

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1035 OF 2005

MOTI LAL & ORS.

... APPELLANTS

VERSUS

STATE OF U.P.

... RESPONDENT

J U D G M E N T

B. SUDERSHAN REDDY, J.

This appeal by special leave is directed against the Judgment and Order dated 14th July, 2003 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 2405 of 2002 by which the conviction of the appellants under Sections 148, 302 read with Section 149, Section 307 read with Section 149, Sections 452 and 427 of the Indian Penal Code (IPC) recorded by the Sessions Court in Sessions Trial No. 184 of 1995 is upheld except in case of appellant Sharda Singh whose conviction recorded under Section 148, IPC is altered to one under Section 147, IPC whereas punishment of death sentence imposed on the appellants Moti Lal, Surendra Singh, Virendra Singh, Amar Singh and Dhunna Singh is reduced to one of rigorous imprisonment for life but other punishments imposed on all the appellants for commission

of offences punishable under Sections 302 read with Section 149, Section 307 read with Section 149, Sections 452 and 427 are upheld.

2. The facts leading to the present appeal are that on the night intervening 24th/ 25th June, 1994 at about 1.45 a.m., one Motilal, Surendra Singh, Virendra Singh, Sharda Singh, Miyadi @ Ram Miyadi Singh, Dhunнан Singh, Amar Singh (all are appellants herein) along with Anil Singh (not approached this Court) and Thagai Singh (died during trial) armed with deadly weapons entered the house of one Sita Ram Singh and attacked him and other family members, resulting instantaneous death of Sita Ram Singh and his two sons namely Surinder Singh and Jai Govind and also injuries to the other family members of Sita Ram Singh. The assailants had also set fire to a motorcycle parked in the house of the deceased Sita Ram Singh. In the attack, the appellants used country made pistols (katta), gun, bomb, iron rod (ramma), pharsa fitted lathi etc. The cause of attack is due to rivalry between the family of deceased Sita Ram Singh and the attacking party over a piece of farm land in respect of which some cases were pending in the Civil Courts.
3. Smt. Manju Singh (PW5) is the wife of the deceased Sita Ram Singh who also sustained the injuries in the said attack. She is the informant who rushed to the police

station Hata on the same night and got prepared report (Ex. Ka-1) based on which the First Information Report (Ex. Ka-43) was issued at about 2.40 am for the offences punishable under Sections 147, 148, 149, 302, 307 and 427, IPC against nine persons including the appellants herein.

4. The injured were immediately sent to Primary Health Center, Hata where they were medically examined by Dr. Ghan Shyam Singh (PW8) between 5.30 and 6.30 a.m. Mr. Umesh Chandra Misra, Investigating Officer (PW9) visited the place of occurrence and found the dead bodies of Sita Ram Singh, Surendra Singh and Jai Govind. He seized the remnants of the burnt motorcycle (Ext. Ka-37), the blood stained *ramma* (iron rod with an edge on one end), empty cartridges, wads and pellets from the spot (Ext. Ka-34 and Ka-35) and prepared a site map, recorded statements of the injured and others who were found to be conversant with the incident, made inquest report (Ext. Ka-13, Ka-14 and Ka-15) and sent the dead bodies for post-mortem. On the same day, he arrested Sharda Singh, Anil Singh, Virendra Singh, Thagai Singh (died during trial) and Surendra Singh and also recovered one licensed gun (Ext. Ka-38) from the house of one Toofani Singh who was found murdered before half an hour of the present occurrence. Dr. K. Singh (PW7) conducted post-mortem on 26th June, 1994,

found ante mortem injuries on the persons of deceased and opined the cause of death as "shock and haemorrhage". The post-mortem reports are Exts. Ka-2, Ka-3 and Ka-4. The Doctor's opinion and the details of ante mortem injuries on the persons of the deceased need not be referred in detail as they have been noticed by the Courts below. On completion of investigation, the I.O. submitted charge-sheet against Motilal, Surendra Singh, Virendra Singh, Dhunna Singh, Miyadi Singh and Anil Singh for commission of offences punishable under Sections 148, 302 and 307 read with 149, 452 and 427 IPC whereas Sharda Singh, Amar Singh and Thagai Singh were charged with the offences punishable under Sections 147, 302 and 307 read with Section 149, 452 and 427, IPC.

5. Cognizance of the offences was taken by the Magistrate who committed the case to the Court of Sessions vide Sessions Trial No. 184 of 1995. The appellants pleaded not guilty and preferred trial. The learned Sessions Judge, upon appreciation of evidence and material available on record, found that the prosecution has successfully established its case and accordingly found the appellants guilty of various offences and sentenced them vide judgment dated 11th June, 2002. The details of the conviction and sentence awarded are as under:

Name of	Appellan	Provisions under	Sentence
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the accused	t No.	which convicted	Awarded
Moti Lal	1	Section 302 read with Section 149, IPC	Death Penalty and a fine of Rs.10,000/- in default, S.I. for 3 years.
		Section 307 read with Section 149, IPC	R.I. for 7 years and fine of Rs.2,000/-, in default S.I. for 1 year.
		Section 452, IPC	R.I. for 1 year and fine of Rs.500/- in default, S.I. for 3 months
		Section 427, IPC	R.I. for 1 year and fine of Rs.500/-, in default, S.I. for 3 months
		Section 148, IPC	R.I. for 1 year
Surendra Singh	2	Same as shown against Appellant No.1	Same as shown against Appellant No.1
Virendra Singh	3	Same as shown against Appellant No.1	Same as shown against Appellant No.1
Amar Singh	4	Same as shown against Appellant No.1	Same as shown against Appellant No.1
Dunnan Singh	7	Same as shown against Appellant No.1	Same as shown against Appellant No.1

Sharda Singh	5	Section 302 read with Section 149, IPC	Life imprisonment and fine of Rs.10,000/-, in default, S.I. for 3 years.
		Section 307 read with Section 149, IPC	R.I. for 7 years and fine of Rs.2,000/-, in default, S.I. for 1 year.
		Section 452	R.I. for 1 year and fine of Rs.500/-, in default, S.I. for 3 months.
		Section 427, IPC	R.I. for 1 year and fine of Rs.500/-, in default, S.I. for 3 months.
		Section 148, IPC	R.I. for 1 year
Miyadi Singh	6	Same as shown against Appellant No.5	Same as shown against Appellant No.5

6. The learned Sessions Judge ordered the sentence to run concurrently and further referred the matter to the High Court for confirmation of death penalty as is required under Section 366 of the Code of Criminal Procedure. All the convicts jointly preferred Criminal Appeal No. 2405 of 2002 before the High Court of Judicature at Allahabad challenging their conviction under different provisions of I.P.C. and imposition of sentences.

7. The High Court, by the impugned judgment dated 14th July, 2003, while rejecting the reference made by the learned Sessions Judge for confirmation of death penalty, awarded life sentence to the appellants Moti Lal, Surendra Singh, Virendra Singh, Amar Singh and

Dhunnan Singh for the offence committed under Section 302 read with Section 149, IPC and maintained their conviction recorded under Sections 307 read with Section 149, Sections 452, 427 and 147, IPC and sentences imposed by Sessions Court. The High Court also confirmed conviction of Sharda Singh, Miyadi Singh and Anil Singh under Section 302 read with Section 149, Section 307 read with Section 149, Sections 452, 427 and 148, IPC and sentences imposed for commission of those offences. The High Court further altered conviction of appellant Sharda Singh under Section 148, IPC to one under Section 147, IPC while maintaining the sentence. Aggrieved by the judgment of the High Court, the appellants preferred the present appeal.

8. We have heard learned counsel appearing for the appellants as well as the State and considered the record of the case.
9. The prosecution, in support of its case, mainly relied upon the evidence of Smt. Manju Singh (PW5) and Smt. Kaushalya Devi (PW6). Be it noted that Smt. Manju Singh sustained (1) two round lacerated wound of 0.5 c.m. Radius each present in an area of 1 c.m. on front of right thigh, 18 c.m. above right knee joint bone. Bleeding was present; and (2) two round lacerated wounds of 0.5 c.m. radius each present at a distance of 4 c.m. from each other in right groin, 10 c.m. above

injury No.1. Bleeding with clotted blood was found present. It was found that injuries were caused by firearm, simple in nature and were fresh in duration. She is the crucial witness and the entire case mainly centres around her evidence. She, in clear and categorical terms, stated that her husband Sita Ram Singh and two sons Surendra Singh and Jai Govind were murdered. On the fateful day, they were sleeping in the house in the Chhappar of Dalan. The appellants Ram Miyadi, Amar Singh, Moti Lal, Surendra Singh, Virendra Singh, Dhunнан Singh, Sharda Singh along with Anil Singh and Thagai Singh (since died during trial) barged into her house. Anil Singh was holding gun, Sharda Singh was having lathi, Miyadi was having bomb and Moti Lal was holding *katta* (country made pistol). Surendra Singh and Virendra Singh were also having *kattas*. Amar Singh was having *pharsa* fitted with lathi. Anil Singh and Virender Singh were sons of Sharda Singh. Dhunнан Singh was armed with *ramma*. At the relevant time, the lights were on in the house. Smt. Kaushalya Devi (PW6) was also sleeping inside the house. Immediately upon entering into the house, the appellants started abusing the inmates and indulged in attack during which she also sustained injuries on her body. The appellants hit her husband and two sons with the weapons in their hands. It is in her evidence that her husband and two

sons died on the spot due to the injuries inflicted upon them by the appellants. She also stated that amongst others, Smt. Kaushalya Devi (PW6) had also witnessed the occurrence. She also deposed that the appellants set fire to the motor cycle that was parked in the house. Upon hearing the sounds of bomb, guns and shrieks neighbours came to the spot and witnessed the occurrence. That immediately after the occurrence, she went to police station, Hata and got prepared report (Ext. Ka-1) from one Dwarika Tiwari, resident of Hata and lodged report at police station. The appellants were in inimical terms with Bichari Singh Vakil who belonged to her family and there was a litigation pending between them in respect of a piece of farm land. It is also in her evidence that few minutes before the incident, one Toofani Singh was murdered. She explained that the other witnesses Smt. Vijai Laxmi, Smt. Bela Devi, Ram Lachhan Singh and Ram Bilas were won over by the appellants. Though this witness was subjected to intense cross-examination, nothing could be brought on record to impeach her credibility. During her cross-examination, minor discrepancies with reference to her earlier statement recorded under Section 161, Cr.P.C. were brought on record which are trivial in nature and the Courts below rightly ignored them. She herself was injured in the incident,

therefore, her presence at the time and place of incident can hardly be doubted._

10.Smt. Kaushalya Devi (PW6), wife of Bichari Singh Vakil corroborated the statement of Smt. Manju Singh (PW5). She stated that she was sleeping inside her house and woke up upon hearing the sounds of bomb blast. She heard the appellants shouting that the deceased killed Toofani singh and therefore, no one in his family should be spared of their life. It may not be necessary to repeat and recapitulate what has been stated by her except to notice that she broadly corroborated the statement of PW5. It is in her evidence that her sister-in-law—Smt. Manju Singh (PW5) went to police station, Hata to lodge report to police. She also stated that there was enmity regarding a piece of farm land between her husband Bichari Singh and Toofani Singh and it so happened that Toofani Singh was murdered in the same night. Her evidence is fully corroborated by the testimony of PW5 and as well as the other evidence available on record.

11.Be it noted, the appellants have not disputed the date and place of occurrence. According to the prosecution, the incident took place on the intervening night of 24th/25th June, 1994 at about 1.45 a.m. The report of occurrence was lodged at 2.40 a.m. on the same intervening night. The police station is at a distance

of about five kilometres. It is in the evidence of Smt. Manju Singh (PW5) that she went to police station on a cycle of an unknown person. The fact remains that she and other injured persons were examined between 5.30 and 6.30 a.m. on 25th June, 1994. Dr. Ghanshyam Singh (PW8) who examined the injured persons, in clear and categorical terms, stated that the injuries could have been caused at 1.45 am in the same night. In the circumstances there is nothing on record to disbelieve her evidence.

12.In this appeal, Shri Nagendra Rai, learned senior counsel appearing on behalf of the appellants strenuously contended before us that the appellants have been falsely implicated due to enmity between the parties. According to him, the first information report was not lodged at 2.40 a.m. as alleged by the prosecution but it was lodged during day time after due deliberations to falsely implicate the appellants. The contention was that no crime number was mentioned in the injury report as well as inquest and it is clearly apparent even to a naked eye that there was interpolation in the first information report as regards the timing which makes claim of Smt. Manju Singh highly unbelievable that in that atmosphere, she went to the police station on the bicycle of an unknown person and lodged the first information report. Another

aspect highlighted by the learned counsel was that Dwarika Tiwari who is stated to be the scribe of the report was not examined. These factors according to the learned senior counsel cast a shadow and doubt on the prosecution story.

13.Both the Courts below found that there is some overwriting in the original report (Ka-1) and Chick FIR (Ka-43) as regards the timing. Initially, it was written as 1.30 a.m. in the night and subsequently some re-writing was made and time of occurrence was shown as 1.45 a.m. There is no dispute that Toofani Singh was murdered at about 1.30 a.m. in the same night and the present incident admittedly has taken place subsequent to the murder of Toofani Singh. It is thus clear that the occurrence had taken place after 1.30 a.m. Admittedly, the murder of Toofani Singh and occurrence in the present case had taken place one after the other in that sequence at different places. It is not in dispute that the houses of Toofani Singh and deceased Sita Ram Singh are not adjacent to each other. In the circumstances, there cannot be any doubt whatsoever that the incident had taken place at about 1.45 a.m. after the murder of Toofani Singh at about 1.30 a.m. As rightly observed by the Courts below, the police in some confusion, initially treated the present case as the cross case of Crime No. 151 of 1994 concerning the

murder of Toofani Singh and accordingly registered the case as Crime No. 151A of 1994. It is evident from the evidence of Umesh Chandra Misra, the Investigating Officer (PW9) that it was a mistake on their part to register the present case as a cross case. Having regard to the facts and circumstances of the case, the corrections, if any, made by the Investigating Officer or the Station House Officer, as the case may be, in the first information report do not have any vital bearing on the case of the prosecution. On that score lodging of the first information report itself cannot be doubted. Once it is conceded that the occurrence had taken place after the murder of Toofani Singh at about 1.30 a.m. on the same intervening night, the overwriting in first information report, if any, itself has no material bearing on the prosecution's case.

14.An analysis of the sequence of events apparent from the record would reveal that admittedly there was enmity between the appellants and Bichari Singh Vakil who is none other than the elder brother of deceased Sita Ram Singh with regard to some landed property. Toofani Singh, who is none other than the real brother of appellant Sharda Singh was murdered at about 1.30 a.m. on the same intervening night and the appellants suspected that the murder was committed by Bichari Singh and his family members. The suspicion entertained

by the appellants about the involvement of the deceased led to the murderous attack on deceased Sita Ram Singh and his family members. Bichari Singh Vakil escaped from the wrath of the appellants as he was not in the village on that particular day. These facts are clearly evident from the evidence of Smt. Manju Singh (PW5) and Smt. Kaushalya Devi (PW6). In the circumstances, the alteration, if any, made in the first information report as regards the time of occurrence is not of much significance.

15. Secondly, the distance between the place of occurrence and the police station is about five kilometres. Smt. Manju Singh (PW5) was not seriously injured. She explained that her husband and two sons were killed on that fateful intervening night of 24th/25th June, 1994 and there was no male members left in the house and it was under those circumstances she had to muster her courage and reach the police station to lodge first information report. We find no reason whatsoever to doubt her statement in this regard. It is true that she admitted in her evidence that apart from the other injured persons, one Uday Singh who was not injured was also present in the house, but it is not brought on record as to who this Uday Singh was. There is nothing strange in Smt. Manju Singh securing the help of a person who dropped her at the police station on his

bicycle. Non-examination of the said person and equally the non-examination of the scribe of the first information report, in our considered opinion, are not that fatal to doubt the entire prosecution story. There is nothing unnatural and improbable in Smt. Manju Singh reaching the police station and lodging the first information report at about 2.40 a.m.

16. The omission on the part of the Investigating Officer in not mentioning the case number in the injury report and inquest is not a ground by itself to doubt the reliable and clinching evidence adduced in this case by the prosecution. The Investigating Officer may have committed an error in registering the first information report lodged by PW5 as a cross case initially to that of Toofani Singh's murder case which he rectified subsequently. The Investigating Officer may not have been that diligent that led to making some corrections in the first information report but that is no reason to reject the evidence of Smt. Manju Singh (PW5). The courts below rightly appreciated the evidence available on record and found the so-called interpolation in the first information report, if any, itself was no ground to doubt the prosecution's story.

17. Learned senior counsel further submitted that presence of PW6 (Smt. Kaushalya Devi) at the place of occurrence is highly doubtful since her name is not mentioned in

the first information report lodged by Smt. Manju Singh (PW5). It is well settled that the first information report need not contain every minute detail about the occurrence. It is not a substantive piece of evidence. It is not necessary that the name of every individual present at the scene of occurrence is required to be stated in the first information report. It is true that Smt. Kaushalya Devi (PW6) admitted in her cross examination that she was residing in Gorakhpur in connection with the education of her minor daughter. But she also stated that she very often comes to her village to look after cultivation of lands and household affairs. It is in her evidence that she came to the village about 4 - 5 days prior to the occurrence. It is an admitted fact that deceased Sita Ram Singh and Bichari Singh, husband of Smt. Kaushalya Devi are real brothers and residing in the same house in the village, but in separate portions. Bichari Singh has interest in the lands possessed by the family in the village. There is nothing improbable in Smt. Kaushalya Devi frequently visiting the village and staying in the house at her own convenience. It is relevant to note that the Investigating Officer (PW9) stated that on 26.6.1994, he visited the spot and examined PW6 along with other witnesses. Therefore, there is no reason to disbelieve her statement that she

was very much present on that fateful night at the scene of occurrence.

18. Learned senior counsel further contended that absence of injuries on the person of Smt. Kaushalya Devi (PW6) makes her presence at the scene of occurrence doubtful. This aspect of the matter has been clearly explained by PW6 who was subjected to very rigorous cross examination that when she came out of her room to see as to what was happening, the appellants Moti Lal and Virendra Singh after spotting her, chased her and she ran away and re-entered into her room and bolted the doors from inside. Two shots were fired aiming at her out of which one hit the door and the other went through the window hitting the inner wall of the room. She saved herself from those two shots aimed at her. We do not find any reason to disbelieve her evidence in this regard as to how she escaped from getting injured in the melee.

19. It was lastly contended that even if the prosecution's case is to be accepted, the appellants Sharda Singh and his son Anil Singh are entitled to benefit of doubt. The submission was that their presence at the scene of offence is highly doubtful in view of the categorical admission made by the Investigating Officer (PW9) that both of them were present in the police station at 2.10 a.m. to lodge information about Toofani Singh's murder

that had taken place in the same intervening night. We express our inability to accede to the submission made in this regard. The occurrence took place in the midnight at about 1.45 a.m. The distance between the police station and the place of occurrence is only about five kilo meters which could easily be covered within 10-15 minutes. May be the said appellants went to the police station to inform about the murder of Toofani Singh and they may have been present in the police station at about 2.10 a.m. Their presence in the police station at 2.10 a.m. does not rule out their presence at the scene of offence at about 1.45 a.m. The eye-witnesses Smt. Manju Singh and Smt. Kaushalya Devi, in specific terms, stated in their evidence about presence of these two appellants at the scene of offence. They may have been present at the police station at about 2.10 a.m., but on that count, their participation in the murderous attack on the deceased at about 1.45 a.m. cannot be ruled out.

20.The ocular evidence of PWs 5 and 6 and the medical expert's (PW7) evidence leads us to an irresistible conclusion that the appellants are guilty of all the charges levelled against them and the Courts below rightly convicted all of them for the charged offences.

21.No other point is urged.

22.For the aforesaid reasons, we do not find any error whatsoever to have been committed by the High Court. The High Court properly re-appreciated the entire evidence available on record, considered all the submissions that were made and arrived at the correct conclusion to confirm the conviction of the appellants under various Sections mentioned hereinabove. This Court, in exercise of its jurisdiction under Article 136 of the Constitution, normally does not interfere with such concurring finding of facts arrived at the Courts below upon proper appreciation of evidence available on record unless it is shown that such appreciation suffers from any manifest error resulting in miscarriage of justice. In the present case, we are satisfied that the Courts below properly appreciated the evidence and rested their conclusions mainly relying upon the evidence of PWs 5 and 6 and the evidence of forensic expert Dr. K. Singh (PW7). We accordingly find no merit in this appeal.

23.The appeal shall accordingly stand dismissed.

.....J.
(B. SUDERSHAN REDDY)

NEW DELHI,
DECEMBER 2, 2009.

.....J.
(J.M. PANCHAL)