

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.

SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA

Cr.A. No.62/1998

Rakesh and others

Vs.

State of M.P.

Shri Vivek Singh, learned counsel for the appellants.

Shri Peyush Jain, learned counsel for the respondent/State.

JUDGMENT

(Delivered on 07/03/2016)

This criminal appeal is directed against the judgment of conviction passed by the 2nd Additional Sessions Judge, Ratlam in Session Trial No.118/1997 dated 06.01.1998 wherein the appellants found the appellant No.1 guilty under Section 304 Part II of IPC and sentenced him to undergo 7 years rigorous imprisonment with fine of Rs.1,000/- with default stipulation. The remaining accused were found guilty under Section 323 of IPC and sentenced to 1 year rigorous imprisonment each.

2. The facts according to prosecution story are that the incident took place on 26.01.1997 at about 7 p.m. Jaduram is paternal uncle of Ramlal Borasi. The said Jaduram went to the house of Ramlal Borasi (P.W.-9) and informed him that his son Umesh had eloped with daughter of Siyaram/accused No.2. He

also informed him that wife of Siyaram and his son Jahendra Pal Singh were called by them to sort out the matter. On this, the deceased Lalman, Srilal (P.W.-11), Babulal (P.W.10) and Madanlal (P.W.13) went to the house of Jaduram, where wife of Siyaram and his son Jahendra Pal were also called. The talks were not successful and they were coming back from their house. Lalman was walking ahead. Suddenly, they heard Dilip (P.W.-8) shouting. The said Dilip came in search of Lalman. There they saw knife in the hand of accused Rakesh and lathi in hand of Surajpal. Jahendra Pal and Siyaram were having brick bats in their hands. They were beating Lalman. Injury was inflicted by knife by accused Rakesh. Dilip (P.W.-8) placed head of the deceased Lalman in his lap and sat down. At that time, a blow by lathi was given on his head by Suraj Pal. Next day deceased Lalman died while Dilip sustained simple injuries.

3. Learned trial Court framed charges under Sections 302/34 IPC and sentenced to the accused persons under Section 304 Part II and one year rigorous imprisonment each to accused Siyaram, Suraj Pal and Jahendra Pal under Section 323 IPC with default stipulation.

4. Aggrieved by the order of conviction and sentence, this appeal is filed on following grounds :-

(i) That the complainant party was an aggressor and the

deceased and other witnesses caused injuries to appellants Siyaram, Jahendra Pal Singh, Rakesh, Khempal and Munga Devi.

(ii) The prosecution and the witnesses produced by the prosecution failed to explain the injuries found on the bodies of the persons named above.

(iii) The belated explanation given by the prosecution witnesses in respect of injuries suffered by the appellants cannot be accepted.

5. Counsel for the State supports the findings by the Trial Court and prays that the impugned judgment be affirmed.

6. It is to be seen whether the learned Trial Court erred in holding the present appellants guilty as stated above.

7. According to learned counsel for the appellants, the incident took place at the house of appellant- Siyaram. He submits that if we refer to the spot map Exhibit P-17, it is clear that the house of Jahendrapal Singh, where admittedly all the prosecution witnesses gathered to discuss the matter of elopement of daughter of Siyaram with son of Jaduram and which was the main reason for dispute between two families, is situated adjacent to house of the appellant Siyaram. The map Ex.P-17 also shows that the incident took place exactly in front of house of Siyaram and house of Jaduram is adjacent to the house of Siyaram and the distance is

15 steps, which means roughly 20 feet.

8. Learned counsel for the appellants submits that a counter FIR was lodged by Suraj Pal S/o Siyaram, which was registered at Crime No.33/1997 and the copy of the FIR is Exhibit D-26. In this FIR, it was stated that at about 11.30 p.m., Dilip Borasi (P.W.-8), Lalman Borasi and 4-5 other persons came to the house of Jaduram. There they consumed liquor, thereafter, they all entered into their house. They were armed with knife, lathi etc. Dilip Borasi inflicted injuries by knife on left foot of Siyaram. Her mother sustained injuries by a brick on her right eye. Jahendrapal also sustained injuries by knife. It was also mentioned in the FIR that Dilip and the deceased Lalman also sustained injuries during the fight.

9. Learned trial court observed in the impugned judgment that both the sides suppressed genesis of the incident. In para 22, the trial court observed that it was clear that the prosecution as well as defence suppressed the genesis of dispute. A cross case was also registered, and therefore, the trial court inferred that the fight began all of a sudden and every accused involved in the case was responsible for his own conduct.

10. However, in my considered opinion, this inference cannot be accepted in this case. There should be clear evidence to show that there was free fight between two groups and nobody could be

turned as aggressor and then only the every member of the assembly is liable for his individual act.

11. In the present case, there is a clear suppression of material facts by the prosecution witnesses. P.W.-8 is Dilip Kumar. According to prosecution story, he reached on the spot on his scooter. In the First Information Report, he said that he saw the deceased lying on the ground and the accused Rakesh was having a knife in his hand, however, he made an improvement in his Court statement and said that he saw the accused Rakesh inflicting injury by knife on the deceased. By way of suggestion, he was asked by the defence counsel in para 11 of his cross-examination about the incident as narrated in Exhibit D-26, the FIR of the cross case, which he promptly denied. In para 16 he explained that when Rakesh inflicted injuries by knife during the incident only the same knife caused injuries on legs of appellants Siyaram. This explanation was given by all other prosecution witnesses, but this explanation was not given to the police during the investigation in their statements under Section 161 Cr.P.C., and therefore, it is apparent that they suppressed the material facts, and therefore, in light of principles laid down in case of **Mitter Sen vs. State of U.P.; AIR 1976 SC 1156** statements are not believable.

12. This apart, looking to the facts that house of Jaduram where admittedly the deceased Lalman and other prosecution

witnesses except Dilip P.W.-8 were sitting immediately prior to the incident is only roughly 20 feet from the spot where the incident took place. All the witnesses said that deceased Lalman left ahead of them and then they followed. They have already come out of the house of Jaduram when they heard cry of Dilip, this does not appear correct, if we take the spot map Ex.P-17 into consideration. 20 Feet is hardly a distance which would preclude them from seeing the incident. They all stated the same story in their statements under Section 161 Cr.P.C., and therefore, it is apparent that they were suppressing some very important facts, due to which such unnatural story crept in the statements of these witnesses.

13. The learned trial court observed that injuries suffered by the present appellants were of minor nature. But we may see that the injuries suffered by Siyaram are incised wound, they can be spotted easily and it cannot be said that due to sudden attack on them, they failed to notice the injury on bodies of the appellants. Accordingly, after taking into consideration, the evidence produced by the prosecution and taking the arguments of the learned counsel for the defence into consideration, in considered opinion of this Court, the prosecution witnesses Dilip (P.W.-8), Ramlal Borasi (P.W.-9), Babulal Borasi (P.W.-10), Srilal (P.W.-11) are not reliable, as they are suppressing material facts in their

statements and the conviction cannot be based on their statements. Accordingly, in my opinion, this appeal deserves to be allowed and accordingly allowed.

14. The conviction and sentence awarded on the present appellants are set aside. The appellant- Rakesh is acquitted from charge under Section 304 Part II IPC and remaining appellants are acquitted from charge under Section 323 IPC.

It is directed that if any amount of fine is deposited by them, the same should be refunded to them.

The seized property may be destroyed.

(ALOK VERMA)
JUDGE