

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1478 OF 2004

BABU Appellant (s)

VERSUS

STATE OF U.P. Respondent(s)

(With office report )

Date: 29/05/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.S. SIRPURKAR  
HON'BLE MR. JUSTICE R.M. LODHA  
(VACATION BENCH)

For Appellant(s) Mr. V.S.Chauhan, Adv.  
Mr. N. Chaudhary, Adv.  
Mr. D. Mahesh Babu, Adv.

For Respondent(s) Mr. Sahdev Singh, Adv.  
Mr. Rajeev Dubey, Adv.  
Mr. Kamalendra Mishra, Adv.

UPON hearing counsel the Court made the following  
ORDER

Heard the learned counsel for the parties at length.  
The appeal is dismissed in terms of the signed order.

(A.S. BISHT)  
COURT MASTER

(M.S. NEGI)  
COURT MASTER

(Singed order is placed on the file)  
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1478 OF 2004

Babu .... Appellant

Versus

State of Uttar Pradesh .... Respondent

ORDER

1. This is an appeal by one of the convicted persons, namely, Babu, who was  
accused No. 4 in an incident which occurred in the night of 21st and 22nd April,

1984, in which two persons, namely Manoj and Ramu were killed and Devender was seriously injured. As many as five accused persons were tried for the offences falling under Sections 147, 148, 302/149 and 323/149 of the Indian Penal Code. In the concerned incident, two persons lost their lives. They were Manoj and Ramu. One of the persons was seriously injured, he was Devender.

2. The prosecution case was that in between the night of 21st and 2nd April, 1989 all these accused persons in furtherance of their common object attacked the complainant party, who were working by the side of a tubewell in their field. The attack was made by the accused persons who were armed with various weapons, like spear, Lathi, knife and Balkati (probably a sharp-edged weapon). In the said attack, as has been stated earlier, Manoj and Ramu lost their lives on the spot, whereas Devender (PW-3) survived the attack although he was severely attacked.

3. In the First Information Report, which was lodged at the instance of PW-1 Yashpal, as many as six persons were involved. However, the 6th person Hukam Singh was not proceeded against, probably finding that he was not involved in the incident. The trial Court convicted four persons. Presently, we are concerned with the 4<sup>th</sup> accused-appellant herein.

4. The role ascribed to him was that he was present amongst those persons who assaulted Manoj, Ramu and Devender, causing them multiple injuries. It is not necessary for us to go into the injuries, but the fact that the injuries were multiple and they included injuries on the head, a fracture of skull etc., the attack was clearly with the common object of committing the murder of two persons. Even the injuries caused to Devender are quite serious.

5. There cannot be any dispute that in the First Information Report, a clear cut allegation was made against all the accused persons that they came to the field in the dead of night and assaulted the deceased Manoj, Ramu and Devender who were also present with other persons in the field.

6. Since the Trial court had accepted the case against the accused persons, namely, Sohan Lal, Reshampal, Sheoraj and Babu, it seems an appeal was filed on behalf of all of them. The High Court, however, has acquitted accused Reshampal (original accused No. 2) presumably on the ground that the allegation against him was that he attacked with a spear and that the injured person or the dead persons did not have any injuries which could be caused by a spear, like punctured wounds. The High Court has on that basis given the benefit of doubt to the accused Reshampal and

acquitted him.

7. The acquittal of Reshampal is not challenged by the State. However, the learned counsel appearing on behalf of the appellant contended that his case was identical with that of Reshampal. Firstly, the learned counsel tried to attack the evidence of PW-2 Jagvir, PW-3 Devender and PW-7 Dhirender. According to learned counsel, this evidence was not sufficient to bring home the guilt of the accused as there were inter se contradictions in between the evidences of PW-2 and PW-3, who claimed to be present at the spot at the time of occurrence and that these contradictions are in respect of the direction in which the accused fled away the moment the witnesses approached them hearing the shouts made by the injured persons when they were actually injured.

8. We have seen the evidences very closely and we are not impressed by the argument of the learned counsel for the appellant as the witnesses are unanimous in respect of the presence of the accused persons and the fact that all of them made collective attack on the deceased persons, as well as, the injured. The witnesses have also spoken about the weapons handled by each of the accused persons and all the witnesses were unanimous that the present appellant Babu had a stick in his hand and that he took an active part in the said assault.

9. Learned counsel also tried to point out that because of darkness it was not possible for the witnesses to make such a graphic description of the assault and also speak about each of the accused handling a particular weapon. According to the learned counsel, the evidence of the witnesses was unnatural and only because of enmity with the accused person and to implicate them falsely.

10. We have examined the evidence of the witnesses. The appreciation of the evidence on the part of the Trial Court and the re-appraisal thereof by the High Court is flawless. All the possible criticism has been taken into consideration by both the Trial Court as also by the High Court.

11. In that view of the matter, we do not accept the contention of the learned counsel. However, the learned counsel points out that the situation of accused No. 4 - Babu was identical with that of Reshampal and, therefore, if Reshampal was acquitted by the High Court by giving him the benefit of doubt, similar treatment should have been given to accused No. 4-appellant herein also. We do not agree. Predominantly the reason given for acquittal of Reshampal appears to be the inference drawn up by the High Court that there was no injury caused by the spear. The High Court has made an observation, whenever any accused take any weapon to the scene of occurrence,

then he uses the weapon in the incident in the normal manner, meaning that he would not use the spear as a stick. It was unlikely that Reshampal had used a spear as there are no injuries of spear on body of the deceased or the injured. It is on that ground that Reshampal has been given the benefit of doubt and that may not be available to the present appellant Babu as we find from the evidence that there were multiple injuries caused by Lathi on the body of the deceased as also on the body of the injured witness PW-3.

12. Therefore, it is not possible to weight the evidence as against Reshampal and Babu, applying the same yardstick. We are of the opinion that the High Court has properly re-appraised the evidence as appreciated by the Trial Court.

13. For this reason, it is not necessary for us even to refer to the evidence of other witnesses who have been examined in support of the aforementioned three witnesses. Since we are clearly of the opinion that the accused persons made the assault having common object of committing the murder, their appeal has rightly been dismissed by the High Court.

14. We do not find any merit in this appeal by accused No. 4 Babu. It is dismissed as such.

.....J.  
(V.S. Sirpurkar)

.....J.  
(R.M. Lodha)

New Delhi;  
May 29, 2009.