

CASE DETAILS

PARSHURAM

v.

STATE OF M.P.

(Criminal Appeal No. 524 of 2021)

With

(Criminal Appeal No. 3416 of 2023)

NOVEMBER 03, 2023

**[B.R. GAVAI, B.V. NAGARATHNA AND
PRASHANT KUMAR MISHRA, JJ.]**

HEADNOTES

Issue for consideration: Whether the courts below were justified in convicting and sentencing the appellants for the offences punishable u/s. 302/149, s.326/149, s.324/149, s.323/149, s.147 and s.148 IPC.

Penal Code, 1860 – ss. 304 Part II, 302/149, 326/149, 324/149, 323/149, 147 and 148 – Murder – Unlawful assembly – Accused persons formed an unlawful assembly when the buffalo of the complainant party spoiled the taparia built by the accused, and thereafter grievously assaulted the complainant and his members with deadly weapons, killing one of them – Conviction and sentence of the appellants for the offences punishable u/s. 302/149, 326/149, 324/149, 323/149, 147 and 148 by the courts below – Tenability of:

Held: Inconsistencies in the evidence of two prosecuting witness being rustic villagers not fatal – Their evidence that the appellants were members of the unlawful assembly, though no specific role attributed to them of assaulting the deceased – It is not necessary that such a person, for being convicted, must have actually assaulted the deceased – Trial court's observation that no fatal weapons were used by the complainant party in assaulting the accused persons, whereas accused used fatal weapons, not correct since injuries sustained by one of the accused was by a sharp weapon – Furthermore, witnesses are interested witnesses – Non-explanation of

injuries on the persons of the accused creates a doubt, on the prosecution case – Moreso, cross case was registered against the complainant party – Defence by accused that the complainant party started assaulting them resulting into a free fight in which the persons from both the sides received injuries and one person of complainant's side died – Entire incident arose on account of the happening on the previous day-buffalo spoiling the taparia built by accused – No clarity as to whether the common object of the unlawful assembly was to cause the death of the deceased – Prosecution failed to prove beyond reasonable doubt that the unlawful assembly had an intention to cause the death of deceased – Appellants entitled to benefit of doubt – Thus, the conviction u/s. 302 not sustainable and altered to one under s. 304 Part-II – Appellants sentenced to rigorous imprisonment for 7 years. [Paras 15, 19, 20, 23-27]

Penal Code, 1860 – s. 149 – Unlawful assembly – Scope and ambit of s. 149 :

Held: Every person constituting an unlawful assembly need not play an active role for convicting him with the aid of s. 149 – Prosecution has to establish that a person has to be one of the persons constituting the assembly and that he had entertained the common object along with the other members of the assembly, as defined u/s. 141 – Whoever being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of unlawful assembly. [Para 14]

LISTS OF CITATIONS AND OTHER REFERENCES

Nand Lal and Others v. State of Chhattisgarh 2023 SCC OnLine SC 262; *Masalti v. State of U.P.* [1964] 8 SCR 133; *Lakshmi Singh and Others v. State of Bihar* (1976) 4 SCC 394; *State of Rajasthan v. Madho and Another* 1991 Supp (2) SCC 396; *State of M.P. v. Mishrilal (Dead) and Others* (2003) 9 SCC 426; *Nagarathinam and Others v. State Represented by Inspector of Police* (2006) 9 SCC 57 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.524 of 2021.

From the Judgment and Order dated 14.03.2018 of the High Court of Madhya Pradesh at Gwalior in CRLA No.243 of 2005.

With

Criminal Appeal No.3416 of 2023.

Appearances:

A. Sirajudeen, Sr. Adv., Rishi Malhotra, Ms. N. Annapoorani, Advs. for the Appellant.

Dhirendra Singh Parmar, AAG, Abhimanyu Singh, Yashraj Singh Bundela, Susheel Tomar, Pawan, Ms. Jyoti Verma, Bhagwanjee Thakur, Advs. for the respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

B. R. GAVAI, J.

1. Leave granted in appeal arising out of SLP (Criminal) No. 1718 of 2022.

2. These appeals challenge the common judgment and order dated 14th March 2018, passed by the Division Bench of the High Court of Madhya Pradesh at Gwalior, in Criminal Appeal Nos. 243 and 260 of 2005, whereby, the High Court upheld the judgment and order dated 30th March 2005, passed by the 1st Additional Sessions Judge, Shivpuri (Madhya Pradesh) (hereinafter referred to as the “trial court”) in Sessions Trial No. 09/2002, convicting the appellants and sentencing them to imprisonment for life for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”), to undergo rigorous imprisonment for seven years for the offence punishable under Section 326 read with Section 149 of IPC, to undergo rigorous imprisonment for six months for the offence punishable under Section 324 read with Section 149 of IPC, to undergo rigorous imprisonment for three months for the offence punishable under Section 323 read with Section 149 of IPC, and to undergo rigorous imprisonment for three months for the offence punishable under Section 148 of IPC.

3. Shorn of details, the facts leading to the present appeals are as under:

3.1 It is the prosecution case that the appellant Jalim Singh had constructed a shed (*taparia*) on the passage of the village which is used by the cattle. Since the said shed (*taparia*) was damaged by a buffalo belonging to the complainant party, appellant Jalim Singh had beaten that buffalo with *lathi* and drove that buffalo away. Thereafter, appellant Jalim Singh, Ram Sewak @ Sewak, Ram Lakan @ Lakan, Ramrup @ Roopa, Ram Sahai, Parshuram (appellant in Criminal Appeal No. 524 of 2021) and Mangal Singh came to the house of Chironji (PW-6). On seeing this, Chironji (PW-6) ran away from the house out of fear. Thereafter, accused persons broke the doors and entered his house. It is the prosecution case that the accused persons caught and beat Madan, Leelabai and Kailash. Thereafter, all the accused persons fled from there. When Chironji (PW-6) came back to his house, he was informed about the incident.

3.2 It is further the prosecution case that on 6th October 2001 at 09.15 am, when Chironji (PW-6), Madan (deceased), Raghuveer, Patiram (PW-13), Leelabai (died natural death during pendency of trial), Ramhet (PW-12), Gyani (PW-14) and Kailash (PW-15), from the complainant party were going on a tractor to the Police Station to lodge the complaint, the accused persons, armed with lethal weapons like *barchi*, sword, spear, *lathi* and country-made bomb (*hathgola*), waylaid them to cause injuries to them.

3.3 After intercepting the victims, Ram Lakan who was carrying a *barchi*, stabbed Madan on the left side of his chest, as a result of which Madan fell down unconscious; thereafter, Ram Sewak @ Sewak, who was carrying a *gupti*, caused injuries to the complainant on the right side of his torso (*Bakha*), and gave another blow on his head; and thereafter, Ramrup @ Roopa who was carrying a sword, caused injury to the complainant on his shoulder. Other accused persons, including the appellants herein, who were also armed with lethal weapons, caused grievous injuries.

3.4 The original First Information Report (for short, “FIR”) was registered for the offences punishable under Sections 307, 323, 452, 147, 148 and 149 of IPC. However, on the death of Madan, the same came to be converted to the one under Section 302 IPC.

3.5 The accused persons were arrested, and after completion of investigation, the chargesheet was filed in the Court of Judicial Magistrate 1st Class, Kolaras. Since the case was exclusively triable by the Sessions Court, the case was committed to the Court of 1st Additional Sessions Judge, Shivpuri, on 10th January 2002.

3.6 Before the trial court, the accused persons (in total nine), denied the charges levelled against them, stating that they have been falsely implicated because of a land dispute. Defence examined two witnesses and the prosecution examined twenty-one witnesses. Out of the twenty-one prosecution witnesses, Chironji (PW-6), Ramhet (PW-12), Partiram (PW-13), Gyani (PW-14) and Kailash (PW-15) were injured eyewitnesses.

3.7 The trial court, thereafter, framed five issues for its consideration in connection with the charges framed against the accused persons. Vide judgment dated 30th March 2005, the trial court held, that the evidence adduced by the prosecution proved that the accused persons Parshuram, Ram Sahai, Mangal Singh, Ram Lakan, Ramrup @ Roopa, Ram Sewak @ Sewak and Jalim Singh, formed an unlawful assembly on the date of the incident and thereafter they grievously assaulted the complainant and his family members, thereby killing one of them in furtherance of the common intention of their unlawful assembly, using deadly weapons. The abovenamed seven accused were held guilty of the charges under Section 302 read with Section 149, Section 326 read with Section 149, Section 324 read with Section 149, Section 323 read with Section 149, Section 147 and Section 148 of IPC, and the remaining two accused, namely Diwan Singh and Siyaram were acquitted of the charges.

3.8 Consequently, the trial court, after considering the facts and circumstances of the case, convicted and sentenced the accused persons as aforesaid. All the sentences awarded to the accused were to run concurrently.

3.9 Aggrieved by the judgment of the trial court, the accused persons (Parshuram & Others), preferred Criminal Appeal No. 243 of 2005, and accused Jalim Singh preferred Criminal Appeal No. 260 of 2005 before the High Court. The High Court vide common impugned judgment and order dated 14th March 2018, dismissed both the criminal appeals and affirmed the judgment and order of conviction as recorded by the trial court. Aggrieved thereby, the present appeals are filed by accused Parshuram and Jalim Singh.

4. We have heard Shri Rishi Malhotra, learned counsel appearing for the appellant-Parshuram in Criminal Appeal No. 524 of 2021, Shri A. Sirajudeen, learned Senior Counsel appearing for the appellant-Jalim Singh in appeal arising out of SLP (Crl.) No. 1718 of 2022 and Shri Abhimanyu Singh, learned counsel appearing on behalf of the respondent-State of Madhya Pradesh.

5. Shri Malhotra submitted that both the High Court and the trial court have grossly erred in convicting the appellants. He submitted that the prosecution has failed to attribute any specific role to the appellants herein. In the absence of the same, he submitted that the conviction recorded under Section 302 of IPC would not be tenable. The learned counsel submitted that the role attributed to the present appellant Parshuram was only holding the *lathi* and as such, no injuries which had caused the death of the deceased, can be attributed to the appellant Parshuram. The learned counsel further submitted that two of the accused persons, who were attributed the role of holding hand-bombs, were acquitted by the trial court. As such, conviction of the present appellants was not sustainable.

6. Shri Malhotra submitted that many accused persons had sustained injuries. These injuries were not at all explained by the prosecution. He submitted that the FIR which was lodged by the accused persons against the complainant party arising out of the same incident was prior in point of time. The learned counsel, relying on a recent judgment of this Court in the case of *Nand Lal and Others v. State of Chhattisgarh*¹, submitted that non-explanation of injuries is fatal to the prosecution case and the appellants are entitled to be acquitted on the ground of non-explanation of such injuries.

7. Shri Sirajudeen, learned Senior Counsel for the appellant-Jalim Singh in appeal arising out of SLP (Crl.) No. 1718 of 2022, also advanced arguments on the same lines.

8. Shri Singh, on the contrary, submitted that both the trial court and the High Court have concurrently found that the prosecution has proved its case beyond reasonable doubt. He submitted that since the appellants were a part of the unlawful assembly, it was not necessary for the prosecution to attribute

a specific role to each of them. It is submitted that the object of the unlawful assembly was to kill the members of the complainant party and as such, no interference would be warranted in the finding of conviction recorded by the trial court as affirmed by the High Court. He further submitted that the injuries sustained by the deceased was on vital parts caused with deadly weapons.

9. With the assistance of the learned counsel for the parties, we have perused the material placed on record.

10. Chironji (PW-6) is the first informant. He has narrated about the incident which had taken place on a day prior to the day of occurrence of the present incident. He has stated that, after the accused persons assaulted Madan, Lila (sic Leelabai) and Kamlesh (sic Kailash), when they were going on a tractor to the Police Station for lodging the complaint, they were waylaid by Mangal, Roopa, Sewak, Ram Sahai, Parshuram, Lakan, Jalim, Diwan and Siya and 4-5 other persons. All of them stopped their tractor and thereafter hurled hand bombs. He further stated that Sewak beat with Gupti on his chest and also hit Gupti on his head. He stated that Roopa stabbed him with sword on his shoulder. He stated that Madan was stabbed in the chest by Lakan with barchi, on which, he became unconscious. He stated that thereafter, they went to the Police Station. Madan died at 10.00 am. His evidence is corroborated by Ramhet (PW-12).

11. Dr. S.K. Majeji (PW-4) has performed autopsy on the deceased. Injuries sustained by the deceased are thus:

"Injury no. 1: Deep punctured wound 1" X 1/2" X Lung Deep in the chest on the left side. The skin and muscles below this injury and left lung of the deceased had ripped apart because of this injury. The size of ripped lung was 1" X 2" X 2";

Injury no.2: Peeled wound 4" X 1" in the center of the back; and

Injury no.3: Peeled wound ½" X 1/2" on left arm."

12. It is sought to be urged on behalf of the appellants that the testimonies of Chironji (PW-6) and Ramhet (PW-12) are not reliable inasmuch as there are material contradictions in their evidence. No doubt that there are certain inconsistencies in the evidence of Chironji (PW-6) and

Ramhet (PW-12). However, it is to be noted that the witnesses are rustic villagers and they cannot be expected to give minute details identical with each other.

13. The law with regard to conviction under Section 302 read with Section 149 of IPC has been succinctly discussed by a Constitution Bench of this Court in the *locus classicus* of ***Masalti v. State of U.P.***², wherein this Court observed thus:

“**17.**What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC. Section 142 provides that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of *Baladin* [AIR 1956 SC 181] assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to

be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.....”

14. It could thus clearly be seen that the Constitution Bench has held that it is not necessary that every person constituting an unlawful assembly must play an active role for convicting him with the aid of Section 149 of IPC. What has to be established by the prosecution is that a person has to be a member of an unlawful assembly, i.e. he has to be one of the persons constituting the assembly and that he had entertained the common object along with the other members of the assembly, as defined under Section 141 of IPC. As provided under Section 142 of IPC, whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

15. Undisputedly, from the evidence of Chironji (PW-6) and Ramhet (PW-12), it is clear that the present appellants were members of the unlawful assembly. No doubt that there is no specific role attributed to the present appellants of assaulting the deceased Madan. However, since the appellants were members of the unlawful assembly, in view of the law laid down by this Court in the case of *Masalti* (*supra*), it is not necessary that such a person, for being convicted, must have actually assaulted the deceased.

16. Having held that, the question which we are left to answer is, as to, whether, the conviction under Section 302 of IPC would be tenable or not.

17. The defence taken by the appellants and the other accused persons was that in fact the accused persons had first lodged the complaint with regard to the attack made by the complainant party. It is their defence that after lodging the complaint, when they were coming back from the Police Station, the complainant party had come on a tractor and assaulted the accused persons. It is their contention that the accused persons tried to save themselves. As a result whereof, there was a free fight resulting in injuries to the members of both the parties and unfortunately deceased Madan succumbing to the injuries.

18. It is to be noted that the defence side has also examined two witnesses. Ram Krishan Pandey (DW-1) is the police Constable who had registered the FIR lodged by one of the accused persons. Dr. Nisar Ahmed (DW-2), the Medical Officer, Shivpuri, who has deposed about the injuries sustained by accused Ram Sewak @ Sewak, Ram Lakan and Ramrup @ Roopa. The injuries suffered by accused Ram Sewak @ Sewak are thus:

- (i) Incised wound 7 cm X 1 cm on the deep bone on the front of the forehead;
- (ii) Torn wound 3 cm X 1 cm was skin deep at the back and right side of the head.
- (iii) Incised wound 4 cm X 2 cm was on the left shoulder posterior to the muscle depth;
- (iv) Incised wound 1 X 1 cm/2 X 1 cm/ 2 cm on the outer and upper part of the left forearm;
- (v) Incised wound 1 X 1 cm/ 2 X 1 cm was located on the left thumb;
- (vi) Diffuse swelling in the upper left forearm;
- (vii) Swelling of the right middle malleus and pain on pressure;
- (viii) Diffuse swelling in the right thigh;

The injuries suffered by accused Ram Lakan are thus:

- (i) Diffuse swelling on the tendon in the back of the left leg.

The injuries suffered by accused Ramrup @ Roopa are thus:

- (i) Cracked wound 6 X 1 cm blind skin deep in right parietal area of head;
- (ii) The swelling and deformity in the lower part of the right forearm;
- (iii) Swelling and pain on pressure in upper part of left scapula;
- (iv) Diffuse swelling above the right knee.

19. Though the trial court has referred to the fact of the case being registered against the complainant party for the offences punishable under Sections 323, 341, 294, 147, 148 and 149 of IPC, the trial court observed that no fatal weapons were used by the complainant party in assaulting the

accused persons. However, on the contrary, the accused persons had used the fatal weapons.

20. We do not find the said observation of the trial court correct. The injuries sustained by Ramrup @ Roopa is by a sharp weapon. It will be trite to refer to the following observations of this Court in the case of *Lakshmi Singh and Others v. State of Bihar*³:

“**12.** It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this

Court in *State of Gujarat v. Bai Fatima* [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

21. A similar view with regard to non-explanation of injuries has been taken by this Court in the cases of *State of Rajasthan v. Madho and Another*⁴, *State of M.P. v. Mishrilal (Dead) and Others*⁵, *Nagarathinam and Others v. State Represented by Inspector of Police*⁶ and recently in the case of *Nand Lal (supra)*.

22. Undisputedly, in the present case also, the witnesses are interested witnesses. The injuries sustained by three accused persons are not at all explained. The trial court and the High Court have not considered this aspect of the matter.

23. Non-explanation of injuries on the persons of the accused would create a doubt, as to, whether, the prosecution has brought on record the real genesis of the incident or not. Undisputedly, as observed hereinabove, a cross case was also registered against the complainant party for the injuries sustained by the accused persons.

24. The defence taken by the accused persons is that when they were coming back from the Police Station, it was the complainant party which started assaulting them resulting into a free fight. Their further case is that in the said free fight, the persons from both the sides received injuries. As a result of the injury caused in the said free fight, Madan died.

⁴ 1991 Supp (2) SCC 396

⁵ (2003) 9 SCC 426

⁶ (2006) 9 SCC 57

25. From the material placed on record, it is also not clear as to whether the common object of the unlawful assembly was to cause the death of the deceased or not. The entire incident arose on account of the happening on a day prior to the day of occurrence of the present incident, i.e. the buffalo of the complainant party spoiling the *taparia* built by accused Jalim Singh. It is quite possible that the accused persons did not have an intention to cause death of anybody from the complainant party. It is possible that the accused persons only assembled to teach a lesson to the complainant party on account of the buffalo from their party damaging the *taparia* of the accused Jalim Singh.

26. We are therefore of the considered view that the appellants are entitled to benefit of doubt. The conviction under Section 302 IPC would not be sustainable. The prosecution has failed to prove beyond reasonable doubt that the unlawful assembly had an intention to cause the death of the deceased. As such, we find that the case would fall under Part-II of Section 304 of IPC.

27. In the result, the appeals are disposed of with the following directions:

- (i) The conviction under Section 302 IPC is altered to Part-II of Section 304 of IPC;
- (ii) The appellants are sentenced to suffer rigorous imprisonment for 7 years.

28. Pending application(s), if any, shall stand disposed of in the above terms.

Headnotes prepared by:
Nidhi Jain

Appeals disposed of.