
(2011) 07 SC CK 0030

In the Supreme Court Of India

Case No : Criminal Appeal No's. 146-147 and 1180 of 2008

Prahalad Singh and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307

Citation : (2011) 3 ACR 3278 : (2011) 3 JLJ 114 : (2011) 8 JT 591 : (2011) 3 PLJR 314 : (2011) 3 RCR(Criminal) 757 : (2011) 8 SCALE 105 : (2011) 9 SCR 282

Hon'ble Judges : Harjit Singh Bedi, J;Gyan Sudha Misra, J

Bench : Division Bench

Advocate : Shiv Sagar Tiwari, V.P. apppan and Vibha Datta Makhija, for the Appellant;

Final Decision : Allowed

Judgement

1. This Order will dispose of all the above appeals as they arise from a common judgment.

2. The facts of the case are as under:

At 12.50 p.m. on the 30th September, 1996 as the deceased Ganeshram accompanied by his relative Annilal (PW.2) and his son Chandan Singh (PW.5) were about to cross the Narmada river on a boat, the five accused, Rammilan Lodhi and Babulal Lodhi, both armed with shot guns, and Dullam, Hukum and Prahlad armed with lathis came out of a bush. On seeing Ganeshram and the others Prahlad, Hukum and Dullam exhorted Rammilan and Babulal to fire at Ganeshram. On this exhortation Rammilan first fired a shot at Ganeshram which hit him on the abdominal area killing him instantaneously and a shot fired by Babulal caused a severe injury on the head of Annilal (PW.2), Chandan Singh (PW.5) who was behind them at some distance answering the call of nature witnessed the entire incident. He rushed to the spot and first removed the

injured Annilal (PW.2) to the village and thereafter conveyed the information about the incident to PW.6 Saheb Singh - his brother. He also arranged for a tractor on which Annilal was carried to the hospital at Narsinghpur about 20 k.m. away and the first information report was lodged in the police station Narsinghpur at about 2.30 p.m. The Investigating Officer thereafter reached the place of incident and made the necessary inquiries and also sent the dead body for its post-mortem examination. The post-mortem examination revealed a large number of pellet injuries on the person of the deceased. Rammilan was also arrested and on his disclosure statement u/s 27 of the Evidence Act a muzzle loading shot gun was seized along with pellets, gun powder and brass metal caps.

3. During the course of the trial Annilal(PW.2) did not support the prosecution as he was equally related to the complainant as well as the accused party. The prosecution accordingly relied on the statement of PW.5-Chandan Singh and PW.6-Saheb Singh, as also the medical evidence. The Trial Court however found that the evidence of PW.2 partly supported the other evidence inasmuch that he had admitted his presence and that of Chandan Singh at the time of the incident. The Trial Court also noted that as the charge against the accused was under Sections 302, 307, 148 and 149 of the IPC, all the accused (notwithstanding the fact that they had not fired either at the injured or the deceased) were liable to be roped in on a charge of murder. The Trial Court accordingly convicted all the accused under Sections 302 and 307 read with Section 149 and sentenced them to undergo several terms of imprisonment; all the sentences to run concurrently.

4. An appeal was thereafter taken by the accused to the High Court and during the pendency of the appeal Babulal, one of the main accused is said to have died. The High Court vide its judgment dated 11th September 2007 which has been impugned before us dismissed the appeal on facts and findings similar to ones recorded by the Trial Court. It is in this background that the matter is before us and after grant of leave and has been heard by us today.

5. Mr. Shiv Sagar Tiwari, the learned Counsel for the Appellants-Prahlad, Dullam and Hukum in Crl. A. Nos. 146-147/2008 at the very outset pointed out that Annilal (PW.2) having disowned the prosecution story, the entire story hinged on the statement of PW.5 and that as there was no evidence to suggest that the Appellants had caused any injury to either of the victims although they were armed with lathis, clearly ruled out their participation. He has also urged that the fact that the parties appeared to be at logger heads on account of election rivalries was said to be the reason for murder but as per the statement of Saheb Singh (PW.6), the election dispute was between Gendalal-the father of the Rammilan and the deceased but he had subsequently withdrawn his nomination form, and as such the dispute no longer existed. He has also pointed out that it is by now well settled that in the case of a solitary witness the evidence of that witness had to be wholly credible before the conviction could be recorded there under.

6. Mr. V.P. Apan, the learned Counsel representing Rammilan the Appellant in Crl.

A. No. 1800/2008, has in addition referred to the defence evidence of Sita Ram (DW.1) the Contractor at the river crossing who testified that he had not seen any of the accused and only Annilal had been present and he had told him that some incident had taken place.

7. We have considered the arguments advanced by the learned Counsel for the parties and perused the record. We must emphasize that the evidence of Chandan Singh (PW.5) is wholly reliable. The First Information Report had been recorded in the police station 20 k.m. away within 2 hours of the incident. The very spontaneity of the FIR indicates that Chandan Singh had been present at the murder site. Likewise Sahab Singh (PW.6) who had arranged the tractor to take Annilal to the police station clearly supports the view that Chandan Singh had been present at the site and the two had carried the injured to the hospital. Annilal, too supported the prosecution to the extent that he admitted the presence of PW.5 at the time of incident. The medical evidence also supports the eye-witnesses account. It is the admitted case that Babulal and Rammilan were both armed with muzzle loading 12 bore shotguns which could have caused the injuries found on the person of the deceased as well as on Annilal (PW.2). Some arguments had been occasioned before the courts below with regard to the distance from which shots had been fired. The Courts have found that the shots had been fired from a short distance. We must however emphasize that where the weapon and ammunition used is of uncertain make and quality the normal pellet pattern based on standard weapons and ammunition, cannot be applied with accuracy. The distance from which the shots have been fired cannot therefore have the effect of dislodging a credible eyewitness account in such a case.

8. The Appellants Prahlad, Hukum Singh and Dullam were armed with lathis which had not been used by them in any manner and the only allegation against them is that they had exhorted their co-accused to fire at the opposite party. We are therefore of the opinion that the possibility that these three accused have been roped in on account of animosity cannot be ruled out and we must give them the benefit of doubt on that score.

9. The appeal of Rammilan i.e. CrI. A. No. 1180/2008 is dismissed whereas CrI. Appeal Nos. 146-147/2008 are allowed. The accused - Appellants Prahlad, Dullam and Hukum are said to be in custody. They shall be released forthwith if not required in connection with any other case.

10. Fee of the amicus curiae is fixed at Rs. 7,000/-.