
(2009) 08 MP CK 0070
In the Madhya Pradesh High Court

Chotey Khan and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 148, 149, 295, 307, 395

Citation : (2009) 08 MP CK 0070

Hon'ble Judges : K.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Chauhan, J.—This criminal appeal u/s 374(2) of the Code of Criminal Procedure has been filed by the appellants being aggrieved by the impugned judgment, finding and sentence 9th dated 29.10.1998 passed by Additional Sessions Judge, Bhopal in S.T. No. 393/97 whereby the appellants have been convicted u/s 148 of I.P.C. and sentenced to R.I. for 1 year each with fine of Rs. 1000/-in default of payment of fine S.I. for 6 months.

2. Prosecution case in short is that on account of demolition of Babri Mosque on 06.12.1992 the armed pickets were deployed in Bhopal city at the sensitive places for maintaining law and order. On 07.12.1992 G.S. Rajpoot, Sub Inspector Police of Police Station Jahangirabad along with other staff was deputed at Ashbagh Police Help Centre. On that day at 9:00 a.m. the curfew was imposed in the city. At about 11:00 a.m. mob of 150200 persons of Muslim community came there. They were armed with deadly weapons such as swords, farsa, ballam, countrymade pistols, petrol bombs etc. They were shouting provocative slogans. They destroyed and damaged the shops of the persons of Hindu Community. They also looted shops. They were proceeding towards Ashbagh Colony where the majority of Hindu community reside. Complainant reached at Ashbagh gate and warned them that the curfew is in force hence return back to their houses. They did not pay any heed, used filthy languages and threatened to kill them.

They started pelting stones and threw petrol bombs. The police fired in air with intend to disperse them. They set on fire the motorcycle, scooter and moped belonging to complainant G.S. Rajpur, Kanhaiyalal, Head Constable and Chunnilal. Thereafter 5 round fire was done in air by constable Kailash to disperse them on account of which they ran away. The arms, stones etc left by them were seized from spot. They looted the shops and damaged Shiva Temple. The complainant identified Chanda S/o Raheem, Saleem Badebal Wala, Saleem Mota, Akhtar, Achchhe Saeed, Sheru, Bhura Tangewala, Guthli, Guddu Akbar etc. Dehati Nalisi was written by him accordingly. Crime No. 0/92 under Sections 395, 397, 436, 427 and 307 of I.P.C. was registered. On the basis of this Dehati Nalisi Crime No. 970/92 was registered at police station Jahangirabad. Three burnt vehicles were seized from the spot. Spot map was prepared. One unknown person aged about 32 years also died in this incident. According to postmortem report his death was due to shock and hemorrhage as a result of firearm injury caused by rifled gun from distant range and was homicidal in nature. The statements of the witnesses were recorded. After completing investigation charge sheet was filed in the Court of J.M.F.C. Bhopal who committed the case to the Sessions Court for trial.

3. Accused persons were charged under Sections 148, 436/149, 295/149, 395/149 read with Section 397 of I.P.C. They denied the guilt and claimed to be tried mainly contending that they are innocent and have been falsely implicated. Prosecution examined as many as 10 witness whereas the accused persons did not examine any witness in their defence. After appreciating the evidence trial Court acquitted the appellants from the charge u/s 436/149, 295/149, 295/149 read with Section 397 of I.P.C. but found them guilty u/s 148 I.P.C. and sentenced thereto as stated hereinabove in para No. 1 of this judgment. Being aggrieved by the impugned judgment, finding and sentence, the instant appeal has been preferred by the appellants on the grounds mentioned in the memo of appeal.

4. Shri Ajay Gupta, advocate was engaged by the appellants as their counsel but he did not appear to argue the case on the date of hearing on 06.07.2009. The appeal was pending since 1998. Therefore, Ku. Manisha Shrivastava has been appointed from the panel of the High Court Legal Aid Services Committee to argue the case on behalf of the appellants so that the appeal may be disposed of expeditiously.

5. Learned Counsel for the appellants submitted that the court below has not appreciated the evidence in proper perspective. No independent witness has supported the prosecution case. No injury has been caused to any person. It was very difficult to identify the appellants in a mob consisting of 150-200 persons. It has also not been proved that what weapons they were carrying on. The finding of guilt is erroneous which deserves to be set aside and appellants are entitled for acquittal.

6. On the contrary, Shri G.P. Singh, learned Dy. Govt. Advocate supported the

judgment, finding and sentence mainly contending that the names of these appellants have been mentioned in the F.I.R. and the witnesses have correctly identified them. It has been proved that they damaged the property hence finding of guilt is proper and does not call for any interference.

7. The main point for consideration in this appeal is that whether the trial Court has committed an illegality in convicting and sentencing the appellants u/s 148 of I.P.C.

8. G.S. Rajpoot (PW-1) has deposed that the curfew order was imposed on 07.12.1992 in Bhopal city due to demolition of Babri Mosque at Ayodhya on 06.12.1992. He was on duty along with his staff at Ashbag Police Help Centre. At about 11:00 a.m. a mob of 150-200 persons came there from the side of Bogda Bridge. They were having lethal weapons in their hands and shouting slogans. They also looted some shops and set on fire and when they tried to enter in Ashbagh Colony he warned them that curfew is imposed in the city therefore, they should be dispersed but the mob did not pay any heed and with intent to kill them, threw petrol bombs and pelted stones. The fire from katta was also done. He again warned them but of no consequence, therefore, in self defence he directed head constable Kanhaiyalal to fire in air. The mob was divided into different groups and after abusing and threatening to police persons they started surrounding them. They also set on fire his motor cycle and vehicles of Kanhaiyalal and Chunnilal.

9. This witness has further deposed that he identified Shera, Saleem, Saleem Mota, Bhura Tangewala, Achchhe, Akhtar, Akbar etc. He knows accused persons by face. They were present in mob. In court also he correctly identified them. He seized the weapons left by rioters at spot vide seizure memo Ex.P-1.

10. In cross examination this witness has admitted that no injury was caused to any person but the damage to property was done. Since it was a mob of 150-200 persons, therefore he could not see as to who set on fire the vehicles.

11. Thus, from his evidence it is manifestly clear that the appellants were there in the mob. The vehicles were burnt by rioters. Nothing has been brought in the cross examination to discredit his testimony and there is nothing to disbelieve his statement.

12. Kailash Sharma (PW-2) and Kanhaiyalal Malviya (PW-8) have also supported the evidence of G.S. Rajput (PW-1) mainly contending that a mob of several persons armed with lethal weapons came there, looted and ablazed the shops. They have also burnt the vehicles of these witnesses. Kailash Sharma (PW-2) has identified Bhura, Saleem, Chandar, Guddu, Akhtar etc. in the mob of rioters. Likewise Kanhaiyalal has also identified Chhotu, Guddu, Bhure Miyan, Saleem, Chanda etc. According to him all the accused persons were present in the mob. In spite of lengthy and piercing cross examination nothing has been brought on record so as to discredit their testimony. Thus there is the evidence of G.S. Rajput (PW-1), Kailash Sharma (PW-2) and Kanhaiyalal Malviya (PW-8) against

these appellants.

13. Dehati Nalisi (Ex.P-2) was written immediately after incident at the spot and on its basis F.I.R. (Ex.P-6) was recorded by J.P. Rai (PW-6). The weapons were seized from the spot vide Ex.P/1 by G.S. Rajput (PW-1). Spot map (Ex.P-7) was prepared by R.K. Patel (PW-7). He seized the empty cartridges vide seizure memo Ex.P-8 and Ex.P-9. He also seized the burnt motorcycle, scooter and moped from spot vide seizure memo Ex.P-11.

14. Thus by the evidence of these witnesses it is proved that empty cartridges and burnt vehicles were seized from the spot.

15. It is evident that they came together and went together. They were armed with lethal weapons. In spite of warning by police they did not disperse instead they abused and threatened them and burnt their vehicles. They also tried to surround them. These acts themselves are sufficient to establish the fact they contributed the unlawful assembly and the common object of the assembly was to spread communal riots and to destroy the shops belonging to other community. In doing so they also burnt the vehicles of police and caused damage to property. Thus the violence was done by them hence offence of rioting is proved.

16. Thus there is overwhelming evidence against the appellants. The prosecution has proved the case beyond reasonable doubt against the appellants. The trial Court has discussed every aspect in great detail and has rightly arrived at the conclusion regarding the guilt of the appellants. I found no infirmity, illegality or perversity in the finding of the court below hence does not call for any interference. This appeal is meritless and deserves to be dismissed.

17. Consequently, appeal fails and is dismissed. The conviction and sentence passed by court below is hereby affirmed. The appellants are on bail. Their bail bonds are cancelled. They be directed to surrender before C.J.M., Bhopal on 08.09.2009 to serve out the remaining part of the sentence.