
(2014) 11 SC CK 0098
In the Supreme Court Of India
Case No : Criminal Appeal No. 272 of 2009

Jagdish Solanki

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 324, 34

Citation : (2015) 2 RCR(Criminal) 257

Hon'ble Judges : Dipak Misra, J;U.U. Lalit, J.

Bench : Division Bench

Advocate : Akshat Srivastava for Praveen Chaturvedi, Advs., for the Appellant; Apoorv Kurup, C.D. Singh, Sakshi Kakkar, Rohit Rathi, V.C. Shukla, Sumit Kumar Sharma and Niraj Sharma, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. Akshat Shrivastava, learned Counsel for the Appellant, Mr. Apoorv Kurup, Learned Counsel for the Respondent No. 1-State, and Mr. Sumit Kumar Sharma, Learned Counsel for the Respondent No. 3 to 5. The present appeal is directed against the judgment and order of acquittal dated 18.08.2006 rendered by the Division Bench of the High Court of Madhya Pradesh at Indore in Criminal Appeal No. 270 of 1996 whereby the High Court has set aside the judgment of conviction recorded by the learned IInd Additional Sessions Judge, Ujjain in Sessions Trial No. 182 of 1995.

2. The facts which are essential to be stated for disposal of this appeal are: On 06.03.1995, the informant, Jagdish Solanki (PW-6), being accompanied by Sanjay, went on a motor-cycle to Juna Bus Stand in Unhel. While Jagdish was sitting on stationary motor-cycle, Sanjay was talking to one Dayaram. At that juncture, about 10.30 P.M., the accused persons, who had put on shawls, came on a motor-cycle and there was an altercation with the deceased Sanjay, and eventually they took out their weapons, namely, Gupti, Sword and knife and attacked him, as a result of which he sustained serious injuries. The informant

lodged an FIR on the same day and as the informant had also sustained injuries, he was sent for medical examination to the Primary Health Centre, Unhel. Be it stated, the deceased while being taken to the hospital breathed his last and, therefore, FIR which was lodged Under Section 307/34 of the Indian Penal Code (Indian Penal Code) and other offences was converted to one Under Section 302/34 Indian Penal Code and other offences in respect of the accused persons.

3. After the criminal law was set in motion, the investigating agency recorded the statements of a number of witnesses including Mohammed Shakir (PW-11) who claimed to be the eye witness. In the course of instigation, the blankets, knives and other weapons were seized. Accused persons were arrested on 07.03.1995. Test identification parade was held on 30.03.1995 in the presence of the Executive Magistrate (PW-5). After completion of the investigation, the chargesheet was placed before the competent court which, in turn, committed the matter to the Court of Session and eventually, it was tried by the learned Additional Sessions Judge.

4. The prosecution, in order to establish the charges leveled against the accused persons, examined a number of witnesses, including the informant (PW-6) and the eye witness PW-11 and the doctor who conducted the autopsy on the deceased and also the doctor who had examined PW-6. The other witnesses are basically formal witnesses.

5. The learned trial Judge, after appreciating the evidence, came to hold that the prosecution has proved the case beyond reasonable doubt and, accordingly, convicted the Respondent Nos. 3 to 5 Under Section 302/34 Indian Penal Code. However, apart from Govind, all others were acquitted in respect of the offence Under Section 324 Indian Penal Code. It is apt to note here that the Respondent Nos. 3 to 5 were put to trial along with another accused, Prakash.

6. Being aggrieved by the aforesaid judgment of conviction and the order of sentence, the accused persons, including Respondent No. 2, Prakash, preferred the appeal before the High Court. During the pendency of the appeal before the High Court, Prakash died and the appeal stood abated as against him. In this appeal, Prakash was arrayed as Respondent No. 2, but vide order dated 21.10.2008, his name was deleted from the array of parties.

7. The High Court took note of the aspects that there has been a delayed test identification parade and no explanation had been offered by the prosecution; that the investigating officer, Rajendra Sharma (PW-14), had taken the accused persons to the village in connection with seizure and there was possibility of others seen them earlier could not be ruled out; that PW-6, the informant, had deposed in Court that the accused persons had put on shawls and he could recognize them only by their faces, but by the time when test identification parade was conducted, he had known their names and the identification; that in the test identification parade, the accused persons were not put along with persons having almost similar height, age and complexion; that the PW-11, who

claimed to be the eye witness, could not be given credence to because his conduct did not inspire confidence and there was no justification for his delayed examination; that there was no evidence on record which can corroborate the testimony of PW-6; that the examination of witnesses by the learned trial Judge was incorrect inasmuch as he had only been persuaded by the injuries sustained by the deceased and the seizure of weapons which are common. Being of this view, the High Court reversed the judgment of conviction. To appreciate the reasoning of the High Court, we have carefully perused the judgments of the learned trial Judge and that of the High Court and, with the assistance of the Learned Counsel for the parties, we have also perused the original evidence which is in Hindi. On a scrutiny of the same, we find that analysis made by the High Court cannot be held to be fallacious or perverse, for it is founded on material on record. In fact, the view expressed by the High Court is a plausible one and hence, does not warrant any interference by this Court.

Resultantly, the appeal, being devoid of merit, stands dismissed.