

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. 31 of 2019

Viram @ Virma

.... Appellant

Versus

The State of Madhya Pradesh

.... Respondent

W I T H

Criminal Appeal No.32 of 2019

J U D G M E N T

L. NAGESWARA RAO, J.

1. These Criminal Appeals are directed against the judgment of the High Court of Madhya Pradesh at Gwalior by which the conviction of the Appellants under Sections 147, 302/149, 325/149, 324/149, 323/149 and their sentences were upheld. On the oral report given by Solal son of Girdhari (PW-10), FIR No.48 of 1995 was registered at Police Station Kumbhraj, Guna, Madhya Pradesh. The informant Solal son of Girdhari stated that Babulal Lodha son of Prabhulal Lodha and Shankarlal (PW-11) had an altercation with Shriram and others during the day time on 19.08.1995. After sunset, Shriram Sarpanch, Biram,

Devlal, Gyarasiram, Shrilal, Gangaram, Kamarlal, Ramesh, Nathulal, Laxminarayan, Sholal son of Gopal Lodhi, Kanhaiyalal, Moolchand, Navneet Ram, Daula, Bhima, Hiralal, Dhurya, Bansilal, Hazari, Parmanand, Bala Bux son of Balram, Ram Narayan Lodha armed with farsa, lathi, ballam, spear and sword attacked Shankarlal (PW-11) and Babulal Lodha. The informant along with Rodibai (PW-1), Shantibai (PW-2), Pana Bai (PW-4), Babulal S/o Girdhari (PW-6), Bala Bux (PW-7), Panchulal (PW-8) and Kesharbai (PW-9) rushed to rescue Shankarlal (PW-11) and Babulal son of Prabhulal Lodha. Shriram, Devlal, Gyarasi, Shrilal, Kamarlal, Ramesh @ Barya, Nathulal, Sholal son of Gopal Lodhi, Kanhaiyalal, Daula @ Daulatram, Bhima, Hira Lal, Hazari, Parmanand, Bala Bux son of Balram, Ramnarayan, Laxmi Narayan and Viram @ Virma assaulted the informant and others who reached the place of incident with farsa, spear and sword and inflicted injuries on their heads, legs, back and other parts of the body. The Appellants were charged under Section 302 and 324 IPC, alternatively under Sections 147, 302/149, 324/149, 329/149 IPC. There were a total of 21 accused apart from the two juveniles Ram Narayan and Kanhaiya Lal. 14 witnesses were examined on behalf of the prosecution.

2. On a consideration of the evidence adduced by the prosecution, the Trial Court held the accused guilty of committing offences under Section 147, 302/149 for committing murder of Babulal and under Sections 325/149, 324/149, 323/149 for voluntarily causing hurt to Rodibai (PW-1), Shantibai (PW-2), Pana Bai (PW-4), Babulal S/o Girdhari (PW-6), Bala Bux (PW-7), Panchulal (PW-8) and Kesharbai (PW-9), Solal son of Girdhari (PW-10) and Shankarlal (PW-11). The accused were sentenced to life imprisonment for the offence punishable under Section 302 read with 149 IPC, 3 years rigorous imprisonment under Section 325/149, 2 years rigorous imprisonment under section 324/149 and six months for each count under Section 323/149 IPC. The Trial Court noticed that except Shankarlal (PW-11), the other witnesses reached the place of occurrence after the accused assaulted Babulal son of Prabhulal and Shankarlal. However, the Trial Court found that the oral testimony of Shankarlal (PW-11) is creditworthy and there is sufficient corroboration from the ocular evidence of the other injured witnesses. The Trial Court observed that the inconsistencies in the testimonies of the injured eye-witnesses are trivial and their evidence cannot be rejected on that ground. According to the Trial Court, a cumulative reading of the oral testimony of the injured eye-witnesses conclusively proved that the accused inflicted a

fatal injury on the head of the deceased Babulal. The injury certificates and the oral testimonies of Dr. A.D. Bhindurkar (PW-13) and Dr. Sitaram Singh (PW-15) was scrutinized by the Trial Court and the submission on behalf of the defence that there is a contradiction between the ocular testimony of the witnesses and the medical evidence was rejected.

3. The High Court dismissed the appeals filed by the Appellants by holding that there was no error committed by the Trial Court. The discrepancies in the statements made by the witnesses in Court were held to be minor in nature on the basis of which the Appellants cannot be said to be not guilty. The attack made by all the accused on the deceased Babulal and the injured witnesses has been narrated by them in one voice, though with some minor variations.

4. Daulal (A-12), Bhima (A-13), Hazari (A-14), Bala Bux son of Balram (A-15), Mool Chand (A-19) and Hira Lal (A-21) have died. Vanshilal (A-2), Navneet Ram (A-3), Dhurya (A-4), Shrilal (A-7), Kamarlal (A-8), Ramesh (A-9), Nathulal (A-10), Sholal son of Gopal Lodhi (A-11), Viram (A-18) and Shriram (A-20) are before this Court in the above Appeals.

5. The Appellants contended that the depositions of all the witnesses is not supported by medical evidence in respect of the nature of injuries, number of injuries and the nature of weapons that were used by the accused. Reliance was placed

on judgments of this Court in *Amar Singh v. State of Punjab*¹ and *Ram Narain Singh v. State of Punjab*² to submit that the incongruity in the statements of the eye-witnesses and the medical evidence is vital and the accused are entitled for acquittal. The Appellants submitted that only Shankarlal (PW-11) was a witness to the assault on the deceased and all the other injured eye-witnesses, admittedly, arrived at the scene of occurrence, later. Therefore, their evidence cannot be relied upon by the prosecution to convict the Appellants under Section 302 read with 149 IPC. Yet another point raised on behalf of the Appellants is that the ingredients of Section 149 IPC have not been made out and the Appellants could not have been convicted with the aid of Section 149 IPC. The learned Senior Counsel appearing for the Appellant contended that, in any event, conviction under Section 302/149 is harsh and excessive and an alternate conviction under Section 326/149 may be imposed, if the Court is inclined to uphold the judgment of the High Court.

6. The case of the prosecution is that interference with the judgments of the Courts below is unwarranted in view of the abundant evidence on record. Shankarlal (PW-11) is an eye-witness to the murder of Babulal. The other injured eye-witnesses corroborated the statement of PW-11. The

1 (1987) 1 SCC 679

2 (1975) 4 SCC 497

inconsistencies and discrepancies in the evidence of all the eye-witnesses are trivial and cannot be resorted to by the Appellants to their benefit. Though there are certain inconsistencies between the oral testimony of the witnesses and medical evidence, the Appellants cannot seek reversal of the judgments of the Courts below in view of the overwhelming oral evidence on record.

7. It is well settled law that this Court does not normally re-appreciate the evidence unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence. This Court does not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court³. Having scrutinised the record of the courts below, we are of the considered view that there is no error committed by them. The death of deceased Babulal was caused due to the attack by the Appellants. However, the submission of the Appellants that there is a contradiction in the oral testimonies and the medical evidence requires consideration. Shankarlal (PW-11) who is an injured witness stated that he has seen the accused persons beating the deceased Babulal. According to him, Shriram (A-20) gave a sword blow on the head of Babulal. Dhurilal (A-4), Ramesh (A-

³ Dalbir Kaur & Ors. v. State of Punjab, (1976) 4 SCC 158

9), Bala Bux son of Balram (A-15) and others gave farsa blow to Babulal. When confronted with the statement recorded by the Police under Section 161 Cr. P.C., the said witness submitted that he had stated to the Police about the aforementioned covert acts and he is not aware as to why this has not been mentioned in his statement. The other witnesses corroborated the statement of PW-11 and also spoke about the injuries caused to them by the Appellants. Dr. A.D. Bhindurkar (PW-13) stated that the deceased was brought to the hospital at 03:15 AM on 20.08.1995 and he found the following injuries on his person:

1. *"A torn wound in Y shape measuring 8 cm x 1.2 cm x 1.5 cm located on the skin in the region of left parietal bone, which appears to have been inflicted by hard and blunt weapon.*
2. *A bluish mark along with abrasion measuring 1 x 0.5 cm · located towards rear side on the joint of right elbow, which appears to have been inflicted by hard and blunt weapon.*
3. *A bluish mark along with abrasion measuring 2 x 2 cm below left knee in the front region, which appears to have been inflicted by hard and blunt weapon.*
4. *A bluish mark measuring 8 x 3 cm located on left side of chest towards front, which appears to have been inflicted by hard and blunt weapon.*

5. *A bluish mark on multiple areas measuring 12 cm x 3 cm located on the back, which appears to have been inflicted by hard and blunt weapon."*

Dr. A.D. Bhindurkar (PW-13) was of the opinion that injury No.1 was fatal and all the other injuries are simple in nature. He has also stated that the injuries were likely to have been inflicted by truncheon or luhangi.

8. Babulal son of Prabhulal Lodha succumbed to the injuries suffered by him. According to PW-13, the injuries were caused by hard and blunt weapon. Sriram (A-20) who was carrying a sword, Ramesh (A-9), Daulal @ Daulatram (A-12), and Mool Chand (A-19) were carrying farsas and Sholal son of Gopal Lodhi (A-11) was armed with a ballam. The remaining accused were having sticks in their hands. Apart from some minor aberrations in the testimony of the injured eye-witnesses, they were consistent in speaking about the weapons that were used by the accused.

9. The oral evidence discloses that there was an indiscriminate attack by the accused on the deceased and the other injured eye-witnesses. As found by the Courts below, there is a contradiction between the oral testimony of the witnesses and the medical evidence. In ***Amar Singh v. State of Punjab*** (supra), this Court examined the point relating to inconsistencies between the oral evidence and the

medical opinion. The medical report submitted therein established that there were only contusions, abrasions and fractures, but there was no incised wound on the left knee of the deceased as alleged by a witness. Therefore, the evidence of the witness was found to be totally inconsistent with the medical evidence and that would be sufficient to discredit the entire prosecution case.

10. In the instant case, the fatal injury was caused by a hard and blunt weapon on the left parietal bone. There is no corresponding injury to the weapons used by Ramesh (A-9), Daulal @ Daulatram (A-12), Mool Chand (A-19) and Shriram (A-20). Therefore, the conviction of the Appellants under Section 302/149 is not justified. However, there is abundant evidence on record to show that the Appellants attacked the deceased and the injured witnesses with deadly weapons. Therefore, the Appellants are liable to be convicted under Section 326 read with 149 IPC.

11. The conviction of the Appellants under Sections 325/149, 324/149, 323/149 is confirmed. We are informed that the Appellants have undergone a sentence of four and half years. In the facts and circumstances of the case, we are of the opinion that a sentence of seven years under Section 326/149 would meet the ends of justice.

12. While upholding the judgment of the High Court regarding the conviction and sentence of the Appellants under Sections 325/149, 324/149, 323/149 and the sentence imposed for such offences, we convert the conviction under Sections 302/149 to 326/149 and sentence from life imprisonment to seven years. Needless to say, that we are not expressing any view on the validity of Section 149 IPC which question is left open.

13. The Appeals are partly allowed.

.....J.
[L. NAGESWARA RAO]

.....J.
[B. V. NAGARATHNA]

**New Delhi,
November 23, 2021.**