

of

I.P.C.",RI for life each,"Rs.5,000/-

each",RI for 1 year each

4,"324/149

I.P.C.",Â Â Â -, "Rs.3000/-

each",RI for 6 months each

5,506/149,"RI for 6 months

each",Â Â Â -,Â Â Â Â Â -

10. It is also pleaded in the appeal that the complainant party had also assaulted the appellants causing grievous injuries to most of the accused,,,,,

persons. The appellants were, therefore, protected by the right of private defence. In this connection, the appellants had lodged an FIR on the basis of",,,,

which the complainants were prosecuted for attempting to commit murder and later on have been convicted under Section 324 of I.P.C.. The,,,,

appellants had received grievous injuries which have not been explained by the prosecution. It is submitted that failure in explaining the injuries not only,,,,,

renders the evidence of the prosecution case unreliable but also proves the defence of the appellants. Hence, in view of the facts and circumstances",,,,

of the case, prayer is made to allow the appeal and acquit the accused/appellants from the alleged offences.",,,,

11. The State has filed an application for grant of leave to appeal under Section 378 (iii) read with Section 378 (I) of Cr.P.C. being aggrieved by the,,,,,

acquittal of appellants under Section 307 of I.P.C.. This Court has allowed the application and registered Criminal Appeal being Criminal Appeal,,,,,

No.1575/2006. For rest of the part of the judgment learned Government Advocate appearing for the respondent/State has argued in support of the,,,,,

observation and stated that the judgment of conviction and order of sentence of the trial Court is in accordance with law. Hence, the appeal of the",,,,

appellants/accused persons be dismissed.,,,,

12. The prosecution case seems to be that there was a dispute with regard to a shop belonging to a Qabristan situated at Indore Naka, Sehore. Abdul",,,,

Majeed was the tenant of that shop and on behalf of the Kabristan Committee, the appellants (some of them are office bearer of the committee)",,,,

wanted to take the possession of the shop forcefully. In this regard some

altercation had taken place on the date of the incident at the residence of,,,,
complainant Abdul Majeed, thereafter, on request of the complainant Abdul Majeed, the appellants and complainant decided to proceed to Indore" ,,,,
Naka followed by his three sons i.e. Anwar, Sarvar and Batki @ Soeb also reached. When the appellants Aiyya @ Aslam and Raffu @ Rafique" ,,,,
started using abusive language against Abdul Majeed, it aggravated the quarrel and the incident took place." ,,,,

13. Here it is necessary to mention that Abdul Majeed who is said to have reported the incident to the Police has died immediate after two or three,,,,
days of the incidence, which is the reason why his statement has not been recorded in support of the prosecution. It is also pertinent to mention that" ,,,,
the scribe of the Dehati Nalishi (Ex.P-34) Sub Inspector O.P. Nayak (PW18) has been examined on behalf of the prosecution, who has deposed that" ,,,,
the incident took place on 16.09.2004 at about 11:15 am and on getting the information, he reached at the spot. On oral information of Abdul Majeed," ,,,,
he wrote the First Information Report in the form of a Dehati Nalishi. He has been cross-examined in detail but there seems to be no material,,,,
omissions and contradictions and his version is found to be reliable. ,,,,

14. The FIR which is in the form of Dehati Nalishi is on record and it is clear that at the time to incidence Mohd. Sarvar (PW-1) and Anwar (PW-10),,,,
were also present on the spot. They are said to have reached the place of incident just after Abdul Majeed and Batki @ Soeb. From their statements," ,,,,
it seems that when they had reached the site of the incident, an altercation regarding stamp papers of shop was taking place and the accused" ,,,,
persons/appellants were using abusive language towards their father i.e. Abdul Majeed. ,,,,

15. From the statements of both the witnesses Mohd. Sarvar and Anwar, it appears that when the quarrel was taking place both of them tried to stop" ,,,,
the appellants from using abusive language towards their father, But all of a sudden, accused/appellants Aiyya @ Aslam has thrust the sword in the" ,,,,
stomach of Batki @ Soeb. At the same time, the appellant Karim also attacked Batki @ Soeb with a sword and inflicted injuries on his body. They" ,,,,
have also stated in one voice that at the same time, the appellant Raffu @ Rafique who was in possession of a Katta fired on Batki @ Soeb but" ,,,,
because Batki @ Soeb had already fallen down because of injuries sustained by

him, the shot missed him and instead injured driver Anoop Verma,",,,,
who was standing just behind Batki @ Soeb. Mohd. Sarvar and Anwar also stated
that Batki @ Soeb and Anoop Verma died on the spot due to the,,,,
injuries inflicted by the sword and the country made revolver.,,,,

16. Prosecution witnesses Mohd. Sarvar and Anwar Ali have been cross-
examined at length on the issue of the assault made by appellants Aiyya @,,,,
Aslam, Karim and Raffu @ Rafique, by deadly weapons like sword and katta.
Apparently there is no material contradictions in their statements even",,,,

in the course of their cross-examination on the basis of which their statements
may be doubted.,,,,

17. From the side of the prosecution Banti @ Shoukin (PW-2) and Mansoor Ali
(PW-14) have also been examined. As far as the prosecution,,,,

witnesses Banti @ Shoukin is concerned, who is also the third son of the
complainant Abdul Majeed, he has fully supported the prosecution version",,,,

while other witness Mansoor Ali seems to be an independent witness and has
partially supported the prosecution version by saying that at the time of,,,,

the incidence, appellant Aiyya @ Aslam and Raffu @ Rafique were present on the
place of incident and appellant Aiyya @ Aslam inflicted a knife",,,,

injury on Abdul Majeed's Son. He has also supported the prosecution version
by saying that fire arms were also used and the bullet injured the,,,,

boy who fell down and died on the spot. The witness Mansoor Ali has established
his presence at the scene of the incidence by stating that he had,,,,

gone there for repairing puncture of his vehicle's tyre. There is no dispute that
at the place of incidence there is a tyre repairing shop and,,,,

therefore, although he is a chance witness but the reasons of his presence shown
is very much natural.",,,,

18. In this respect the Hon'ble Apex Court in the case of Rana Pratap Vs. State
of Haryana AIR (1983) SC 680 has held as under:-,,,,

"The expression 'chance witness' is ununderstandable. Murders are not
committed with previous notice to witnesses, soliciting their presence.",,,,

If murder is committed in a dwelling house, the inmates of the house are natural
witnesses. If murder is committed in a brothel, prostitutes and",,,,

paramours are natural witnesses. If murder is committed in a street, only
passers by will be witnesses. Their evidence cannot be brushed aside or",,,,

viewed with suspicion on the ground that they are mere 'chance witnesses'.

To discard the evidence of street hawkers and street vendors on the ground that they are chance witnesses, even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence.

19. Prosecution witnesses J.S. Parmar (PW-22), Station Officer at Kotwali, Sehore stated that he arrested the accused persons Aiyya @ Aslam,

Raffu @ Rafique, Anwar Ali and Abid Ali through arrest memo i.e. Ex. P/27, P/28, P/29, P/30 and after taking them in custody, they have given the

information regarding the weapons used in the offence which were recorded vide memorandum Ex. P/22, P/21, P/19, P/20 and on that information he

recovered that weapons vide seizure memo Ex. P/23, P/24, P/25, P/26 respectively.

20. The aforesaid interrogation and seizures have been shown to have taken place before Farhan and Kherullah, out of which only Kherullah has been

examined by the prosecution. From his statement it is clear that all the interrogations of the accused persons have taken place in his presence and

accused persons Aiyya @ Aslam, Raffu @ Rafique, Abid Ali and Anwar Ali have given the information regarding swords and desi kattas shown in

the above mentioned memorandums and later on the weapons were seized from the place which they had indicated. The witness Kherullah has

supported the prosecution case by saying that the appellants had given the information regarding the weapons and later on the weapons have been

recovered from the place, pointed out by the appellants and seized. During the course of the cross-examination of Kherullah, no remarkable

contradictions or omissions have come on record. He had admitted that he had participated in funeral of the deceased Batki @ Soeb and Majeed but

he has denied that he is a close relative of complainant party and for that reason he is supporting the prosecution case.

21. The FIR i.e. Dehati Nalishi (Ex. P-34) is also shown to be written on the initiation of Abdul Majeed who is father of deceased Batki @ Soeb. In

the aforesaid FIR, the name of the accused persons, the weapon used by them and their participation in the crime have been described categorically.

22. The contentions of the appellants regarding contradictions and omissions in the statement of eyewitnesses Mohd. Sarvar (PW-1), Anwar (PW-10),

Banti @ Shoukin (PW-2) and Mansoor Ali (PW-14) is also required to be

considered. On minute scrutiny of the statements, it appears that there are",,,,
no major contradictions and omissions with regard to the fact that the appellants
were assailants at the time of the incident. The main witnesses are,,,,
real brothers of the deceased Batki @ Soeb. There is nothing in their statements
to indicate that they have falsely implicated the innocent appellants in,,,,
place of actual culprits who have infact committed the crime of murdering their
real brother and assaulting their father, who later on died immediately",,,,
after the incident due to the injuries he sustained or the shock of death of one of
his son.,,,,

23. We have carefully scrutinized their statements and we find that they are
consistent, trustworthy and reliable. We find support for the view taken",,,,
by us from the decision of the Supreme Court in case of Surendra Pratap
Chouhan vs Ram Naik (AIR 2001 SC 164) wherein it has been held as,,,,
under:-,,,,

â??Merely because the relations between the accused persons and the
complainant were strained leading to groupism in the village, the testimony of",,,,
the eye-witnesses is not to be discarded though it needs to be scrutinised with
caution so as to eliminate the possibility of any false implication.â??,,,,

In the same way, in case of Annapoorna Dutt vs State of U.P. (AIR 1993 SC
1207), it has been held as under:-",,,,

â??The existence of a dispute over landed property appears to be the cause for
bad relations between the parties but simply because there is a,,,,
dispute in respect of a landed property, the prosecution story is not required to
be discarded outright on the footing that the witnesses for the",,,,
prosecution were all partisan witnesses and had deposed falsely to implicate the
accused persons.â??,,,,

24. As far as accused statement under Section 313 of Cr.P.C. is concerned,
appellants Aslam @ Dyanuma, Anwar Ali, Abid Ali and Karim Khan",,,,
have shown ignorance about the incidence and taken the plea of alibi while
remaining accused persons Raffu @ Rafique and Aiyya @ Aslam have,,,,
also shown some enmity for one or other reasons. Accused Raffu @ Rafique,
Aiyya @ Aslam have also alleged that the complainant Abdul Majeed",,,,
was also a criminal and involved in gambling (Satta). Eight witnesses have been
examined from the side of the appellants, out of which Prem Singh",,,,
(DW-2) and Vijay Singh (DW-3) have been examined to show the alibi of accused

Aslam @ Dyanuma. It is pertinent to mention that accused Aslam,,,,,

@ Dyanuma has reportedly died during the course of trial. Offence against him has abated so the statement of the witnesses which have been,,,,,

examined to show his absence from the place of incidence is of no use.,,,,

25. As far as the absence of appellants Anwar Ali, Abid Ali and Karim is concerned, the witnesses Rishikant (DW-1), Abdul Aala Siddiqui (DW-4),,,,,

Aminuddin (DW-5) and Javed Khan (DW-6) have been examined. The statements of these witnesses in that regard is not found to be acceptable,,,,,

because from the statement of prosecution witnesses, their presence at the place of incident has been proved and established. As far as the statement",,,,,

of Gopal Sharma (DW-7) is concerned, he seems to have been examined to show that the complainant Majeed Khan and deceased Batki @ Soeb",,,,,

were the aggressor but his version is not found supported by other witnesses. Otherwise also he seems to confirm the prosecution case by stating and,,,,

affirming the presence of appellants Aiyya @ Aslam and Raffu @ Rafique at the scene of incidence. This witness although alleges that at the time of,,,,,

incidence, Abdul Majeed was attacking accused persons Aiyya @ Aslam and Raffu @ Rafique by sword and revolver and in the same incidence",,,,,

injuries were inflicted upon his son Batki @ Soeb and one another person Anoop Verma and they died because of those injuries. As stated above the,,,,,

statements of prosecution witnesses have been found reliable, trustworthy and acceptable beyond doubt. So in this regard, defence witnesses who",,,,,

have been examined seem to be planted witnesses and their version cannot be relied upon.,,,,

26. In view of the aforesaid discussions, it is clear from the testimony of eyewitness, medical evidence and other circumstantial evidence that the",,,,,

appellants were armed with deadly weapon like swords and country made revolvers (Kattas) and inflicted fatal injuries upon Batki @ Soeb and Anoop,,,,,

Verma, as a result of which they died on the spot. As far as Abdul Majeed, Sarvar and Anwar are concerned they have also sustained simple injuries",,,,,

which were caused by sharp pointed object. The trial Court has rightly held the appellants guilty of the offence and consequently convicting them,,,,,

under Sections 148, 302/149, 324/149 of I.P.C. However, as there is no sufficient evidence regarding abusing in the public place and threat to life to",,,,,

the complainant side by the accused persons therefore, we find that the

appellants have wrongly been held guilty of offences punishable under",,,,,

Sections 294/149 and 506/149 of I.P.C.,,,,,

27. As far as the appeal (Cr.A. No.1575/2006) preferred on behalf of the State for convicting the appellants under Section 307 of I.P.C. is concerned,",,,,

it does not have any substance. Therefore, the appeal (Cr.A. No.1575/2006) is hereby dismissed.",,,,

28. In such circumstance, conviction of the appellants under Sections 294/149, 506/149 of I.P.C. is not sustainable and the appeal in that respect is",,,,,

allowed and the conviction of the appellants under the above said sections is set aside and they are hereby acquitted of these offence. So far as with,,,,

the finding of trial Court regarding their conviction under Sections 148, 302/149 and 324/149 of I.P.C. is concerned, the same is upheld and their",,,,,

convictions in the above mentioned offences is affirmed and appeal in this regard is hereby dismissed.,,,,,

29. 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.,,,,,

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