REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s).1864 OF 2009

JAGDISH AND ANOTHER ...APPELLANT(S)

VERSUS

THE STATE OF HARYANA ...RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The two appellants have been convicted under Sections 302, 149 and 148 of the Indian Penal Code (hereinafter referred to as 'IPC'). Originally there were 13 accused. Only six were charge-sheeted. Two of them were tried by the juvenile court. Seven were summoned under Section 319. The Trial Court convicted three persons. One of them, Ishwar has been acquitted by the High Court.

2. Sri S.R. Singh, learned senior counsel, on behalf of the appellants submits that once the other accused have been acquitted, the two appellants alone cannot be convicted with the aid of Section 149 of the Indian Penal Code. The High Court erred in convicting with the aid of Section 34 in absence of a charge framed under that Section. There is no evidence of any common intention, displaying a prior meeting of minds to commit the assault. PW-1 and PW-8 were not eye witnesses. They reached after the occurrence. Their claim to be eye witnesses is highly improbable from their own evidence. An alternative submission was made that in any event at best it was a case for conviction under Section 304 Part-II I.P.C. Reliance was placed on ***Dalip Singh vs. State of Punjab***, AIR 1953 SC 364::1954 SCR 145, and ***Sakharam Nangare vs. State of Maharashtra***, 2012 (9) SCC 249.

3. Learned counsel for the State submitted that PW-1 and PW-8, the eye-witnesses to the occurrence had stated that Appellant no.2 made the fatal assault on the head of the deceased with a lathi while appellant no.1 also assaulted the

deceased. The parties resided in the same locality and there is evidence of a street light. Relying on ***Khem Karan and others vs. State of U.P. and another***, 1974 (4) SCC 603, it was submitted that because PW-1 was the sister of the deceased, the credibility of her evidence as an eye-witness to the occurrence cannot be doubted to grant acquittal in the nature of materials available on the records.

4. We have considered the submissions on behalf of the parties and perused the materials on record. The parties resided in the same locality and were known to each other. Animosity existed between them because the son of the second appellant had written love letters to the daughter of PW-1. Earlier an altercation had taken place between the parties on 20.05.1995 leading to a police case being lodged against both sides. There was another incident on 12.06.1995 for which the appellants and the deceased were proceeded with under Sections 107, 151, Cr.P.C. The deceased had been released on bail and was

returning from the house of PW-1 on 16.06.1995 at about 9.00 P.M. when the assault is stated to have taken place.

5. PW-8 and PW-1 are husband and wife holding arms licence in their individual names. They are stated to have been accompanied to the place of occurrence by Kamla the sister of PW-8 and one Pali Ram who was also an arms licensee. Surprisingly, the latter two have been given up by the prosecution and have not been examined. All four are stated to have moved away from the place of assault out of fear, as claimed. If three of them were possessed of weapons there has to be an explanation why they did not act in self defence when the assault is alleged by lathis, gandasi and guns. It is also difficult to accept that her husband PW-8 and Palli continued to hide in fear while PW-1 accompanied by her sister-in-law alone shortly returned to the place of occurrence to check on the deceased. An additional fact which is not only improbable but highly unnatural according to normal societal rural customs and mores is that PW-1 accompanied by her sister-in-law alone went to the police station at 3.00 A.M, a kilometer away, to lodge the

F.I.R. while her husband and Pali Ram who was staying with them remained at home.

6. In the F.I.R. PW-1 made generalized allegations of assault by all the 13 accused who are stated to have surrounded the deceased. But her court statement was more specific with regard to the nature of assault made by each of the accused. A total of 11 injuries were found on the person of the deceased. The first injury was bone deep in the right parieto occipital region with damage to brain and pieces of bone in the wound. There was injury on the neck, lacerated wound over the right shoulder, lacerated wound over the dorsum of both ring and little fingers causing fracture, lacerated wound over the right wrist joint over the middle of forearm, on the left side of the chest wall, over the iliac crest, over the left scapular region with a linear incision due to sharp weapon, over left deltoid region and lacerated wound over the right knee left ankle and left forearm. The two appellants were armed with lathis by which an incised wound could not have been caused. In any event, the

number of injuries on the deceased leaves us satisfied that it was the result of a mob assault and not an assault by the two appellants alone.

7. The High Court has committed an error of record by considering PW-8 to be an eye witness without any discussion when his presence at the time of occurrence has been disbelieved by the Trial Court. With regard to PW-1, the Trial Court has itself observed that her deposition “does not contain the entire truth and it makes the court to sit up and to find out the kernel out of the chaff”. This observation assumes significance in view of the acquittal of the remaining accused by the Trial Court itself, excluding the juveniles.

8. The question that arises to our mind is that in the mob assault by 13 persons who had surrounded the deceased at night, PW-1 was the sole eye-witness. Even if a light was burning some of them undoubtedly must have had their back to PW-1 making identification improbable if not impossible. The

witness has been severely doubted both by the trail court and the High Court to grant acquittal to the other accused. Can the evidence of a solitary doubtful eye witness be sufficient for conviction? We may have a word of caution here. Conviction on basis of a solitary eye witness is undoubtedly sustainable if there is reliable evidence cogent and convincing in nature along with surrounding circumstances. The evidence of a solitary witness will therefore call for heightened scrutiny. But in the nature of materials available against the appellants on the sole testimony of PW-1 which is common to all the accused in so far as assault is concerned, we do not consider it safe to accept her statement as a gospel truth in the facts and circumstances of the present case. If PW-1 could have gone to the police station alone with her sister-in-law at an unearthly hour, there had to be an explanation why it was delayed by six hours. Given the harsh realities of our times we find it virtually impossible that two women folk went to a police station at that hour of the night unaccompanied by any male. These become crucial in the background of the pre-existing enmity between the parties

leading to earlier police cases between them also. The possibility of false implication therefore cannot be ruled out completely in the facts of the case.

9. The High Court concluded that the appellants alone were the assailants of the deceased. Ishwar is also stated to have assaulted with a lathi capable of causing lacerated wounds. We find it difficult to hold that the appellants were any differently situated than Ishwar. The susceptibility of eleven injuries, including incised wounds, by two accused is considered highly improbable.

10. Therefore, in the entirety of the facts and circumstances of the case, the relationship between PW-1 and the deceased, the existence of previous animosity, we do not consider it safe and cannot rule out false implication to uphold the conviction of the appellants on the evidence of a doubtful solitary witness, as observed in ***State of Rajasthan vs. Bhola Singh and Anr.***,

AIR 1994 SC 542, (Crl. Appeal No. 65 of 1980 decided on 25.08.1993):

> "4. From the above-stated facts, it can be seen that the case is rested entirely on the solitary evidence of P.W.1. The High Court has pointed out several infirmities in the evidence of P.W.1. It is well-settled that if the case is rested entirely on the sole evidence of eye-witness, such testimony should be wholly reliable. In this case, occurrence admittedly took place in the darkness...."

11. In ***Lallu Manjhi and another vs. State of Jharkhand***, (2003) 2 SCC 401, it was observed that if ten persons were stated to have dealt with blows with their respective weapons on the body of the deceased, and that if each one of them assaulted then there would have been minimum of ten injuries on the person of the deceased. In the present case, as noticed there are 11 injuries on the person of the deceased. Giving the benefit of doubt granting acquittal, it was observed as follows:

> "13..... The version of the incident given by the sole eyewitness who is also an interested witness on account of his relationship with the deceased and being inimically disposed against

> the accused persons is highly exaggerated and not fully corroborated by medical evidence. The version of the incident as given in the Court is substantially in departure from the earlier version as contained and available in the first information report. We cannot, therefore, place reliance on the sole testimony of Mannu (PW 9) for the purpose of recording the conviction of all the accused persons."

12. We therefore find the order of the High Court to be unsustainable and accordingly set it aside. The appellants are acquitted. They are directed to be released forthwith if they are not required in any other case.

13. The appeal is allowed.

.....J.
(Ashok Bhushan)

.....J.
(Navin Sinha)

New Delhi,
AUGUST 06, 2019.