medical evidence, and therefore the presence of accused No.1 and 3 is doubtful and therefore, they are entitled to the benefit of doubt. As such there are no material contradictions between the ocular and medical evidence. The presence of all the accused have been established and proved and the prosecution has also been successful in proving that all

A **the accused including accused No.1 and 3 shared the common intention. Therefore, as such the Trial Court rightly convicted all the accused including accused No.1 and 3 (respondent no.1 and 2) for the offences punishable under Section 302 read with Section 34 of the IPC. [Para 4.3][759-G-H; 760-A-C]**

B CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 293 of 2022.

From the Judgment and Order dated 13.12.2018 of the High Court of Madhya Pradesh, Bench at Gwalior in C.R.A. No.339 of 2006.

C P. V. Yogeswaran, AAG, Gopal Jha, Nishant Verma, Shreyash Bhardwaj, Advs. for the Appellant.

Prashant Shukla, Divyesh Pratap Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

D 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 13.12.2018 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No.339 of 2006, by which, the High Court has allowed the said appeal and has acquitted respondent No.1 and 2 herein – original accused No.1 and 3, for the offences punishable under Section 302 read with Section 34 of the IPC, by giving benefit of doubt, the State of Madhya Pradesh has preferred the present appeal.

E 2. As per the prosecution case sometime prior to 8:30 in the morning of 17.01.2002, one Devendra, son of Bhagirath, brother of deceased Munshilal, went to the house of accused Ramjilal for demanding money for grinding of wheat in the flour mill and accused persons Mukesh (A-4) and Brijesh (A-3) met him. When Devendra demanded money, then, accused No.3 and accused No.4 assaulted him with kicks and punches. Somehow, he rescued himself. The said incident was brought to the notice of the complainant Laxminarayan. The brother of Devendra, namely, Ramgopal and father Bhagirath, went to the house of accused persons for enquiring about the scuffle. All the accused were going towards the house of the deceased Munshilal. While seeing them, the cousin brother of deceased namely Laxminarayan also reached the door

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of Munshilal. The accused-Mukesh was carrying 12 bore double barreled
firearm, accused-Kallu Brijkishore was carrying 12 bore single barreled
firearm and accused Brijesh alias Sadhu alias Brijnandan and Ramjilal
were carrying axe. At that time, the deceased was returning after urinating
in Goda of Ramswaroop. All the accused persons surrounded him.
Accused-Ramjilal hit with the axe on Munshilal, which was obstructed
and held by the deceased and thereafter, accused Mukesh fired from his
firearm. The accused-Kallu also fired from his firearm. The deceased
Munshilal fell down in the Goda of Ramswaroop. The entire incident
was seen by eye witnesses including the original complainant –
Laxminarayan (PW-1). When Laxminarayan, Devendra and Surrender
put Munshilal on the Cot (charpai) to take him to the Police Station but
Munshilal died while he was being taken to the Police Station. The
complainant Laxminarayan got recorded the First Information Report of
the incident in the morning at 9:20 against all the four accused for the
offences punishable under Sections 302, 307, 34 of IPC and Section
3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of
Atrocities) Act. The Investigating Officer initiated the investigation and
recorded the statements of the witnesses. He prepared the punchnama.
He collected the post mortem report/medical evidence. After conclusion
of the investigation, the Investigating Officer filed a chargesheet against
all the accused for the offences punishable under Sections 302, 307 and
34 of the IPC and Section 3(2)(5) of the Scheduled Caste and Scheduled
Tribe (Prevention of Atrocities) Act. As the case was exclusively triable
by the Court of Sessions, the case was committed to the Court of Sessions.
The accused pleaded not guilty and therefore, all of them came to be
tried by the learned Trial Court for the aforesaid offences.

3. To prove the case, the prosecution examined five eye witnesses
including PW1, PW3 and PW5. The prosecution also examined Dr. R.K.
Taneja as PW6. The Investigating Officer was also examined by the
prosecution. After closure of the evidence on the side of the prosecution,
further statements of accused under Section 313 of Cr.PC were recorded.
Their case was of total denial. That thereafter, on appreciation of evidence
on record oral as well as the documentary, the learned Trial Court held
that all the accused shared the common intention to kill the deceased.
On appreciation of evidence on record, the learned Trial Court held all
the accused guilty for the offences punishable under Section 302 read
with Section 34 of the IPC and sentenced all the accused to undergo life
imprisonment with a fine of Rs.5,000/- each.

A 3.1 Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction the accused preferred Criminal Appeal No.339/2006 before the High Court. By the impugned judgment and order, the High Court has allowed the appeal preferred by respondent No.1 and 2 herein – original accused No.1 and 3, by giving them benefit of doubt and by observing that there is a contradiction in the ocular and the medical evidence and therefore their presence itself is doubtful.

B 3.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court acquitting respondent No.1 and 2 herein – original accused No. 1 and 3, by giving them benefit of doubt, the State has preferred the present appeal.

C 4. Having heard learned counsel appearing on behalf of the respective parties at length and on going through the impugned judgment and order passed by the High Court, it appears that while acquitting the accused the High Court has observed in paragraph 14 as under: -

D “14. After hearing the arguments and going through the record, two things are apparent; one, involvement of appellant No.1 Ramjilal Sharma and Appellant No.3 Brajmohan @ Kallu is not made out as ocular evidence is not corroborated by medical evidence given by Dr. Taneja (P.W.6) and secondly, as far as appellant No.2 Brijkishore Sharma @ Kallu is concerned, in view of specific finding given by Dr. R.K. Taneja (P.W.6), that cause of death was homicidal and it occurred because of injury in femoral artery as well as gun shot injury in lungs, it can not be said that femoral artery is not a vital organ. Thus, it is apparent that Kallu shared common intention, whereas presence of appellant No.1 and 3 is doubtful. Therefore, appellants No.1 and 3 should have been extended benefit of doubt which has been wrongly denied by the trial court. When no independent witnesses are examined and medical evidence is not corroborated by the prosecution story, then conviction was reversed as held by the Hon’ble Supreme Court in the case of Lilia Vs. State of Rajasthan as reported in (2014) 16 SCC 303. Therefore, this court finds that this is a fit cases to record acquittal in favour of appellants No.1 Ramjilal and No.3 Brijnandan @ Brijesh Sharma. As far as conviction of appellant No.2 under Section 302 with the aid of Section 34 of IPC is concerned, it is clearly made out.”

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Except the above findings/reasoning no other findings are recorded by the High Court. A

4.1 From the impugned judgment and order passed by the High Court, it appears that what has weighed with the High Court is that there is discrepancy in the ocular evidence as well as the medical evidence and/ or the ocular evidence is not corroborated by the medical evidence and therefore, the presence of accused No.1 and 3 is doubtful. According to the High Court, eye witnesses PW1, PW3 and PW5 stated that accused No.1 and 3 were having axe in their hands, they attacked the deceased by their axe, however, as per the medical evidence no such injury by axe is found. However, it is required to be noted that PW1, PW3 and PW5 are all eye witnesses to the incident and they are believed so far as the other accused are concerned. It is also to be noted that right from the very beginning of filing/lodging the FIR the names of all the accused were disclosed. Accused No.1 and 3 were also named in the FIR. All the eye witnesses are common in saying that accused No.1 and 3 also came along with other accused. Therefore, their presence has been established and proved by the prosecution. Even on going through the deposition of PW1, his case was that Ramjilal – accused No.1 first hit Munshilal with an axe which was caught by Munshilal with his hand. If that be so naturally there could not be any injury on the hand of Munshilal. Even PW5, who is also one of the witnesses, has also deposed and stated even in cross-examination that Ramjilal hit axe and that Munshilal caught head of axe, therefore, axe could not hit Munshilal. Therefore, as such it cannot be said that there are any material contradictions in the ocular and the medical evidence of which benefit of doubt should be given to the accused. B C D E

4.2 Even otherwise once it has been established and proved by the prosecution that all the accused came at the place of incident with a common intention to kill the deceased and as such, they shared the common intention, in that case it is immaterial whether any of the accused who shared the common intention had used any weapon or not and/or any of them caused any injury on the deceased or not. F G

4.3 As such the learned Trial Court in paragraph 35 gave specific findings on the common intention shared by all the accused to kill the deceased. However, the High Court has not at all considered the aforesaid vital aspect of the case. The High Court has also not discussed and/or re-appreciated the entire evidence on record and has acquitted accused H

- A No.1 and 3 by simply observing that there are contradictions in the ocular and medical evidence, and therefore the presence of accused No.1 and 3 is doubtful and therefore, they are entitled to the benefit of doubt. As observed hereinabove as such there are no material contradictions between the ocular and medical evidence. The presence of all the accused have been established and proved and the prosecution has also been
- B successful in proving that all the accused including accused No.1 and 3 shared the common intention. Therefore, as such the learned Trial Court rightly convicted all the accused including accused No.1 and 3 for the offences punishable under Section 302 read with Section 34 of the IPC. The High Court has erred in reversing the conviction and acquitting
- C accused No.1 and 3 – respondent No.1 and 2 herein, by giving them the benefit of doubt.

5. In view of the above and for the reasons stated above the present appeal succeeds. The impugned judgment and order passed by the High Court of Madhya Pradesh in Criminal Appeal No.339/2006 in
- D so far as acquitting respondent No.1 and 2 herein – original accused No.1 and 3 for the offences punishable under Section 302 read with Section 34 of the IPC is hereby quashed and set aside. The judgment and order passed by the learned Trial Court convicting respondent No.1 and 2 herein - original accused No.1 and 3 for the offences punishable under Section 302 read with Section 34 of the IPC is hereby restored.
- E The sentence imposed by the learned Trial Court is also restored. Now respondents herein – original accused to undergo the remaining sentence as per the judgment and order of conviction and sentence passed by the learned Trial Court. Respondent No.1 and 2 to surrender before the concerned Jail authorities or Court within a period of four weeks from
- F today. The present appeal is accordingly allowed.