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Cr1.A.No. 1118-1120 OF 1999
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ITEM No.101 Court No. 9 SECTION IIA
PART-HEARD

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No. 1118-1120/1999@@
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Jhunzara & Ors. ... Appellants

VERSUS

State of Madhya Pradesh ... Respondent
(With office report)

Date : 20/03/2002 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.P.SETHI
HON'BLE MR. JUSTICE K.G.BALAKRISHNAN

For Appellant (s) Mr. Virender Kr. Sharma, Adv. (A.C.)
Mr. Yugal Kishor Prasad, Adv.

For Respondent (s) Mr. R.P.Gupta, Sr.Adv.
Ms. Pragati Neekhara, Adv.
Mr. Satish K.Agnihotri, Adv.

UPON hearing counsel the Court made the following
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Mr. Virender Kumar Sharma, learned counsel for the appellants resumed his arguments at 2.00 p.m. and concluded at 2.25 p.m. Thereafter, Mr. R.P. Gupta, learned senior counsel started his arguments at concluded at 2.50 p.m.
The appeals are dismissed.

.SP1

(Ganga Thakur) (V.P.Tyagi)
P.S. to Registrar Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1118-1120 OF 1999@@
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Jhunzara & Ors.

..... Appellants

-Versus-

State of Madhya Pradesh

..... Respondent

O R D E R@@
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The appellants alongwith six others were chargesheeted for the offences punishable under Sections 148, 302 and 307 read with Section 149 of the IPC. After completion of the trial, the appellants alongwith the A.1 Jhenju, A.5 Jhamku Bai, A.6 Janu Bai and A.7 Bhangadiya were convicted for commission of the offences punishable under Sections 148 and 302 read with Section 149 and sentenced to undergo life imprisonment for the main offence. The convicted accused filed an appeal in the High Court which was disposed of by the impugned judgment by acquitting A.1 Jhenju, A.5 Jhamku Bai and A.7. Bhangadiya. However, the conviction and sentence of the appellants was upheld.

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.2.

According to the prosecution, on 28th July,1988 at about 4.00 P.M. Bhadr, P.W. 2, Badiya (deceased) and one Sastiya had gone to the house of Pujara Idla where the appellant Jhunzara had also come. The appellant Jhunzara invited P.W. 2, the deceased and Sastiya for dinner and drinks at his place. The deceased accompanied other two persons went to the house of Jhunzara where other accused persons were also present. All of them consumed liquor. Jhamku Bai A.5 then closed the door from inside. At that time Kelsingh, Jhunzara, Kekadiya the appellants put their arrows on the Kamathi and decided to kill the deceased and his companions. Accused Kelsingh and Jhunzara shot two arrows at Bhadr P.W. 2, one of which hit him at his left shoulder and other at his chest. Jhamkubai is alleged to have hit the aforesaid witness with a stick. Janu Bai A.6 also hit Badiya (the deceased) with an axe. The appellant then shot arrows at the deceased which hit at his stomach, chest and right hand. After the matter was reported to the police, the injured was shifted to the hospital where he succumbed to his injuries on the 3rd day of the occurrence.

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.3.

While acquitting the other accused persons, the

High Court found that no case was made out for attracting the provisions of Section 149 of the Indian Penal Code and finding that there existed the common intention amongst the appellants, the provisions of Section 34 of the Indian Penal Code were invoked for upholding the conviction and sentence.

Learned counsel appearing for the appellants has submitted that as P.W. 2 has not been believed so far as the involvement of the other accused is concerned, his statement cannot be made the basis for conviction of the appellants. In support of his contention, learned counsel has relied upon the judgment of this Court reported in Sorab & Anr. Vs. The State of Madhya Pradesh AIR 1972 SC 2020. After perusing the aforesaid

judgment, we are of the opinion that the submissions made by the learned counsel cannot be accepted as the said judgment has no application to the facts of the present case. Only because a part of the statement of the witnesses has not been accepted by the trial court, is no ground for rejecting the whole testimony of the witness.

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.4.

The courts below have rightly sifted the grain out of the chaff to ascertain the criminal liability of the appellants. We have also perused the aforesaid statement and find no contradiction worth any credence to disbelieve the testimony of the said witnesses so far as the involvement of the appellants in the commission of the crime is concerned.

Learned counsel further contended that as the location of the injury found on the person of the deceased at the time of autopsy are different than the injuries detailed by the prosecution witnesses, no reliance can be placed upon their oral testimony. This argument is also without any substance because in his cross-examination, PW 2, has explained all the injuries attributed to the appellants which were inflicted on the person of the deceased. Such injuries are located on the parts of the body of the deceased as were noticed by the doctor who conducted the post-mortem of the dead body

Learned counsel for the appellants then contended that as other accused persons have been acquitted, the appellants being similarly situated are also entitled to similar treatment. We are afraid, such a general, broad propositions without reference to the facts of the

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present case cannot be accepted. Other accused persons have been acquitted as their involvement was not found to have been established by the prosecution. In view of the positive evidence against the appellants, proving beyond doubt the commission of the crime, it cannot be said that they were similarly situated with the accused persons who have been acquitted on account of insufficiency of the evidence or other legal infirmities noticed by the courts below.

There is no merit in these appeals which are accordingly dismissed.

.....J.
(R.P. Sethi)

New Delhi,
March 20, 2002.

.....J.
(K.G. Balakrishnan)