

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.162 of 2010

Ramcharan (Dead) & Anr.

.....Appellants

Versus

State of Madhya Pradesh

.....Respondent

W I T H

CRIMINAL APPEAL NO.1716 OF 2010

J U D G M E N T

Abhay S. Oka, J.

1. These two appeals take exception to the judgment dated 31st July 2009 passed by the High Court of Madhya Pradesh by which conviction of the appellants has been confirmed. In all, there were nine accused. The appellants in Criminal Appeal No.162 of 2010 are accused nos.2 and 3 and the appellant in Criminal Appeal No.1716 of 2010 is accused no.9.

2. As per the case of the prosecution, when the incident occurred, the complainant Jagannath (P.W.1) and his wife Kamlabai (P.W.8) along with their son deceased Laxminarayan as well as two daughters-in-law Suganbai (P.W.10) and Sharmilabai (P.W.11) were sleeping in the house situated near a tube-well in their field. P.W.10 and P.W.11 were sleeping inside the house and others were sleeping outside. Around midnight, the accused reached the house and started assaulting Jagannath (P.W.1). When P.W.8 Kamlabai tried to save P.W.1 Jagannath, even she was assaulted by the accused. At that time, deceased Laxminarayan came there to protect his parents. He was also assaulted by the appellants. Though deceased ran away to save himself, the accused chased him and assaulted him. He sustained injuries. While he was being taken by a tractor to the police station, he died on the way. It must be noted here that P.W.18 who was the Executive Magistrate purportedly recorded a statement of P.W.1 Jagannath as a dying declaration. The Trial Court found all nine accused persons guilty of the offence punishable under Section 302 of Indian Penal Code (for short, 'IPC') with the aid of Section 149 of IPC. The Trial Court held that accused no.1 - Ranglal and accused no.4 - Prem Singh were guilty of the offence punishable under Section 325 read with Section 149 of IPC for assaulting P.W.1 Jagannath. The said two accused were also held guilty of the offence punishable under Section 325 read with Section 149 of IPC for assaulting P.W.8

Kamlabai. Both accused nos.1 and 4 were also convicted for the offence under Section 148 of IPC. The Trial Court sentenced all the accused to undergo life imprisonment for the offence punishable under Section 302 read with Section 149 of IPC. The accused were also separately punished for the other offences.

3. There were separate appeals preferred by the accused. It must be noted here that accused no.4 Prem Singh died during the pendency of the appeals. By the impugned judgment, the High Court acquitted accused no.1 Ranglal; accused no.5 Bhagwan Singh; accused no.6 Kamal Singh; accused no.7 Benu and accused no.8 Lakhan. However, the conviction and sentence of the appellants in these two appeals was maintained. The learned counsel for the appellants during the course of submissions stated that accused no.2 who is the appellant no.1 in Criminal Appeal No.162 of 2010 has passed away.

4. Ms. Pragati Neekhara, learned counsel appearing for appellants in Criminal Appeal No.162 of 2010 has made detailed submissions. Mr. Sharangouda S. Patil, learned counsel appointed to espouse the cause of appellant in Criminal Appeal No.1716 of 2010, has assisted the Court. The learned counsel appearing for appellants has taken us through the judgments of the Trial Court and the High Court as well

as the material part of depositions of the prosecution witnesses. The learned counsel pointed out that the appellants have been convicted only on the basis of the evidence of P.W.1 Jagannath and P.W.8 Kamlabai and the evidence of the two other injured persons, namely, P.W.10 Suganbai and P.W.11 Sharmilabai has been disbelieved. She submitted that in fact evidence of P.W.1 and P.W.8 also deserve to be discarded as there are number of material omissions and contradictions brought on record during their cross-examination. She submitted that a serious doubt is created whether both of them have witnessed the incident as both of them were allegedly attacked by the accused while they were sleeping. The learned counsel appearing for the appellants submitted that though P.W.1 and P.W.8 had ascribed the same role to all the accused, the High Court has disbelieved their version only insofar as accused nos.1, 5, 6, 7 and 8 are concerned. It was submitted that on the ground of parity, even the appellants ought to have been acquitted.

5. Learned counsel appearing for the State urged that there was no reason for the High Court to discard the testimony of P.W.10 and P.W.11 who were injured eye witnesses. His submission is that both the Courts have believed the testimony of P.W.1 and P.W.8 and, therefore, there is no reason to interfere with the findings recorded on the basis of appreciation of their evidence. He would, therefore,

submit that no interference is called for in the impugned judgment.

6. We have given careful consideration to the submissions. We have perused the judgments impugned in these appeals as well as the depositions of the material witnesses. As the High Court has disbelieved the testimony of P.W.10 and P.W.11 who were allegedly injured eye witnesses, their evidence will have to be kept out of consideration. The evidence of P.W.1 Jagannath and P.W.8 Kamlabai needed careful scrutiny as they are interested witnesses being the parents of the deceased. In the examination-in-chief, P.W.1 claimed that he was lying on a *charpai* when acquitted accused no.1 and accused no.4 came there and started giving blows by a *lathi*. He claimed that 5 to 7 people started assaulting his wife P.W.8. He stated that after the deceased came out, the accused gave *lathi* blows to him which caused his death. Though, he did not say that the assault on the deceased was made after he ran away to some distance, P.W.8 has stated that when the deceased started running away, the accused persons chased him and assaulted him. P.W.1 was confronted with material part of his statement under Section 161 of the Code of Criminal Procedure (for short, 'Cr.PC') recorded by the police. In that part of his statement, he had stated that blows of *lathi* were given to him when he was asleep and he woke up only after the assault. P.W.1 denied to have made such a statement to the police. He also

accepted that he had not named accused no.6 Kamal in his police statement.

7. The Executive Magistrate had purportedly recorded a statement of P.W.1 Jagannath in the form of a dying declaration. In view of Section 157 of the Indian Evidence Act, 1872 the so-called dying declaration can be treated as a former statement made by P.W.1 and, therefore, the same can be used for contradicting the witness. When P.W.1 Jagannath was confronted with a portion of his statement at Ex.D-2, he accepted that the statement does not refer to the presence of accused nos.1, 3, 7, 8 and 9.

8. According to P.W.1, the accused were carrying *lathis* and the deceased and injured witnesses received blows of *lathis*. However, P.W.8 deposed that all the accused persons were carrying *lathis* and *farsa* (axe). She stated that one of the accused was holding *Ballam* (spear) and by using the said weapon, he caused injury to the eye of P.W.1. As noted earlier, P.W.1 never claimed that any one was holding weapons such as *farsa* and *Ballam* and that one of the accused attacked him with *Ballam*. Though P.W.1 did not make out a case that deceased Laxminarayan tried to run away, P.W.8 has come out with the said case that the deceased ran away and she could see from a distance that the accused were assaulting him.

9. P.W.8 in the cross-examination admitted that she cannot describe who were holding *lathis* and who were holding *Ballam*. Further in paragraph 12 of the cross-examination, she stated that she did not see how the accused were assaulting deceased by use of *Ballam* as she was far away. She accepted in the cross-examination that there was no injury caused to her husband P.W.1 by use of *Ballam* but the injury was caused by use of *farsa*. P.W.8 claimed that she went to the spot when accused were assaulting the deceased. However, she admitted that when the deceased came out of the house, she and P.W.1 were lying down on *charpai* due to injuries and they continued to lie down for a period of one hour. She admitted that she was unable to tell as to which of the accused caused injuries to the deceased and by which weapon. In further cross-examination, P.W.8 admitted that only after her husband P.W.1 made hue and cry that she woke up.

10. Thus, both P.W.1 and P.W.8 tried to implicate all the nine accused by making omnibus statements. In his statement recorded by the Executive Magistrate, P.W.1 did not disclose the names of five accused including accused no.3 Boro and accused no.9 Shyam who are the appellants in these appeals. Looking to the admissions given by P.W.8 that she along with P.W.1 were lying down for a period of

one hour on the spot where they were assaulted and that fatal assault was made on the deceased after he ran away from the spot, a serious doubt is created whether both of them had seen the actual assault on the deceased. Moreover, there is a serious discrepancy about the weapons of assault. In the depositions of P.W.1 and P.W.8 though role assigned by them to all the accused was the same, the High Court acquitted accused no.1 Ranglal; accused no.5 Bhagwan Singh; accused no.6 Kamal Singh; accused no.7 Benu and accused no.8 Lakhan. Neither the State Government nor the victim of the offence have challenged their acquittal. Apart from the fact that there is a serious doubt created about the truthfulness of the version of P.W.1 and P.W.8, there was no reason for the High Court for treating the appellants differently from the acquitted accused. The accused no.1 who allegedly assaulted both the witnesses has been already acquitted by the High Court. The accused no.4 who allegedly assaulted them has died during the pendency of the appeal before the High Court.

11. In the circumstances, taking overall view of the case, the conviction of the appellants cannot be sustained. As noted in order dated 22nd January 2010 in Criminal Appeal No.162 of 2010, at the time of grant of bail, appellant no.1 (accused no.2) had undergone sentence for seven and half years and the appellant no.2 (accused

no.3) had undergone sentence of 10 years. The appellant in the other appeal who is accused no.9 had undergone sentence for 7 years and 10 months at the time of grant of bail, as noted in the order dated 17th January 2011.

12. Hence, the appeals are allowed. The impugned judgment of the Trial Court and the High Court to the extent to which conviction of appellants (except appellant no.1 in Criminal Appeal No.162 of 2010) in these two appeals was confirmed, are set aside and the said appellants (accused no.3 Boro and accused no.9 Shyam) are acquitted of the offences alleged against them. The said two appellants are on bail and, therefore, their bail bonds stand cancelled. Criminal Appeal No.162 of 2010 stands abated as far as appellant no.1 – Ramcharan is concerned.

.....**J.**
[SANJAY KISHAN KAUL]

.....**J.**
[ABHAY S. OKA]

New Delhi
December 07, 2022.