

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
BEFORE D.B. HON'BLE MR. JUSTICE ALOK VERMA & HON.MR.
JUSTICE VIRENDER SINGH

Criminal Appeal No.51/2006

Padamnath & Others . . . Appellants

Versus

State of Madhya Pradesh . . . Respondent

CORAM

Hon'ble Shri Justice Alok Verma
Hon'ble Shri Justice Virender Singh

Whether approved for reporting ?

Smt Purnima Kanoongo, learned counsel for the appellants.
Shri Hemant Sharma, learned counsel for the respondent/State.

Judgment

27.11.2017

Per : Alok Verma, Justice:

This Criminal Appeal is directed against the judgment of conviction and sentence passed by learned Second Additional Sessions Judge, Ujjain in Sessions Trial No317/2004 dated 27.10.2005, whereby the learned Additional Sessions Judge held the present appellants guilty under Section 395 r/w sections 397, 398 of IPC and Section 459 of IPC and sentenced them to 14 years rigorous imprisonment each and fine of Rs.1,000/- each under Section 395 r/w sections 397 and 398 of IPC & 10 years of rigorous imprisonment and fine of Rs.1,000/- under Section 459 of IPC with default stipulation.

2. In all, thirteen accused persons faced the trial. Vikram S/o

Mohan Nath was a juvenile at the time of incident, and therefore, he faced trial before Juvenile Justice Board. The trial Court acquitted Fundanath S/o Amarnath, Paras Bai W/o Fundanath, Asha Bai W/o Peerunath and Rajunath S/o Mohannath from all the charges while convicted the 8 accused persons, who are before this Court as appellants.

3. According to prosecution story, on 17.10.2003 at about 11:30 pm in village Sanwarakhedi, when the complainant and his family members Bherulal, Omprakash, Dhapu Bai etc. were sleeping in a house constructed on a field, about 12 to 15 persons came there armed with lathi, farsi and axe. They inflicted injuries on Bherulal and committed loot of silver ornament and cash. They also beaten Deepak, Raju, Pannalal, Basanti Bai etc and committed loot. The matter was reported to Police Station-Neelganga, where Crime No.712/2003 was registered. Subsequently, the accused persons were arrested in another crime registered at Police Station-Narbar, and there, they gave their disclosure memos and also ornaments looted from the complainant were seized from their possession, on the basis of which, they were made accused in the present case. Test identification parade was also held during the investigation of articles as well as of all accused persons.

4. The learned trial Court framed charges under Section 395 r/w sections 397 and 398 of IPC & Section 459 of IPC, recorded statements of both the sides, recorded statements of the accused persons and passed the impugned judgment convicting and sentencing them as aforesaid, against which, this appeal is filed on the ground interalia (i) that the appellants were not present at the time of incident, and therefore, the trial Court has erred whiling conviction them (ii) the independent witnesses did not support the

prosecution case in spite of that, the trial Court convicted the accused persons, which was not proper (iii) there were lot of contradictions in the statement of the prosecution witnesses. (iv) the appellants were not properly identified investigation.

5. On the basis of aforesaid grounds, learned counsel for the appellants prayed that the appeal may be allowed and the appellants be acquitted from the offence.

6. Learned counsel for the State support the impugned judgment and submits that it must be affirmed.

7. So far as the facts that the incident took place on 17.10.2003 at about 11:30 pm to 12:00 am in the night that ten to twelve miscreants entered into the house of the complainant armed with *lathi, farsi* and axe and they inflicted various injuries on the injured persons are established. Medical evidence corroborated these facts and there is not much dispute regarding these facts, and therefore, no further consideration of these facts is necessary.

8. The main thrust of defence counsel's arguments is identity of the accused persons. The accused persons were arrested in another crime by Police Station-Narbar, District-Ujjain in the month of July, 2004 about seven months after the incident. There they gave their disclosure memo and some ornaments, belonging to the complainant recovered on their disclosure memo. Subsequently they were formally arrested by Police Station-Neelganga. In this case, their formal disclosure memo were also prepared. After they were arrested in the month of September 2004, their test identification parade was held and only four accused persons were identified.

9. Bherulal (P.W-2) in his statement, identified Padamnath S/o Dhannanath, Soorajnath S/o Ratanlal, Sakkunath S/o Heeranath and

Peernath S/o Naharnath was identified by Padambai (P.W-3). Accused Soorajath was also identified by Deepak (P.W-7) while accused Padamnath was also identified by Padam Bai (P.W-3). Similarly, Omprakash (P.W-9) also identified the accused Padamnath during their Court statement. In this situation, these four persons were identified by the prosecution witnesses before the trial Court. This apart, they were rightly identified during the test identification parade. Unfortunately, the Executive Magistrate conducted the test identification parade, could not be produced as she was on long maternity leave in her office. In her place, Priti Gwali (P.W-23) was examined, who could only prove the test identification memo Ex-P/2 and Ex-P/3.

10. The prosecution witness identifying these accused persons were examined in detail and they did not admit in their cross-examination that they were shown the accused persons prior to test identification parade, and therefore, their identification during the investigation cannot be doubtful.

11. The contentions of defence counsel was that the test identification parade was conducted after 11 months of the incident, however, nothing came in the cross-examination of the prosecution witnesses to make the identification parade during the investigation doubtful and as such, so far as these four accused persons are concerned, there appears to be no doubt regarding their involvement in the crime.

12. So far as the four remaining accused persons are concerned, they are Guddunath S/o Baijnath, Ganesh @ Guria S/o Naharnath, Bhanwarnath S/o Pannanath and Dharmendra S/o Heeranath, these four persons were convicted on the basis of their disclosure memo given at Police Station-Narvar in another crime, and subsequently,

recovered ornaments were also identified during the investigation and also from the cross-examination of prosecution witnesses, no fact had come to doubt the correctness of identification of the prosecution witnesses.

13. To prove their disclosure memo, Anil Kumar Chouhan (P.W-21) was examined. He was posted at Police Station-Narvar and he prepared the disclosure memo Ex-P/15 to Ex-P/21. The disclosure memo in respect of Dharmendra is Ex-P/17, the disclosure memo of Garunath is Ex-P/18, the disclosure of Guddunath is Ex-P/20 and disclosure memo of Bhanwarnath is Ex-P/21. Though, certified copy of these documents were exhibited and an objection was raised at the time of recording of statement of Anil Singh Chouhan (P.W-21), it appears that there is no disposal of this objection, which reserved for consideration at the time of final judgment, however, at this stage, there appears to be no doubt about the original documents prepared by the Police Station-Narvar, and therefore, no prejudice was caused to the appellants, if certified copies of the memorandum were accepted. As such, exhibiting the certified copy has no bearing on merits of the case.

14. Learned counsel for the defence argues that the identification of articles was also made at an interval of 11 months, however, so far as the articles are concerned, they belonged to the complainant and other injured persons, and therefore, their identification cannot be doubted.

Accordingly, in considered opinion of this Court, the involvement of eight accused persons were properly made. Their involvement in the crime was also proved. In these situations, there is no force in this appeal, liable to be dismissed and dismissed accordingly. The judgment of conviction and sentence passed by

Criminal Appeal No.51/2006 **6**

the trial Court is hereby affirmed.

Certified copy as per rules.

(Alok Verma)
Judge

(Virender Singh)
Judge

Ravi