HIGH COURT OF MADHYA PRADESH BENCH AT GWALIOR

DIVISION BENCH

(Anand Pathak & Vivek Agarwal J.J.)

CRIMINAL APPEAL No.35/2007

Raghuveer Singh and Others
Vs.
State of Madhya Pradesh

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For appellant No.2:- Shri Ram Kishore Sharma, learned counsel.
For appellant No.3:- Shri Sanjay Gupta, learned counsel.
For appellant No.4:- Shri S.S. Gautam, learned counsel.
For appellant No.5:- Shri Pradeep Katare, learned counsel.
For appellant No.6:- Shri Rajkumar Singh Kushwaha, learned counsel.
For respondent-State:- Shri B.P.S. Chauhan, learned Public Prosecutor

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Whether approved for reporting : Yes

Law laid down:

(1) Where witnesses make inconsistent statements in their evidence either at one stage or at two stages, testimony of such witnesses become unreliable and unworthy of credence and in absence of special circumstances, no conviction can be based on the evidence of such witnesses.

(2) Material improvements of version of eye-witness from FIR to the version given in the Court, said evidence cannot be taken into consideration.

(3) Failure on part of investigating agency to recover any bloodstained clothes from the deceased, accused or from the witnesses, who held the deceased in their hands at the time of

incident or taking bloodstained soil and bloodstains found over the weapon to match blood group and failure to send for chemical or serology examination, render the case of prosecution doubtful.

(4) Common object shared by members of the assembly must pre-exist the occurrence of incident. When whole fight started suddenly on the spur of the moment in a heat of passion the accused though more than five in number, could only be liable for the individual acts committed by them and could not be convicted under Sections 149, 148 or 147 of IPC.

(5) If necessary ingredients of exception -4 of Section 300 of IPC i.e. sudden fight, absence of premeditation, single blow and no undue advantage or cruelty shown in the case, then the offence of Section 302 of IPC can be altered to Section 304 (Part I or II as the case may be) of IPC.

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JUDGMENT

(Pronounced on 18th day of May, 2018)

Per Justice Anand Pathak,

The appellants-accused have preferred this appeal under Section 374(2) of Cr.P.C. against the judgment and order dated 11th December, 2006 passed by the Seventh Additional Sessions Judge (fast track) Gohad, District-Bhind in S.T. No.50/2004, whereby all appellants have been convicted under Section 302 r/w Section 149 of IPC and sentenced to undergo Life Imprisonment each with fine of Rs.100/- each and further convicted under Section 148 of IPC and sentenced to suffer 1 year RI each with fine of Rs.100/- each.

2. As per the case of the prosecution, on 04-11-2003 at around 4 pm complainant Lakhu Singh, his brother Ayodhya Singh and nephew Balister Singh went to agriculture field at

village Moza Khera, District-Bhind for taking fodder. The agriculture field of the complainant was adjacent to the field of the Raguveer Singh and his brothers. On the fateful day, when Raghuveer Singh was taking fodder over the linhay (मेंड) of the field was objected by Ayodhya Singh, which resulted into verbal altercation. Immediately on the call of Raghuveer Singh, his family members i.e. present appellants who were performing agriculture activities were gathered and over exhortation of Raghuveer Singh and other appellants viz; Raju, Bheemsen, Dileep and Munna wielding Lathi, Bakeel wielding Kanta and Raghuveer Singh wielding an axe, came to the spot and Raghuveer Singh gave a blow of axe to Ayodhya over his head and Bakeel Singh gave a blow of Kanta (Farsa like weapon) over the head of Ayodhya and Dileep Singh inflicted blow of lathi over the head of Ayodhya. When complainant Lakhu Singh, Balister Singh tried to intervene and save the victim Ayodhya then Raju, Bheemsen and Munna caught hold of them and did not allow them to move further. When Ayodhya fell down and lying lifeless then Raghuveer Singh and other co-accompolice moved away by hurling abusive language to the family of the deceased. Victim-Ayodhya was taken to Police Station but died midway. The case was registered vide Crime No.159/2003 under Sections 302, 147, 148 and 149 of IPC and matter was taken for investigation.

3. Body of the deceased was sent for autopsy at district hospital Bhind and statements of the witnesses were recorded. Spot map was prepared and from the spot, one stick, blood stained soil, plain soil and spectacles of the deceased were seized through seizure memo. Accused-Raghuveer Singh was arrested and on his statement, *axe* was seized whereas on the statement of another accused-Bakeel Singh, *farsa (kanta)* and on the statement of accused-Raju, *lathi* were seized and

respective seizure memos were prepared. Accused-Bheemsen was also arrested and *lathi* was seized from him. Seized articles were sent for chemical examination at Forensic Science Laboratory, Sagar and after investigation, charge-sheet was filed against the accused persons.

4. The matter was committed to the Court of Session where the charges were framed. The accused abjured their guilt therefore, trial was conducted.

5. In their defence and examination under Section 313 of Cr.P.C., appellants/ accused denied the prosecution story and took the plea of false implication. Dileep Singh took the plea of *Alibi* and for that, witness Rajveer (DW-1) was examined. Two other eye witnesses were also examined on behalf of the defence. Prosecution led as many as eight witnesses.

6. After considering the evidence ocular as well as medical and the documents exhibited, trial Court convicted the appellants/ accused as referred above. Therefore, the accused are before this Court in appeal.

7. Appellant-Raghuveer Singh s/o Vijay Singh Kushwah died during pendency of this appeal. Therefore, this appeal is to be considered at the instance of other appellants (appellants No.2 to 6).

8. Different counsel appearing for the appellants tried to establish the case of false implication on the basis of contradiction surfaced in the testimony of eye witnesses i.e. Lakhu Singh (PW-1) and Balister Singh (PW-3). As per the statements, the course of events as referred in the FIR and in the deposition contains sufficient contradictions to establish the theory of false implication. Injuries caused by the appellants are also factually differently described by two eye witnesses. It was also the case of the appellants that blood stained cloth of the deceased- Ayodhya were seized by the police and no blood was

found on these articles and those weapons which was seized, were not sent for FSL examination. Therefore, the prosecution could not prove the case beyond reasonable doubt so as to render the appellants incarcerated for conviction and suffer substantive jail sentence as referred above.

9. As alternative argument, counsel for the appellants have tried to take shelter of Section 300 exception 4 of IPC to contend that it was culpable homicidal not amounting to murder because the alleged incident was the result of sudden fight in the heat of passion and therefore, appellants cannot be convicted for the offence under Section 302 of IPC for murder of deceased-Ayodhya.

10. Learned counsel for the respondent/ State opposed the prayer of the appellants and placing reliance over the findings of the trial Court, opposed the prayer and prayed for dismissal of the appeal.

11. Heard the learned counsel for the parties at length and perused the record.

12. The first and foremost question for consideration of the case in hand is the nature of death of deceased-Ayodhya. Dr. D.C. Shukla (PW-2), who was the medical officer and conducted autopsy over the corpse was examined. According to him, nature of injuries were as under:-

> *"(i) Lacerated wound 4x1/2 cm x 1x1/2 cm x deep bony on occipital parietal region at skull- clotted blood present around the wound.*
>
> *(ii) Stab wound 2x2 cm area occipital parietal region of skull deep bony*
>
> *(iii) Depressed occipital bone and skull."*

13. According to the injuries and his opinion as contend in para 2 of his deposition, nature of injuries were sufficient to

cause death and therefore, death was homicidal in nature. Once the cause of death is ascertained then natural course is to ascertain and fix the responsibility if any, for such homicidal death.

14. In the present case, scriber of FIR is Lakhu Singh who in his FIR statement (Ex.D-1) narrated the events. In the FIR, he scribed the blow to Raghuveer Singh through axe, Bakeel through Kanta and Dileep through lathi over the head of Ayodhya. The other appellants were guilty of intercepting Lakhu Singh (PW-1) and his nephew Balister Singh (PW-3) and not allowing them to save the deceased-Ayodhya. Later on, statement under Section 161 Cr.P.C. were recorded in which Lakhu Singh (PW-1) has reiterated the events in same fashion but in his deposition on oath, he tried to improve upon the case by saying that Raghuveer Singh inflicted blow of axe from other side (blunt side) and thereafter, Dileep Singh inflicted the blow of lathi and Bakeel with farsa. In the medical examination according to Dr. D.C. Shukla (PW-2), injuries No.1 and 3 could not be inflicted through sharp cutting object or from the blow of axe. Only injury No.2 could have been caused through pointed weapon because injury No.2 was a stab wound. This aspect is further contradicted by Balister Singh (PW-3) in his deposition when he says that Raghuveer Singh inflicted the blow of axe from blunt side but the same has not been clarified in his statement under Section 161 of IPC vide Ex.D-2.

15. Similarly, Lakhu (PW-1) in FIR Ex.P-1 did not clarify the blow of *axe* by Raghuveer Singh through blunt side. Lakhu Singh (PW-1) in his deposition in para 29 has said that Raghuveer Singh inflicted the blow of Farsa from the side of sharp cutting edge because he says that he used the *farsa* from the side by which it is used for killing. This aspect is contradicted by Balister Singh (PW-3) who happens to be

another eye witness, when he says in para 34 of his statement that Raghuveer Singh has inflicted the blow of *axe* from the back side. Therefore, both the alleged eye witnesses contradict each other about the use and mode of using the weapon, whereas they should have been in unison about the incident. The Hon'ble Apex Court in the case of **Suraj Mal Vs. The State (Delhi Administration), AIR 1979 SC 1408** held that where witnesses make inconsistent statements in their evidence either at one stage or at two stages, testimony of such witnesses become unreliable and unworthy of credence and in absence of special circumstances, no conviction can be based on the evidence of such witnesses. This has been further reiterated in the the case of State of **Bihar Vs. Bishwanath Rai and others, AIR 1997 SC 3818** wherein it has been held that testimony of eye witnesses not consistent with medical evidence regarding injury caused to the deceased, thus inference is that eye witnesses not giving correct account of manner in which incident took place. In the case of **Anmol Singh Vs. Asharfi Ram and others, 1998 SCC (Cri) 369**, Hon'ble Apex Court reiterated the law that inconsistencies and improvements of version of eye-witness in FIR different from the version giving by him in the Court when witness making material improvements in his evidence, thus, the said evidence cannot be taken into consideration. In a recent judgment of Hon'ble Apex Court in the matter of **Mahindra Vs. Sajjan Galfa Rankhamb and others, 2017 (2) Cr.L.R. (SC) 433**, the law has been reiterated in the same manner.

16. In the FIR, it was stated by Lakhu Singh (PW-1) that first blow was inflicted by Raghuveer Singh then second blow by Bakeel Singh and third by Dillep Singh, but in his statement under Section 161 of Cr.P.C., he changed the order and said that first blow was inflicted by Raghuveer Singh, second by

Dileep Singh and third by Bakeel Singh. Since eye witness account specifically mentions the fact about the use of *axe* and *farsa,* but no injuries of incised wound are found in the medical report therefore, use of *axe* and *farsa* allegedly wielded by accused persons comes into doubt while inflicting injuries over the deceased-Ayodhya.

17. The said medical report is further substantiated by the inconsistent statements of eye witnesses. In para 8 of his statement, Lakhu Singh (PW-1) says that his agriculture field is just adjacent to Ayodhya Singh but spot map (Ex.P-3) indicates that between Lakhu and deceased Ayodhya's field, it was the field of Maniram which bifurcated both the fields therefore, field of both the persons Lakhu and Ayodhya were not adjacent. Later on, in para 10 of his deposition, he again makes clarification regarding field of Maniram, but the same is contradictory to what he already said in para-8.

18. Perusal of FSL report (EX.P-18) shows that one stick vide article-D referred in the said documents contains blood stains alongwith soil article-A and B and spectacles article-C whereas on Ex-E, F and G which were seized weapons *(axe and sticks)* respectively blood stains were not found. Article-D which was a stick containing blood stains, was not referred for chemical examination alongwith the blood stained clothes of deceased to ascertain and to establish that the blood stains found over it was of the deceased-Ayodhya. In the present case blood group of blood stains found over the stick (vide article-D) was never referred for any forensic/ chemical examination nor the said blood group found over the stick was matched with the blood group of the deceased nor with the blood group of accused persons. Even, the blood stained clothes of deceased were not seized and sent for chemical examination. In absence of such omission in the light of the judgment rendered by the Apex

Court in the case of **Prabhu Babaji Navle Vs. State of Bombay, AIR 1956 SC 51** and in the case of **Kansa Behera Vs. State of Orissa" [AIR 1987 SC 1507]**, it cannot be inferred that the death has been caused by the said lathi blow. In the said judgment it has been clarified that if the accused is to be convicted for the offence on the basis of blood stains, then grouping of that blood should be proved. Since the weapons seized *(axe and lathi)* (article-D) and blood stained clothes of deceased were not sent for chemical examination then without matching the blood group found on the alleged weapons with the blood of the deceased, no conclusive inference can be drawn to prove the guilt of the appellants. In the case of **Khima Vikamshi and others Vs. State of Gujarat, 2003 SCC (Cri.) 1825**, Hon'ble Apex Court held that failure on part of investigating agency to recover any bloodstained clothes from the witnesses, despite the fact that they were present at the time of incident, held the case of prosecution doubtful. The inference drawn by the Hon'ble Apex Court in absence of recovery of such bloodstained clothes and bloodstained earth at the place of incident and omission to send it for chemical examination, render the case of prosecution doubtful.

19. No blood was found on the articles-E, F and G and they were not sent for FSL examination and no explanation has been offered in this regard. Once over the article-D (stick), blood stains were found and the said stick was seized from the spot then it was the duty of the prosecution to sent it for FSL to establish the blood group of the deceased to establish full proof case of the appellants but the same has not happened and no explanation has been offered in this regard therefore, case of the prosecution becomes doubtful.

20. On behalf of the appellants/ defence, Additional S.P.-A.K. Jha (DW-3) was examined as he inquired into the matter and

submitted the inquiry report dated 05-02-2004 to S.P. Bhind. He admitted in his report that no similarity exists between roping of six accused persons *vis a vis* the injuries caused to the deceased. It was also submitted that it is not possible to inflict injuries by six accused and case appears to be of sudden provocation and under the heat of passion.

21. Other three accused persons namely appellant No.3-Bheemsen, appellant No.4- Moti @ Munna and appellant No.5-Raju @ Jaichandra admittedly faced the allegations that they tried to halt or intervene the relatives of Ayodhya Singh when Lakhu Singh (PW-1) and Balister Singh (PW-3) tried to save the Ayodhya Singh. Injuries are only 3 in numbers, which were inflicted over the deceased and admittedly as per the allegations, the said injuries were allegedly caused by Raghuveer Singh (deceased), Dillep Singh and Bakeel Singh. No injury has been caused by the above mentioned appellants even if the story of the prosecution is believed. Since the fight broke out on the question of linhay (मेंड) because of sudden provocation therefore, the appellant No.4-Moti @ Munna and appellant No.5-Raju @ Jaichandra did not share common object alongwith other appellants. They were just doing agriculture work in the vicinity. Theory of common object was not established by the prosecution. Therefore, they cannot be fastened with the liability with the aid of Section 149 of IPC. Since the deposition of Lakhu (PW-1) and Balister Singh (PW-3) are contradictory and do not stand to credence as discussed above therefore, accused referred above deserve to be acquitted from the charge of Section 302/149 of IPC.

In the case of **Mariadasam and others Vs. State of Tamil Nadu, AIR 1980 SC 573**, Hon'ble Apex Court held that where there was no satisfactory evidence to prove the formation of any unlawful assembly with the common object of committing

crimes alleged and the whole fight started suddenly on the spur of the moment in a heat of passion the accused though more than five in number, could only be liable for the individual acts committed by them and could not be convicted under Sections 149, 148 or 147 of IPC. In the case of **Sukhbir Singh Vs. State of Haryana, 2002 SCC (Cri) 616**, Hon'ble Apex Court held that merely because co-accused persons accompanied the main accused when he inflicted the fatal blows to the deceased would not by itself prove existence of the common object. The common object shared by members of the assembly must pre exist the occurrence of incident. Here, in the present case, the prosecution could not prove the case beyond reasonable doubt about existence of common object harboured by members of unlawful assembly to eliminate the deceased. In the case of **Shaji and others Vs. State of Kerala, AIR 2011 SC 1825**, Hon'ble Apex Court considered the judgment rendered in the case of **Kuldip Yadav and others Vs. State of Bihar, 2011 AIR SCW 2404** wherein it has been held that:

> *"It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object, they would be liable for the same under Section 149 IPC."*

22. Even the prosecution story and its witnesses nowhere attached any overt act over these three appellants as referred in

preceding paragraphs to inflict injuries even to the complainant-party. Lakhu (PW-1) and Balister Singh (PW-3) did not receive any injury in the hands of these three appellants therefore, in the fact situation of the case wherein sudden fight broke out, these three 3 appellants deserve to be acquitted.

23. The spot map (Ex.P-3) indicates that the deceased-Ayodhya and appellant No.1-Raghuveer Singh shared a (linhay) Medh between their respective agriculture fields and therefore, it is common in rural area to indulge in verbal altercation and at times, it converts into fights on petty grounds like cutting fodder from others' agriculture field or taking animals or bullock carts from others' agriculture field.

24. It appears in the fact situation of the case that there sharing of agriculture field could not resulted in sharing of hearts and it is a case where a spark neglected burnt the house. Simple intrusion into the field of Ayodhya by Raghuveer Singh was objected by deceased Ayodhya which culminated into sudden provocation and at the exhortation of Raghuveer Singh, it appears that all other accused persons who were relatives of Raghuveer Singh might have visited the spot and the incident precipitated. Even if for a moment, it is assumed that all three blows were given by Raghuveer Singh (now deceased), Dileep Singh and Bakeel Singh even then, the blows were single in nature and if the version of eye witnesses although contradictory and doubtful (being relative also) are taken into account then also it appears that Raghuveer Singhs, Bakeel Singh used the *axe* and *farsa* from the blunt side and Dileep Singh caused injury of *lathi* blow only once. Therefore, intention does not appear to kill the deceased Ayodhya Singh, which resulted into culpable homicidal due to sudden provocation. Here it appears that appellants did not share common object to kill the deceased Ayodhya. Here the case appears to fall under

Section 300 exception-4 of IPC. Said Exception-4 of Section 300 of IPC reads as under:-

> ***"Exception 4-*** *Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."*

25. Appellant No.1-Raghuveer Singh has already passed away who as per evidence of Dr. D.C. Shukla (PW-2) gave two blows, whereas appellant No.2-Dileep Singh is in jail since 11-11-2003 to 26-05-2005 and from 11-12-2006 till today, he has completed almost 14 years and 6 months whereas appellant No.3-Bheem Sen (since 31-01-2004 to 25-06-2004 and from 11-12-2006 to 14-05-2007), Moti Singh @ Munna (since 12-03-2004 to 21-07-2004 and from 11-12-2006 till today) and Raju @ Jaichand (since 29-07-2004 to 16-11-2004 and from 11-12-2006 to 18-07-2007) and Bakeel Singh (since 25-11-2004 to 10-10-2005 and from 11-12-2006 to 01-09-2017), completed almost 12 years. The necessary ingredients of exception- 4 of Section 300 of IPC are:-

(1) a sudden fight;

(2) absence of pre meditation;

(3) no undue advantage or cruelty;

26. If an un-pre-meditated assault has been committed in the heat of passion upon sudden quarrel then it would come in exception-4 and it is necessary that all the three ingredients must be found. From the evidence on record it is established that while the complainant and the accused party were ploughing their respective fields, indulged into verbal altercation then sudden fight broke over the common passage linhay (मेंड) between them. In the circumstances, all the accused persons cannot be said to have the common object of committing murder

of the deceased, though they may have knowledge that the blows inflicted by them may cause death. If anyone of the accused exceeded the common object and acted on his own that could be his individual act but in absence of any evidence as to who acted so, conviction of accused/ appellants under Section 302/ 149 of IPC and sentence of L.I. can be altered to Section 304 Part-I of IPC and can be sentenced for the jail sentence, already undergone which itself is more than 13-14 years in the present fact situation of the case. Sufficient period of Jail Sentence has already been served by them.

27. The Hon'ble Apex Court in the case of **Sukhdev Singh Vs. State of Punjab, 1992 Supp (2) SCC 470** converted conviction from Section 302 to Section 304 Part II of IPC and in the case of **Janab Ali Shaikh Vs. State of West Bengal, 1992 Supp (2) SCC 545** converted the sentence from Section 302 to Section 304 Part I of IPC with the aid of exceptions No.2&4 of Section 300 of IPC. Similarly, in the case of **Masumsha Hasansha Musalman Vs. State of Maharastra (2000) 3 SCC 557** in the fact situation of the case, converted the sentence under Section 304 Part II of IPC. In the case of **Buddhu Singh and others Vs. State of Bihar (Now Jharkhand), (2013) 3 SCC (Cri) 460**, Hon'ble Apex Court converted the case from Section 302 to Section 304 Part II of IPC and Division Bench of this Court in the case of **Rajesh alias Jadu S/o Babulal vs. State of M.P., 2014(1) MPLJ (Cri.) 64** with the aid of exception -4 of Section 300 of IPC, conviction under Section 302 of IPC set aside and altered to Section 304 Part I of IPC. The ratio of all these decisions is that when the incident is occurred in a sudden quarrel without premeditation and accused gave a single blow and did not act in cruel or unusual manner, the case of accused would attract exception -4 to Section 300 of IPC. Here, in the present case,

inconsistencies in the statements of eye-witnesses account itself discarded the prosecution case but nonetheless injury appear to be inflicted by repeated blows by appellants and the case appears to be of sudden fight in the heat of passion (exception -4 under Section 300 of IPC) or on the basis of sudden provocation (exception -2 of Section 300 of IPC), therefore, appellants ought to be punished for offence under Section 304 Part -I. The judgment of the Apex Court in the case of **Sarman and Others Vs. State of M.P., 1993 Supp. (2) SCC 356** as well as in the case of **Ranjitham Vs. Basavaraj and Others, (2012) 1 SCC 414** are worth consideration in this regard. One more aspect persuaded this Court to convert the said conviction and jail sentence under Section 300 exception-4 of IPC is the status of the appellants as agriculturists, because in the agriculture field, verbal altercation and breaking of sudden quarrel, is a common phenomenon in Rural India specially, over the ploughing and possession of linhay (मेंड).

28. Since appellants did not repeat the blows and fact situation indicates that it was a case of sudden provocation, under the heat of passion, therefore, on this count also appellants have strong case therefore, appellants are convicted for the offence under Section 304 part-I of IPC and deserves conviction for the period already undergone (already served more than 10 years) because it is sufficient period to treat them as undergone.

29. Resultantly, appeal preferred by the appellants is allowed and judgment and order of the trial Court dated 11th December, 2006 is modified to the extent that appellants are convicted under Section 304 Part-I of IPC and substantive jail sentence deserves to be reduced to the period they already undergone.

30. Since appellant No.1-Raghuveer Singh died therefore, in respect of him, the appeal stands abated. Appellant No.2-Dileep

Singh and appellant No.4-Moti @ Munna are in jail. Appellant No.2-Dileep Singh suffered the sentence already undergone as awarded by this Court therefore, Registry is directed to issue supersession warrants for releasing him without any delay.

31. Appellant No.4- Moti @ Munna already acquitted by this Court. Therefore, Registry is directed to issue supersession warrant for releasing him without any delay.

32. Appellant No.3-Bheemsen and appellant No.5-Raju @ Jaichandra are hereby acquitted. Since they are on bail therefore, their bail bonds shall stand discharged.

33. Appellant No.6-Bakeel has also suffered more than the sentence already undergone as awarded by this Court. Since he is on bail therefore, his bail bond shall stand discharged.

34. Resultantly, appeal stands allowed in above terms.

35. Copy of this judgment be sent to the trial Court for record and information.

(Anand Pathak)
Judge
18-05-2018

(Vivek Agarwal)
Judge
18-05-2018

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