

(2018) 07 MP CK 0147

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.1357, 1694 Of 2004

Naresh Sahu & Anr

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 458
Arms Act, 1959 — 25(1b)b, 25(1)(b)(B)
Indian Evidence Act, 1872 — Section 27

Citation : (2018) 07 MP CK 0147

Hon'ble Judges : R.S. Jha, J;Mohd. Fahim Anwar, J

Bench : Division Bench

Advocate : Saroj Deharia, Brahma Datt Singh

Final Decision : Dismissed

Judgement

Sr. No.,Under Section,Â Imprisonment,Fine,"Default of payment
of

fine

1,458 IPC,"RI for 10

years (2

counts)","Rs.2000 (2

counts)","2 monthsÂ SI

2,302/34 IPC,RI for life,Rs.2000,2 months SI

3,324/34 IPC,RI for 1 year,Rs.500,1 months SI

4,"25(1)(b)(B) of

Arms Act",RI for 1 year,Rs.500,1 months SI

delay.,,,,

13. Prosecution witnesses Ramsevak Gumasta (PW-3) ,Rameshwar Prasad (PW-4) and Rajendra (PW-9) are also the witnesses who have claimed",,,,

to reach on the place of incident where the incident has taken place. From their statements it is clear that though they did not see the attack on the.,,,,

deceased Shivdas Gumasta and Parvati Bai by the accused persons from the very beginning, but they reachedÂ the place of incident just after the",,,,

fatal attack on the deceased persons. They support the prosecution case upto the extent of attack by the accused persons on Vijay Kumar by deadly.,,,,

weapons. By their statement it also appears thatÂ on reachingÂ the spot they saw the deceased persons were lying on the spot and they also saw.,,,,

fatal injuries on their body. Although these witnesses are not the direct eye witnesses of the incident of causing fatal injuriesÂ on the body of the.,,,,

deceased by the appellants but circumstances stated above depict that they have reached just after the incident which has taken place with the.,,,,

deceased persons and they saw the incident which has taken place with the injured person Vijay Kumar who was already present in the house of the.,,,,

deceased persons.,,,,

14. Complainant Vijay Kumar has categorically stated in his statement that at the time of incident the accused Indrajeet Patel, Naresh Sahu, Rajesh",,,,

Jain and Ganpat Sahu were armed with farsa, bakka, sword and gupti respectively. During the course of investigation the said armsÂ have been",,,,

recovered from these accused persons by the Investigating Officer, S.S. Rajput (PW11) on getting information under Section 27 of the Evidence Act",,,,

and recorded their memorandum as Ex.P-9, Ex.P10, Ex.P-19 and Ex.P-20 and thereafter, seized those arms vide seizure memo (Ex.P-11, Ex.P-12," ,,,,

Ex.P-21 and Ex.P-22). It is also pertinent to mention here that these seized arms were sent for FSL enquiryÂ and the report of the FSL investigation.,,,,

(Ex.P34) shows that most of the arms recovered from the accused persons contained blood stains, and the weapon which has been recovered from",,,,

the possession of the appellant Indrajeet was having human blood.,,,,

15. In the light of the above discussion, the ocular evidence of complainant and other prosecution witnesses is reliable. It is also supported by medical",,,,

evidence and other supporting evidence. As far as the contention of the defenceÂ that most of the witnesses are the family members of the.,,,,

deceased persons and having inimical relations with the accused persons therefore their statements are unreliable and deserve to be ignored, the same",,,,,

deserves to be rejected and is not sustainable in the light of the judgment of the Supreme Court in the case of Indrapal Singh Vs. State of UP (2008),,,,,

16 SCC 64 wherein it has been held that if the eye witnesses are related to the deceased, their evidence has to be accepted if found to be reliable and",,,,,

believable because they would honestly be interested in ensuring that the real culprits are punished.,,,,,

16. In view of the aforesaid discussions, it is proved beyond doubt that on the date of incident the accused persons committed lurking house trespass",,,,,

armed with deadly weapons in the residential house of complainant Vijay Kumar and after entering into the house, they committed murder of Shivdas",,,,,

Gumasta and Parvati Bai and also attacked Vijay Kumar and caused injuries upon his person. As mentioned above, at the time of the incident, all",,,,,

the accused persons were armed with deadly weapons, hence, the learned trial Court has rightly held the accused persons guilty.",,,,,

17. After considering all the facts and circumstances and the evidence on record, we are of the considered opinion that, there is no ground or merit to",,,,,

interfere in the findings of the learned trial Court. The learned trial Court has rightly convicted the appellants under Sections 458, 302/34, 324/34",,,,,

IPC and Section 25(1)(b)(B) of Arms Act for committing lurking house trespass, murder of Shivdas Gumasta and Parvati Bai and causing",,,,,

injuries to complainant-Vijay Kumar after due and proper appreciation of the oral and documentary evidence on record. Hence, no case is made out to",,,,,

interfere with the findings of the learned trial Court. This appeal against the conviction of the appellants, deserves to be and is hereby dismissed.",,,,,

The appellants who are in jail shall remain incarcerated to undergo the remaining part of their sentence and those who are on bail, their bail bonds",,,,,

are directed to be cancelled and they are directed to be taken into custody forthwith to undergo the remaining part of their sentence.,,,,,

18. Copy of this judgment be sent to the trial Court for information and compliance alongwith the record immediately.,,,,,