

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.349 OF 2012

JAGDISH PRASAD @ J.P.& ORS.APPELLANT(S)

VERSUS

STATE OF RAJASTHANRESPONDENT(S)

WITH

CRIMINAL APPEAL NO.350/2012
CRIMINAL APPEAL NOS.2278-2279/2014

O R D E R

These appeals have been preferred by the appellants against the common impugned judgment and order dated 10.3.2011 passed by the High Court of Rajasthan in D.B. Criminal Appeal Nos.129/2000 and 84/2002, by which the conviction of the appellants for offences under section 147, 148, 450, 302/149, 326/149, 325/149, 324/149, 323, 427 and 364 of the Indian Penal Code (for short, the 'IPC') by the Trial Court was upheld by the High Court. The sentence of life imprisonment imposed by the Trial Court was also confirmed.

Banwari Lal (PW5) lodged a complaint in the Police Station Kotwali, Seekar at 10.30 a.m. on 12.09.1998. He alleged that he along with his brothers Bhebharam (deceased) and Om Prakash (PW6) were sitting in their shop. PW2 Sanwar Mal, PW9 Mohan Singh and Tara Chand also joined them. At 10 a.m., Om Prakash stepped out of the

shop and went to Jankinath market gate to order for some tea. At that time, he was assaulted by 10-15 persons near the Jankinath market.

PW5 Banwari Lal, PW2 Sanwar Lal, PW21 Mohan Lal and Mangi Lal PW22, rushed out of the shop and saw 10-15 persons beating Om Prakash with lathi, sword, farsi and sariyas. Thereafter, the assailants entered the shop and launched an attack on Bhebharam (deceased) and Om Prakash. The shop was ransacked and the deceased Bhebharam was dragged out of the cabin. It was also alleged that Shyama attempted to hit Om Prakash with a farsi blow with an intention to kill him. Om Prakash avoided the attack and in the process his left hand's middle finger was chopped off. Both Bhebharam and Om Prakash were abducted in a Jeep and taken away. Bhebharam (deceased) and Om Prakash were found in injured condition near Gaushala in Dataramgarh and were taken to Seekar Hospital. Bhebharam was referred to SMS Hospital, Jaipur, as his condition was serious. Bhebharam died at 12.30 p.m. on 13.9.1998.

FIR No.438/98 for offences under sections 147, 148, 323, 427, 395, 364, 307, 450 and 149 of IPC was registered on 12.09.1998 and after the death of Bhebharam, offence under section 302 of IPC was added.

A charge-sheet was initially submitted against 12 persons while keeping the investigation pending. We are informed that there were six trials that were separately

conducted for the offences mentioned above. The appellants before us were shown as accused in two trials and the accused in other four trials were acquitted by the Trial Court. No appeals were preferred by the State against the said acquittals. The High Court upheld the conviction of the appellants who are before us for all the aforesaid offences except for the offence under section 307/149 of the IPC. The sentence of life imprisonment that was recorded by the trial court was confirmed by the High court.

Mr. Basava Prabhu S. Patil, learned Senior Counsel appearing for the appellants, submits that the FIR is ante-dated and ante-time, the prosecution version about the occurrence of the crime at Jankinath Market is doubtful and that there is clear inconsistency between the injury report and the post-mortem report. He also submits that the eye-witnesses are not reliable and the statement of the deceased (Bhebharam) under section 161 Cr.P.C. recorded on 12.9.1998 could not have been treated as a dying declaration under section 32 of the Indian Evidence Act. He further contended that, in any event, the conviction under section 302 read with section 149 of IPC is not justified. According to him, even if the prosecution version is to be accepted, the conviction can only be under section 326 read with section 149 of the IPC.

A perusal of the evidence on record and the

judgments of the courts below would reveal that the assailants Kesar Jat and Shyama Jat against whom specific overt acts were alleged, have been acquitted. It is also clear from the record that five persons were travelling in a jeep in which Bhebharam (deceased) and Om Prakash were abducted and taken to Dataramgarh. Four out of said five persons were acquitted. Admittedly, there is no appeal preferred by the respondent-State against the acquittal of Kesar Jat and Shyama Jat as also the acquittal of others who were travelling in the jeep.

The accused were part of a large group of 25 persons and no specific role has been ascribed to them. The other accused who were similarly situated to them have been acquitted and no appeals were preferred by the State against their acquittals. Moreover, the main assailants were also acquitted.

We have also carefully perused the injury certificate and the post-mortem report. Almost all the injuries were found on the hands and legs of the deceased. Though the accused were carrying deadly weapons, there is no allegation that they had caused injuries to the vital parts of the deceased or Om Prakash.

There is no doubt that Bhebharam was attacked by the accused and he died due to the injuries caused by the accused. We do not see any reason to interfere with the findings of the courts below that the accused had

attacked the deceased, who died due to the injuries sustained by him. For the reasons mentioned above, we are of the view that the appellants are not liable for conviction under Section 302/149 IPC. In facts and circumstances of this case, we are convinced that the conviction under Section 302/149 has to be modified to Section 326/149 IPC.

We are informed that all the accused have already undergone rigorous imprisonment for periods between 8 years and 7 months to 12 years and 8 months, except the appellants in Criminal Appeal Nos.2278-2279 of 2014, who have undergone rigorous imprisonment for 6 years and 5 years and 2 months respectively.

Taking into account the long period of incarceration undergone by the appellants, we partly allow these appeals, convert the conviction of the appellants from Section 302/149 to section 326/149 of the IPC and reduce their sentence to the period already undergone by them. The appellants are in jail. Their bail bonds stand cancelled. They may be released from custody forthwith, if not required in any other case.

.....J
[S. A. BOBDE]

.....J
[L. NAGESWARA RAO]

NEW DELHI;
APRIL 26, 2017.