

(2020) 06 MP CK 0085

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 682 Of 2009

Vishnu S/O Panwar Kanjar And Others

APPELLANT

Vs

State Of Madhya Pradesh @RESPONDEN

RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 323, 341

Citation : (2020) 06 MP CK 0085

Hon'ble Judges : Vandana Kasrekar, J;Vivek Rusia, J

Bench : Division Bench

Advocate : Sharmila Sharma, Yogesh Gupta

Final Decision : Dismissed

Judgement

Vandana Kasrekar, J

Being aggrieved by the judgment and order dated 04/05/2009 passed in S.T. No.208/2007 by Additional Sessions Judge, Sonkatch, District-Dewas whereby the learned Court has held guilty the appellants for the offence punishable under Section 341, 302, 302/34, 307, 307/34 of IPC and sentenced them for only fine of Rs.500/- each, life imprisonment with fine of Rs.5,000/-, 7 years RI with fine of Rs.2,000/- in default of payment of fine, further to undergo 15 days RI, six months RI, one month RI and acquitted the appellants under Section 323/34 of IPC, the appellants have preferred this present appeal.

2. Facts in brief are that on 01/08/2007 at 06:00 AM Asstt. Sub Inspector posted at P.S.-Bhaunwrasa has received telephonic information through Police Control Room, Dewas regarding accident. Police went on the spot and investigated the case. During investigation while recording the statements of witnesses it reveals that the present appellants assaulted Nitesh and Chiku @ Jagaran by means of stones and wooden stick, with the result Nitesh died on the spot. Police registered crime under Section 341, 302, 302/34, 307, 307/34, 323/34 of IPC. The police sent the body for postmortem, prepared spot map, collected blood

sample, seized the articles, prepared seizure memo, recorded the statement of witnesses and arrested the accused/appellants. After completing the investigation filed the charge-sheet. Appellants were charged under Section 341, 302, 302/34, 307, 307/34, 323/34 of IPC and they abjured their guilt. After taking prosecution evidence and granted opportunity to defend the accused, the learned trial Court considered the evidence and held the offence proved and punished the appellants as stated in para 1.

3. The appeal is preferred on the ground that judgment and order of the trial Court is contrary to law and facts available on record. The learned trial Court erred in not considering the fact that there is no motive for the appellants to commit murder. The learned trial Court committed error in not considering the material contradictions and omissions appeared in the statements of prosecution witnesses. The appellants have falsely been implicated in the present matter, therefore, appellants prayed that the impugned judgment and order be set-aside and they be acquitted.

4. Learned Public Prosecutor has supported the judgment and order.

5. We have considered rival contention of the parties and have perused the record.

6. The prosecution has examined as many as 25 witnesses. Manoj (PW/12-ran away from the spot) and Chiku @ Jagaran (PW/13-who is one of the injured in the incident), who are the eye-witnesses of the incident, have specifically stated that due to stone injury by the appellants, Nitesh died on the spot and all the appellants assaulted them by means of wooden stick and stone, which corroborates the statements of others witnesses. Manoj (PW/12) who is brother of deceased-Nitesh categorically has stated that Pintu hit stone on the head of Nitesh with the result Nitesh died on the spot and Pintu assaulted Chiku by means of Lathi. It is also stated the all the accused persons attacked on them suddenly. He stated that on the date of incident, the wife of Nitesh was admitted in the Hospital for delivery. Jagaran @ Chiku (PW/13) injured in the incident has stated that Pintu hit Nitesh on stone on his head and he died on the spot. Vishnu also assaulted Chiku by lathi. Appellants have intentionally assaulted them on the vital part of the body i.e. head, which shows the motive of appellants to kill the deceased.

7. Mere averment of the appellants without any supporting evidence cannot be taken as truth. No specific defence has been taken during recording of statements of prosecution witnesses, therefore, raising such question first time in the appeal, is not at all acceptable at this stage.

8. The trial Court has considered all these evidence and has rightly reached on the conclusion. It was accused who had committed murder on the alleged date, time and place of the incident. Nothing is there to defer from the finding of the trial Court. We are also in agreement with this finding.

9. Considering the intention of appellants and the manner in which the incident took place, planning and the way in which the accused committed murder, in our considered the the sentence awarded by the learned trial Court is just and proper, looking to the nature and gravity of the offence. We are not inclined to interfere in the sentence and conviction awarded by the learned trial Court also, hence the impugned judgment of conviction and sentence awarded to the appellants is maintained.

10. In the result, the appeal is dismissed being bereft of merits. Order of the trial Court regarding disposal of the property is hereby confirmed.