

Jugroo and ors. Vs. State of M.P.

Jugroo and ors. Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/500189

Court : Madhya Pradesh

Decided On : Jul-04-2001

Reported in : 2002CriLJ1050; 2002(1)MPHT458; 2002(2)MPLJ267

Judge : C.K. Prasad and ;Usha Shukla, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3, 132 and 154; Indian Penal Code, 1860 - Sections 148, 149, 302, 324, 436 and 452

Appeal No. : Criminal Appeal No. 31/89

Appellant : Jugroo and ors.

Respondent : State of M.P.

Advocate for Def. : S.K. Gangrade, Panel Lawyer

Advocate for Pet/Ap. : Jagdish Tiwari, Adv.

Judgement :

C.K. Prasad, J.

1. Altogether, 43 persons were put on trial. Out of them, appellants have been held guilty of offence under Sections 302/149, 324/149, 436/149, 452 and 148 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life, 2 years, 5 years, 3 years and 2 years respectively by the First Addl. Sessions Judge,

Damoh in Sessions Trial No. 41/84 by judgment dated 2-1-1989. Aggrieved by the same, appellants have preferred this appeal.

2. According to the prosecution, on 17-3-1984 villagers were invited to the residence of accused Sashikant (since acquitted), the Sarpanch of the village for Fag i.e. singing holi songs on the Dhuredi day, which is celebrated on the following day of Holi. In the said celebration, members of the Chamar caste i.e. a Scheduled Caste community, also participated. After the Fag was over, members of all the communities went to the public temple situated in the midst of the village to sing Fag and after 2-3 songs, the Pujari of the temple i.e., appellant No. 17 Chattu Brahman and appellant No. 24 Rattu alias Ratan Singh Lodhi put Gulal on the forehead of the persons present there but they did not do so to the members of the Harijan community. They however, on the members of Chamar community sprinkled Gulal, because of untouchability, which entered in their eyes. This was objected by the Chamars. This according to the prosecution, infuriated appellant Rattu Lodhi and he abused the Chamars and stated that they should live like Chamars. This was not liked by the Chamars present there and they started proceeding towards their homes. Accused persons considered it to be affront to their status and they chased them pelting stones and entered the Chamar Mohalla armed with Ballam, Kulhadi, Farsa and Gun. Some of the accused persons climbed on the roof and started destroying the tiles (Khapdas). Apprehending danger to their lives, according to the prosecution, members of the Chamar caste hid themselves in the houses and deceased Vishram and his son Nandu Chamar hid themselves in the house of P. W. 7 Doman, where accused persons after breaking open the roof of the door threw big stones from the hole in the roof and assaulted them by Ballam and axe. According to the prosecution, accused persons ignited Mashaland identified the Chamars and started assaulting them one by one and set on fire their houses and properties. Because of the injuries caused by accused persons, Vishram died at the spot and Nandu was severely hurt. In the occurrence, P.W. 3 Birju, P.W. 5 Ujyar, P.W. 8 Hemraj, P.W. 10 Gannu, P.W. 16 Punna, P.W. 22 Tantu, P.W. 23 Bukhi and P.W. 38 Teji also sustained severe injuries.

3. According to the prosecution, accused persons lifted the injured person and brought them to the temple where they were also assaulted. In the meanwhile, Ujyar P.W. 5 ran to Nohta Police Station and lodged the report (Ex. P-4). On receipt thereof, police personnel reached the village and sent the injured persons to Damoh Hospital but the condition of Nandu being serious, he was sent to Medical College Hospital, Jabalpur where he died on the following day. Other injured person remained admitted in the hospital for several days, P.W. 52 the then Circle Inspector of the Harijan Cell investigated the case and on memorandum of appellant No. 11 Charan Singh, an axe was recovered which was seized and on the same, human blood was found by the Serologist. He further on the memorandum of appellant No. 14 Jugraj recovered a gun for which he had no licence.

4. Police, after usual investigation, submitted charge sheet against the appellants and they were ultimately committed to the Court of Sessions to face the trial. Appellants denied to have committed any offence and their plea was that they had been falsely implicated in the case.

5. Prosecution, in support of its case has altogether examined 52 witnesses. No defence witness has been examined. The Trial Court on consideration of the evidence led before it, came to the conclusion that death of Vishram and Nandu were homicidal in nature and caused by the appellants as members of unlawful assembly in furtherance of their common object and accordingly held them guilty of offence under Sections 148, 302/149 of the Indian Penal Code. The learned Judge further found that the appellants caused grievous hurt as also destructed the human dwelling in furtherance of their common object and accordingly held them guilty of offence under Sections 324/149 and 436 of the Indian Penal Code. The learned Judge also held that the appellants committed house-trespass and assaulted the persons there and accordingly held them also guilty of the offence under Section 452 of the Indian Penal Code.

6. Mr. Jagdish Tiwari appears on behalf of the appellants. Mr. S.K. Gangrade, panel lawyer appears on behalf of the State. It is relevant here to state that while holding the appellants guilty, the Trial Court has held that the death of Vishram

and Nandu were homicidal in nature and nothing has been pointed out by Shri Tiwari to assail the said finding. P.W. 12 Dr. O.P. Dubey had conducted the post-mortem examination of Vishram and had found following injuries on his body :--

'Body was cold. Rigor mortis present all over body, spots of dry blood present over face and neck and arms. Mouth, eyes closed, abdomen extended. It was having following injuries:--

(1) L.W. 1' x 1/2' x bone deep 1' above left eye-brow. (2) L.W. 2' x 1/2' x bone deep - post part of scalp near choti region. (3) L.W. 2' x 1/2' x bone deep - post in middle of occipital region. (4) Abrasion in middle of left forearm - post aspect. (5) Abrasion 1' x 1/2' superior aspect of Rt. shoulder. (6) Abrasion 3' x 1' - Ant. aspect of Rt. chest. (7) Abrasion 3' x 1/2' Rt. hypochondria. (8) Abrasion 2' x 1/2' above Rt. Illiac spine. (9) Abrasion 2' x 1/4' Ant. aspect. The muscle in region of both temporal region and occipital region was contused and infiltrated with blood.

Depressed fracture left temporal bone which extend postcrially upto parietal bone of size 4-3/4' long. The underling membrane was torn in 1/2' area with lacerated wound 1/2' over temporal lobe. The left side of brain was covered with blood. Comminuted fracture seen in Rt. temporal bone with collection of blood in subcutaneous region over brain. Fracture 1' long of left frontal bone.'

In the opinion of the doctor, cause of death was coma due to head injury.

6-A. P.W. 39-A Dr. A.K. Yadu had conducted the post mortem examination of deceased Nandu and found following injuries on his body :--

'Rigor mortis was present all over. No foul smell or putrifaction. There was a blood stained brown shirt and a white banyan on body. The eyes were closed. Tongue was inside mouth. All abrasions were reddish brown in colour, all contusions described were bluish in colour. All the injuries described below showed red infiltration of blood in deeper and surrounding tissues of ante-mortem character.

Injury No. (1) lacerated wound situated 3-1/2' above right eye-brow 4-1/2' Rt. of midline in right frontoparietal region of scap antero posteriorly placed 1' x 1/2' x scalp deep. In 2' area surrounding the wound there was contusion. (2) Lacerated

wound situated 3' behind Lt. ear and 1' left of midline in occipital scalp, obliquely placed 1/2' x 1/2' x scalp deep. In 1-1/2' area, around it there was contusion. (3) Abrasion 3' behind Rt. ear in occipital scalp Rt. side 3/4' x 1/2'. In 1' area around it there was contusion. (4) 3 contusions in occipital scalp at Ext. occipital protuberance level close to each other each 3/4' x 1/2'. (5) Contusion 2' behind Rt. ear in occipital scalp 1-1/2' x 1'. (6) Contusion over Rt. posterior parietal eminence of scalp (4-1/2' above Rt. ear) 2' x 1'. (7) Contusion at centre of forehead, 2' above eye-brow level 1' x 1/4'.

(8) Abrasion Rt. side cheek 2' x 1/2'. (9) Abrasion Rt. side of front of neck, 1' below ear lobule 4' x 2'. (10) Abrasion front of right side of chest lateral to nipple 3' x 2'. (11) Abrasion 2' below left nipple 2' x 1-1/2'. (12) Abrasion on back Lt. side 1' above Iliac crest 1' x 1/2'. (13) Abrasion just right of second lumbar spine on back 1' x 1/2'. (14) Abrasion right gluteal region behind Ant. Sup. spine 2' x 1'. (15) Abrasion back of left knee aspect 1' x 1/4'. (16) Abrasion above Rt. knee 1' x 1/4'. (17) Abrasion above Rt. ankle (front) 2' x 1/2'. (18) Abrasion on Rt. shin (middle) 2' x 1'. (19) Abrasion below Rt. knee 1' x 3/4'. (20) Abrasion above Lt. ankle (front) 2' x 1/2'. (21) Abrasion front of left ankle 2' x 1'. (22) Abrasion middle of front of Lt. thigh 3' x 1/2'. (23) Abrasion upper third front of left thigh 1' x 1/2'.

In the opinion of the doctor, the cause of death was head injuries, and injuries on the head were sufficient to cause death in ordinary course of nature.

7. We do not find any reason, nor has been pointed out by Shri Tiwari in the evidence of the aforesaid two doctors to discredit their evidence; and hence in agreement with the Trial Court, we hold that the deaths of Vishram and his son Nandu were homicidal in nature.

8. It has been contended by Shri Tiwari that there being delay in lodging of the first information report, same renders the case of the prosecution doubtful. It is relevant here to state that the incident had started at about 7 P.M. and the manner in which the occurrence had taken place, one has to assume that it continued for some time. P.W. 5 Ujyar had lodged the report at the police station on 17-3-1984 at 10.30 P.M., which is at a distance of 5 Kms, In the occurrence, persons belonging to one community were the aggressors whereas Chamars were the victims. In

such a situation, we are of the opinion that there is no delay in lodging of the first information report, so as to discard the case of the prosecution.

9. Mr. Tiwari submits that the trial of the appellants is vitiated, as the witnesses have not been examined in the manner as provided under Section 138 of the Evidence Act. Section 138 of the Evidence, Act reads as follows :--

'138. Order of examination.-- Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination :-- The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.'

In the present case, many of the witnesses after their examination-in-chief, were cross-examined by the prosecution and thereafter they were cross-examined by the counsel for the appellants and then re-examined by the prosecution. We are of the opinion that the procedure followed by the learned Judge is in accordance with law. In any view of the matter, the purported defect is not of such a nature which in any way had caused prejudice to the appellants and hence we do not find any substance in the submission of Shri Tiwari.

10. It is relevant here to state that P.W. 1 Jagannath, P.W. 2 Raghuwar, P.W. 3 Birju, P.W. 4 Makhan, P.W. 5 Ujyar, P.W. 6 Bhagirath, P.W. 7 Doman, P.W. 8 Hcmraj, P.W. 11 Kishanlal, P.W. 16 Punna, P.W. 17 Mindia Bai, P.W. 19 Siyarani, P.W. 20 Deshrani, P.W. 21 Mohanlal, P.W. 22 Tantu, P.W. 23 Bukkhe, P.W. 24 Raidas, P.W. 25 Komal, P.W. 26 Lila, P.W. 27 Tudda, P.W. 33 Sakhichand, P.W. 34 Kunji, P.W. 35 Raghunath, P.W. 36 Latora, P.W. 38 Teji, P.W. 39 Ratua, P.W. 41, Dhannu, P.W. 42 Sunni, P.W. 43 Mst. Kera Bai, P.W. 44 Bachiya, P.W. 46

Gorclal and P.W. 47 Kudda during the course of their examination have stated that some or the other appellants have participated in the crime but omitted to say the names of some of accused persons to whom they had named during the course of investigation and as such, they were cross-examined by the prosecution.

11. Mr. Tiwari submits that evidence of an unreliable witness in relation to some of the accused does not become reliable simply because it has been corroborated by a number of witnesses. He submits that evidence is required to be weighed and not counted and the learned Judge committed error by holding the appellants guilty by finding corroboration of the evidence of one unreliable witness with another unreliable witness. He submits that evidence of a witness whose testimony suffers from infirmities does not become reliable by its corroboration. He points out that witnesses have lied on material fact and hence the appellants deserve to be acquitted. He highlights that in a case when the evidence of a witness is neither wholly unacceptable nor wholly impeccable, corroboration is essential. In support of his submission, he has placed reliance on a large number of authorities viz., AIR 1976 SC 989, 1990 Cr.LJ 2091, AIR 1977 SC 315, 1977 Cr.LJ 343. We do not have the slightest hesitation in accepting the broad submission of Shri Tiwari but on the facts of the present case, we do not find that the same has any bearing and as such, we deem it inexpedient to refer to those judgments in our decision. Suffice it to say that when the prosecution witness is cross-examined by the prosecution, evidence of such witness to the extent that supports the prosecution version is admissible in trial and if corroborated by other reliable evidence, same can be relied on to sustain the conviction. Reference in this connection can be made to a decision of the Supreme Court in the case of Koli Lakhmanbhai Chanabhai v. State of Gujarat, (1999) 8 SCC 624, in which it has been held as follows :--

'It is settled law that evidence of a hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony if corroborated by other reliable evidence (Bhagwon Singh v. State of Haryana and Sat Paul v. Delhi Admn.)'

12. Before we proceed to consider the case of the appellants individually, it is apt to consider the genesis of occurrence. P.W. 4 Makhan had stated in his evidence that he had gone to the house of the Sarpanch Shashikant where the Fag was being sung and thereafter he had gone to the temple, where large number of persons had assembled belonging to different castes including Brahmans and Lodhis. He had further stated that the Pujari of the temple namely appellant No. 17 Chattu Brahman put Gulal to the Chamars assembled there but did not put Gulal to the Chamars assembled there but he sprinkled Gulal on the Harijans. Deceased Vishram protested to this as the Gulal had entered in his eyes. He has further stated that Vishram asked the Pujari to handover the Gulal to them if he had any objection to put that in their face, which led to an altercation and accused persons who either belonged to the Thakur or Lodhi caste started abusing the Chamars. At this Chamars left the place but were chased by the accused persons. P.W. 4 Makhan, P.W. 7 Doman, P.W. 8 Hemraj, P.W. 10 Gannu, P.W. 16 Punna and and P.W. 38 Teji have supported the case of prosecution on this point. We do not find any reason to discredit their evidence so far as this part of the prosecution story is concerned.

13. Mr. Tiwari submits that occurrence has taken place suddenly and hence each of the appellants shall be liable for their individual acts. In support of his submission, he has placed reliance on a judgment of the Supreme Court in the case of State of U.P. v. Jashoda Nandan Gupta and Ors., 1974 Cr.LJ625. Our attention has been drawn to the following passage from the said judgment:--

'In our opinion, therefore, the learned Judges of the High Court were right in holding that since the occurrence was a chance encounter and the fatal assault was a sudden, unanticipated and individual act of the unascertained assailant, their assembly did not become unlawful at any stage.'

We do not have the slightest hesitation in rejecting this submission of Shri Tiwari. It is relevant here to state that the Chamars assembled at the temple to sing Fag, where the Pujari of the temple i.e., appellant No. 17 chattu put Gulal on the forehead of the persons belonging to the Thakur and Lodhi Caste but threw Gulal on the Chamars, which was protested by deceased Vishram as the Gulal had

entered in his eyes. Thereafter the members of the Scheduled Caste left the place in protest which was not liked by the appellants and all of them in a mob chased them and set fire to their houses, and as such, we hold that appellants were the members of unlawful assembly and they had common object in their mind. In that view of the matter, we are of the opinion that appellants shall be liable for the acts of other members of the assembly as they were sharing the common object. In view of aforesaid, the submission of Shri Tiwari has no merit and the authority relied on is clearly distinguishable.

14. Now we proceed to consider the evidence as regards participation of the appellants in the crime. Appellant No. 2 Jugru Singh has been named in the first information report lodged by P.W. 5 Ujyar Singh. P. W. 5 Ujyar Singh in his evidence has also stated about participation of this appellant in the crime. It has been pointed out by Shri Tiwari that Ujyar (P.W. 5) in his examination-in-chief had stated that this appellant was armed with axe but in the cross-examination, he had stated that he was armed with Farsa and in that view of the matter, his evidence is not fit to be relied on. It is worth mentioning that P.W. 20 Deshrani had clearly stated in her evidence that this appellant Jugru Singh climbed on her house and broke the tiles along with other accused. P.W. 7 Doman, and P.W. 38 Teji have clearly stated about the presence of this appellant and playing active role in commission of the crime. Further, P.W. 1 Jagannath, P.W. 3 Birju, P.W. 8 Hemraj and P.W. 25 Komal have supported the evidence of the aforesaid witnesses but in the statements recorded during the course of investigation, they had not named this appellant. It is relevant here to state that P.W. 4 Makhan and P.W. 24 Raidas when cross-examined with reference to the statement recorded during the course of investigation, they have also stated about the presence of this appellant at the time of commission of the crime and playing active role in the same. In view of what has been stated by P.W. 7 Doman, P.W. 20 Deshrani and P.W. 38 Teji, the evidence of P.W. 5 Ujyar as regards contradiction in relation to the weapon with which appellant Jugru was armed, is of no consequence. P.W. 4 Makhan and P.W. 24 Raidas have also supported the case of the prosecution and merely the fact that they deposed the aforesaid fact while cross-examined by the prosecutor, shall not render their evidence unworthy of reliance on that count. Evidence referred to above clearly proves beyond all reasonable doubt that appellant No. 2

Jugru participated in the crime,

15. Appellant No. 3 Pirua has been named in the first information report. P.W. 1 Jagannath had stated in his evidence that appellant along with other accused persons were pelting stones and were proceeding towards the houses of Chamars. P.W. 2 Raghuwar had also stated in his evidence that deceased Vishram and other members of the Chamar community were fleeing from the temple and they were chased by this appellant besides other accused persons pelting stones. He has specifically stated that this appellant was exhorting that members of the Chamar community be killed. The evidence of aforesaid witnesses find support from the evidence of P.W. 3 Birju, P.W. 5 Ujyar, P.W. 7 Doman. P.W. 8 Hemraj, P.W. 10 Gannu, P.W. 11 Kishanlal, P.W. 16 Punna, P.W. 17 Mindia Bai, P.W. 19 Siyarani, P.W. 20 Deshrani, P.W. 21 Mohanlal, P.W. 25 Komal, P.W. 38 Teji, P.W. 40 Mulua, P.W. 44 Pachiya and P.W. 47 Kudda.

16. Mr. Tiwari points out that in the earlier statement, recorded during the course of investigation, P.W. 2 Raghuwar, P.W. 10 Gannu, P.W. 11 Kishanlal, P.W. 17 Mindia Bai, P.W. 23 Bukkhe, P.W. 24 Mulua and P.W. 47 Kudda had not named this appellant and in that view of the matter, there evidence connecting this appellant Pilua with the crime, is not fit to be accepted. It is relevant here to state that a large number of persons attacked the Chamars and in that view of the matter, some of the witnesses while disclosing the names of the accused persons are likely to forget the names of some of the accused persons. Even if we ignore their evidence, the presence of this appellant at the time of commission of crime and playing active role is evident from the evidence of other witnesses referred to above, who had not only stated the participation of this appellant in the crime during their evidence in Court but have stated so in their earlier statement. From the aforesaid, we have no manner of doubt that this appellant was the member of the unlawful assembly and had actively participated in the crime.

17. Assailing the conviction of appellant No. 4 Mullu Singh, Shri Tiwari contends that although in the first information report lodged by P.W. 5 Ujyar, his name finds place and although P.W. 5 Ujyar had stated un his examination in chief about participation of this appellant, but in the cross-examination, he had clearly stated

that this appellant was not present at the time of commission of the crime. He points out that P.W. 7 Doman in the cross-examination has accepted non-presence of this appellant at the time of the crime, so also P.W. 38 Teji. He submits that the evidence of the aforesaid witnesses is fit to be ignored. Even if we reject the testimony of the aforesaid witnesses, vis-a-vis this appellant Mullu, there is ample evidence on record which proves beyond all reasonable doubt the presence of this appellant and his active role in commission of the offence. P. W. 1 Jagannath and P. W. 10 Gannu have clearly stated in their evidence that this appellant was pelting stones from the side of the temple and he along with other accused persons were chasing the Harijans. Their evidence finds corroboration from the evidence of P.W. 11 Kishanlal, P.W. 19 Siyarani, P.W. 20 Deshrani, P.W. 24 Raidas, P.W. 25 Komal and P.W. 44 Pachiya. It is worth mentioning here that P.W. 10 Gannu, P.W. 19 Siyarani and P.W. 25 Komal have in their earlier statement during the course of investigation, not disclosed the name of this appellant. But in our opinion, the manner in which the crime was committed and the number of people involved in the crime being large, omission to name a few persons in the statement shall not render their evidence unworthy of reliance. In any view of the matter, P.W. 1 Jagannath, P.W. 11 Kishanlal, P.W. 20 Deshrani, P.W. 24 Raidas and P.W. 44 Pachiya have stated participation of this appellant in the crime and no omissions have been pointed out in their evidence. As such, we do not find any difficulty in holding that appellant No. 4 Mullu Singh participated in the crime.

18. While assailing the conviction of appellant No. 5 Kartu alias Kartar Singh, Shri Tiwari draws our attention to the first information report lodged by P.W. 5 Ujyar and his evidence and contends that Ujyar in his report had stated that this appellant was armed with an axe but in his evidence, he had stated that this appellant was armed with Tabbal. He points out that although P.W. 11 Kishanlal, P.W. 21 Mohanlal, P.W. 22 Tantu, P.W. 23 Bukkhe, P.W. 24 Raidas and P.W. 44 Pachiya in their evidence have stated about the participation of this appellant in the crime but they have not stated so in their earlier statement recorded during the course of investigation. He further points out that not only this, P.W. 24 Raidas in his cross-examination has denied the presence of this appellant in the crime. As observed earlier, omission to name few persons in the earlier statement, when the

crime is perpetrated by a group of persons against another group, omission to name few persons during the course of investigation is quite natural. Victims of the crime in the present case are Chamars, a down-trodden community, and as such we are not prepared to disbelieve their evidence only on the ground of omission referred to above. Not only the aforesaid witnesses, P.W. 1 Jagannath, P.W. 4 Makhan, P.W. 8 Hemraj, P.W. 10 Gannu, P.W. 16 Punna, P.W. 20 Deshrani and P.W. 38 Teji are those witnesses who have in their evidence clearly stated about the participation of this appellant in the crime and we do not find any reason to disbelieve their evidence.

19. Similarly, participation of appellant No. 6 Todal Singh in the crime finds support from the evidence of P.W. 1 Jagannath, P.W. 3 Birju, P.W. 4 Makhan, P.W. 7 Doman, P.W. 8 Hemraj, P.W. 10 Gannu, P.W. 16 Punna, P.W. 19 Siyarani, P.W. 20 Deshrani, P.W. 22 Tantu and P.W. 23 Bukkhe. These witnesses have not only stated about the participation of this appellant in the crime, in their evidence during trial but during the course of investigation also. His name finds mention in the first information report.

20. Appellant No. 7 Mullu Singh's participation in the crime finds proof from the evidence of P.W. 4 Makhan, P.W. 5 Ujyar, P.W. 8 Hemraj, P.W. 16 Punna, P.W. 17 Mindia Bai, P.W. 20 Deshrani and P.W. 21 Mohanlal. They have named this appellant. They have stated so also in who was seen participating in the crime by these witnesses in their earlier statement recorded during the course of investigation and also in their evidence during trial. Their names also find mention in the first information report lodged by P.W. 5 Ujyar.

21. Appellant No. 10 Prahlad was seen participating in the crime by P.W. 1 Jagannath, P.W. 8 Hemraj, P.W. 10 Gannu, P.W. 17 Mindia Bai, P.W. 20 Deshrani, P.W. 21 Mohanlal, P.W. 23 Bukkhe, P.W. 38 Teji and P.W. 44 Pachiya. They have named the appellant not only in their deposition during trial, but also during the course of investigation. He has also been named in the first information report.

22. Appellant No. 11 Charan Singh is named in the first information report and identified by P.W. 8 Hemraj, P.W. 20 Deshrani and P.W. 38 Teji participating in the

crime. Aforesaid witnesses have not only stated his participation in their deposition as also in the earlier statement recorded during the course of investigation.

23. Appellant No. 12 Pancham Singh's participation in the crime stands proved by the evidence of P.W. 1 Jagannath, P.W. 4 Makhan, P.W. 8 Hcmraj, P.W. 10 Gannu, P.W. 11 Kishanlai, P.W. 16 Punna, P.W. 19 Roop Kishore, P.W. 20 Deshrani, P.W. 21 Mohanlal, P.W. 25 Komal, P.W. 38 Teji and P.W. 44 Pachiya. This appellant has also been named in the first information report and during the course of investigation, aforesaid witnesses have also stated so.

24. Appellant No. 13 Sukkhe was seen participating in the crime by P.W. 5 Ujyar and P.W. 20 Deshrani. He has also been named in the first information report.

25. Appellant No. 14 Jugraj Singh has been named in the first information report and P.W. 1 Jagannath, P.W. 5 Ujyar, P.W. 8 Hemraj, P.W. 10 Gannu, P.W. 11 Kishanlai, P.W. 15 Ramnath, P.W. 20 Deshrani and P.W. 38 Teji have stated in their evidence about participation of this appellant in the crime.

26. Appellant No. 15 Gupla alias Gopal has also been named in the first information report and was seen participating in the crime by P.W. 4 Makhan, P.W. 7 Doman, P.W. 16 Punna and P.W. 23 Bukkhe.

27. Appellant No. 16 Mohan Singh has also been named in the first information report and was identified by P.W. 1 Jagannath, P.W. 4 Makhan, P.W. 7 Doman, P.W. 16 Punna, P.W. 20 Deshrani, P.W. 21 Mohanlal, P.W. 22, Tantu, P.W. 25 Komal and P.W. 38 Teji.

28. It is relevant here to state that P.W. 5 Ujyar, P.W. 10 Gannu, P.W. 8 Hemraj, Keshar, Shyambai have sustained injuries which would be evident from the evidence of P.W. 9 Dr. B.M. Das, who medically examined them and found injuries on their person. Injury on P.W. 7 Doman has been found by P.W. 13 Dr. R.K. Bajaj, who has examined him. Ratan Singh has been examined by P.W. 12 Dr. O.P. Dubey and he has found injuries on his person. P.W. 3 Birju, P.W. 16 Punna, P.W. 22 Tantu, P.W. 23 Bukkhe and P.W. 24 Raidas had also sustained injuries which would be evident from the evidence of P.W. 30 Dr. K.P. Tripathi, who had

examined them and found injuries on their person. Injuries have also been found on Jagna, Komal, Rattu, P.W. 38 Teji and Nandu, which would be evident from the doctor's report (Ex. P-85 to P-89). Thus many of the witnesses who have supported the case of the prosecution and stated about the participation of the aforesaid appellants in the crime had themselves sustained injuries.

29. It has been contended by Shri Tiwari that injuries on the person of the eye-witnesses itself would not guarantee as regard to the truthfulness of their version. In support of his submission, he has placed reliance on a judgment of this Court in the case of State of M.P. v. Ram Sai and Ors., 2000(2) M.P.H.T. 93 (NOC) = [2000(2) Current Cr.J. 587 (MP)]. Our attention has been drawn to the following passage from the said judgment:--

'13. So, we have the evidence of solitary eye-witness Ram Khilawan (P.W. 1), whose evidence has been disbelieved for as many as 3 accused persons. True, he is an injured eye-witnesses. The injuries on the person of an eye-witness is no doubt a guarantee of his presence at the time of the incident, but that would not in every case be taken as guarantee of the truthfulness of his version.'

30. It is relevant here to state that P.W. 3 Birju, P.W. 5 Ujyar, P.W. 7 Doman, P.W. 8 Hemraj, P.W. 10 Gannu, P.W. 16 Punna, P.W. 22 Tantu, P.W. 23 Bukkhe and P.W. 24 Ramdeen had sustained injuries. They have supported the case of the prosecution the detail whereof has been discussed in the preceding paragraphs of this judgment. There is nothing in their cross-examination which throws doubt on their testimony. In view of aforesaid, we have no manner of doubt to accept the evidence of the injured witnesses and the authority relied on is clearly distinguishable.

31. From what has been found above, it is evident that aforesaid appellants were the members of unlawful assembly and in furtherance of their common object, some of them assaulted Vishram and Nandu as a result whereof, Vishram died at the spot and Nandu succumbed to said injuries later on and as such they were rightly held guilty of the offence under Sections 302/149 of the Indian Penal Code. It is relevant here to state that P.W. 16 Punna, P.W. 22 Tantu, P.W. 23 Bukkhe, P.W. 24 Raidas, Phagu, Shyambai had sustained injuries which proved beyond all

reasonable doubt from the evidence of P.W. 30 Dr. K.P. Tripathi, who had examined them and found injuries on their person. The injuries found on their person were not dangerous to life. Appellants have caused those injuries, to these persons in furtherance of their common object and for that they have been rightly held guilty of the offence under Sections 324/149 of the Indian Penal Code. From the evidence of the witnesses, it is evident that the appellants have entered in the houses of Chamars, destroyed the roof and other properties as also set the houses on fire. Said act was done by the appellants in furtherance of their common object and as such, their acts come within the mischief of Sections 452 and 436/149 of the Indian Penal Code.

32. Mr. Tiwari then submits that it is not the case of the prosecution that aforesaid appellants intended to cause the death of Vishram or Nandu and as such death has been caused of persons which was not intended and therefore appellants utmost can be held guilty of offence under Section 304 Part II of the Indian Penal Code. We do not have the slightest hesitation in rejecting this submission of Shri Tiwari. As held earlier, Vishram protested throwing Gulal in his eyes, which caused annoyance to the appellants and they chased Vishram and assaulted other members of the Chamar community as also Nandu. They were armed with deadly weapons, assaulted a large number of persons and destroyed property. In such a circumstance, it cannot be said that they did not intend causing the death of Vishram and Nandu. In that view of the matter, we do not find any substance in this submission of Shri Tiwari.

33. It is relevant here to state that appellant No. 8 Mohan, appellant No. 9 Mangal, appellant No. 17 Chattu alias Chaturbhuj, appellant No. 18 Kalyan, appellant No. 19 Cyan Singh, No. 12 Kanchedi, No. 21 Jhutu, No. 22 Manohar, No. 23 Tijia and appellant No. 25 Radha Bai have not been named in the first information report. P.W. 5 Ujyar has seen the entire incident and in that view of the matter, omission to name the aforesaid appellants assumes greater significance. As stated earlier, in the present case, accused persons belong to the Thakur and Lodhi communities and the deceased and the injured persons are Chamars and death had taken the shape of a communal riot. In such a situation, the tendency to implicate persons of the caste of the accused persons cannot be ruled out. True it is that the aforesaid

appellants who have not been named in the first information report, have been named by some of the witnesses during the course of the trial. But in the peculiar facts of the present case, non-mentioning of their names in the first information report is of vital importance and accordingly, we are of the opinion that the prosecution has not been able to prove its case beyond all reasonable doubt so far as these appellants are concerned and they are entitled to be given benefit of doubt. It is worth mentioning here that during the course of trial, role attributed to appellant No. 25 is that she used to give wick (Palita) and oil to other accused persons and the same was lit to have light. Thus a very important role has been attributed to Radha Bai. But her name does not find a place in the first information report. As stated earlier, P.W. 5 Ujyar who had lodged the first information report is an eye-witness to the occurrence and claims to have seen the entire incident. In such circumstances, we are of the opinion that non-mentioning of the name of the persons who had played vital role in commission of the offence is significant and that throws doubt in the prosecution case regarding their participation.

34. Mr. Tiwari lastly appeals to us that now all the accused persons have settled down to their normal avocations and are looking after their family members and it will cause them as well as their family members very great hardship if they are sent to prison at this late stage to serve out further terms of imprisonment. He points out that the occurrence had taken place about 17 years ago. We are of the opinion that the factors enumerated above have no bearing so far as the offence is concerned and the same has relevance only when we consider the adequacy of the sentence. All the appellants have been found guilty excepting appellant No. 8 Mohan, appellant No. 9 Mangal, appellant No. 17 Chattu, appellant No. 18 Kalyan, appellant No. 19 Gyan Singh, appellant No. 20 Kanchedi, appellant No. 21 Jugru, appellant No. 22 Manohar, appellant No. 23 Tijia and appellant No. 25 Radha Bai of offence under Sections 302/149 of the Indian Penal Code and the minimum sentence permissible under law is life imprisonment and hence they can not be awarded sentence less than the aforesaid. Further, the tendency of abusing the members of the Scheduled Caste has to be curbed and as such, we are of the opinion that the appellants do not deserve any leniency in sentence.

35. In the result, appeals preferred by appellant Nos. 8, 9, 17 to 23 and 25 are allowed and the impugned judgment of conviction and sentence so far as it relates to them is set aside. However, the conviction as also the sentence of other appellants are maintained and their appeal stands dismissed. They will surrender and serve out the remaining part of their sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com