

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE ANIL VERMA

CRIMINAL APPEAL No. 1219 of 2012

BETWEEN:-

1. TAKDEER SHAH AND ANR. S/O BABU SHAH,
AGED ABOUT 22 YEARS, OCCUPATION:
LABOURER VILLAGE MULTANPURA (MADHYA
PRADESH)
2. ILIYAS SHAH S/O BABU SHAH, AGED ABOUT 29
YEARS, OCCUPATION: LABOUR VIL
MULTANPURA (MADHYA PRADESH)

.....APPELLANT

(BY MS. SHARMILA SHARMA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH GOVT. THRU. P.S.
Y.D. NAGAR MANDSAUR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI TARUN KUSHWAH - GA)

CRIMINAL APPEAL No. 1249 of 2012

BETWEEN:-

**SHAHJAD S/O SHRI MOBIN GAALA, AGED ABOUT 20
YEARS, OCCUPATION: LABOUR MAGRI NAI
AABADI MULTANPURA TEH. MANDSAUR (MADHYA
PRADESH)**

.....APPELLANT

(BY MS. SHARMILA SHARMA - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH GOVT. THRU.

P.S. Y.D. NAGAR MANDSAUR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI TARUN KUSHWAH - GA)

CRIMINAL APPEAL No. 1313 of 2012

BETWEEN:-

**ASHIQUE GULLA S/O SALIM GULLA, AGED
ABOUT 19 YEARS, OCCUPATION: LABOUR
MULTANPURA,TEH. AND DISTT.MANDSAUR
(MADHYA PRADESH)**

.....APPELLANT

(BY MS. SHARMILA SHARMA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH GOVT.
THRU.P.S.Y.D.NAGAR MANDSAUR (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI TARUN KUSHWAH - GA)

CRIMINAL APPEAL No. 1321 of 2012

BETWEEN:-

**RAIS @ BANJHA MUHASEWALA S/O YUSUF
MUHASEWALA, AGED ABOUT 20 YEARS,
OCCUPATION: LABOURER VILLAGE
MULTANPURA (MADHYA PRADESH)**

.....APPELLANT

(BY MS. SHARMILA SHARMA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH GOVT. THRU.
P.S. Y.D. NAGAR MANDSAUR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI TARUN KUSHWAH - GA)

CRIMINAL APPEAL No. 1324 of 2012

BETWEEN:-

following:

JUDGMENT

Since all these six appeals have been filed against the common impugned judgment, therefore, the same are being decided by this common judgment.

2/ All these appeals have been filed by all the appellants under section 374 of Criminal Procedure Code, 1973 (in short "Cr.P.C) against the impugned judgment dated 25/09/2012 passed by 5th Additional Sessions Judge, Mandsaur in Sessions Trial no. 229/2011, whereby all the appellants have been convicted under sections 148, 332/149 and 302/149 of IPC and sentenced to undergo one year R.I with fine of Rs. 1000/- each; two years R.I with fine of Rs. 2000/- each and life imprisonment with fine of Rs. 3000/- each respectively with usual default stipulation.

3/ Prosecution case in brief is that on 18-07-2011 at night at about 08:40 PM police constable Mukesh Singh Bhadoriya and Brajraj Singh were posted at P.S. Y.D. Nagar in cobra Scott on special duty. During patrolling, when they turned to village Multanpura and reached near house of Ibrahim Aldad, they saw accused Raghu @ Sarfiraz having Katta in his one hand and one steel pipe in another hand and accused Maqsud Batla, Ashiq Gulla and Yusuf Gulla also having steel pipe and accused Shehzad Gulla, Takdeer Shah, Iliyas and other one person having stick in their hands and they surrounded near Mukesh Singh Bhadoriya and Brajraj Singh. At that time,accused Raghu @ Sarfraz fired by katta. Both of police constable fell down and escaped

from gun fire. Accused Sarfraz and other accused person were talking that both came daily for caught us and today they would kill them. Thereafter all of them inflicted injury to both of them. When complainant Mukesh Singh Bhadoriya made hue and cry, at that time other cobra scott person Jitendra and Rakesh come on the spot for his rescue, thereafter accused person run away from the spot. Constable Jitendra and Rakesh took Brajraj for treatment in civil hospital, Mandsaur. During treatment. Barajraj Singh died. Complainant Mukesh Singh Bhadoriya lodged Dehati Nalishi. Accordingly, later on, the merg and FIR was registered.

4/ Prosecution case in further is that Sub-Inspector Musa Khan went on the spot and prepared Naksha Panchanama and spot map and also recovered blood stained soil, simple soil and deceased's hairs from the spot. Police arrested all the accused persons in presence of witnesses and their disclosure statements were recorded. At the instance of accused persons, iron rod, sticks and some of the blood stained clothes were recovered. Postmortem of the deceased was conducted by Dr. D.K. Sharma (PW-23) and found that the deceased sustained fatal injuries over his head and cause of death is due to acute head injury by hard and blunt object and death is homicidal in nature. MLC of victim Mukesh Singh Bhadoriya was conducted by concerned doctor. Seized articles were sent to FSL, Sagar for its chemical examination and DNA test. Thereafter, FSL report was received. Duty certificates of both the constables were obtained. District Magistrate, Mandsaur gave prosecution sanction for the offences under sections 25 and 27 of the Arms Act.

5/ After completion of investigation, charge-sheet was filed before the JMFC, Mandsaur, who committed the case to the Court of Sessions Judge, Mandsaur, which was, later on, transferred to the Court of 5th ADJ, Mandsaur. Prosecution examined as many as 30 witnesses and defence examined 6 witnesses. The trial Court, after appreciating evidence available on record, convicted all the appellants under sections 148, 332/149 and 302/149 of IPC and sentenced as mentioned herein above and also acquitted accused Abdul Rahman, Javed Ratlami, Annu Niyargar and Smt. Rukhsana bi from all the charges. Hence the appellants have preferred all these appeals separately.

6/ Learned counsel for the appellants contended that judgment of conviction passed by the trial Court is contrary to law and facts on record. It is neither legal, nor just, proper and correct. Statement of sole eye witness Mukesh Singh Bhadoriya does not inspire confidence. There is material contradictions and omissions in his statement and Dehati Nalishi and the police statement. At the time of the incident, he ran away from the spot, therefore, identification of the appellants is also doubtful. Independent witness does not support the case of prosecution. Dr. D.K. Sharma (PW-23) admits in his cross-examination that the victim may sustain injuries due to fall down on earth. The complainant lodged false report. Place of the incident is not proved by the prosecution. Investigation is tainted and partial. Hence, learned counsel prays that all the appeals be allowed and judgment of conviction passed by the trial Court be set aside and all the appellants be acquitted from all the charges levelled against them.

7/ Per-contra, learned counsel for the respondent/State opposed

the aforesaid prayer and supports the impugned judgment passed by the trial Court and prays for its dismissal by submitting that the trial Court after appreciating entire evidence available on record in detail, came to the conclusion that deceased Brajraj and injured Mukesh Singh Bhadoriya were discharging their official duty at the time of the incident. In furtherance of common object, accused persons committed murder the deceased and caused injuries to victim Mukesh Singh Bhadoriya. Judgment passed by the trial Court is based upon cogent evidence, therefore, all the six criminal appeals deserve to be dismissed.

8/ Heard learned counsel for both the parties at length and perused the record of trial Court with due care.

9/ After due appreciation of evidence, following questions have emerged for consideration :

i) Whether death of deceased Brajraj is homicidal in nature ?

ii) Whether all the appellants were inspired with common object and in furtherance of their common object, they have committed the alleged offence ?

iii) Whether deceased Brajraj and victim Mukesh Singh Bhadoriya were discharging their official duty at the time of the incident and the appellants have caused injuries to victim Mukesh Singh Bhadoriya?

10/ First of all, it is to be considered, as to whether death of the deceased is homicidal in nature. Dr. D.K. Sharma (PW-23) who conducted postmortem of deceased/constable Brajraj. According to him,

blood was found on scull hairs, both shoulders, neck of deceased and on parietal region, one lacerated wound size 9 x 4 cm bone deep was found and second lacerated wound was found on right side of temporal region size 8 x 5 cm bone deep. Third lacerated wound was found on right frontal portion of head size 2 x 5 x 2 cm bone deep and right ear was found ruptured and during internal examination, right parietal, right temporal and right occipital bone found fractured. It was also found that broken pieces of bones were found in the brain of the deceased. He opined that all the injuries were caused by hard and blunt object and antimortem in nature and the deceased died due to acute head injuries within 12 – 16 hours.. His postmortem report is Ex.-P/40.

11/ Although learned counsel for the appellants contended that at the time of the incident, the deceased and the victim Mukesh Singh Bhadoriya were travelling on motorcycle and due to accident, they fall down from the motorcycle and deceased sustained acute head injury, but Dr. D.K. Sharma (PW-23) in his cross-examination denied all these suggestions. If the deceased was fell down from the motorcycle, he should have sustained abrasion and other injuries on other parts of the body, but he sustained only four injuries on his right side of head, therefore, the contention made by learned counsel for the appellants cannot be accepted, because the appellants did not examine any witness to prove that the deceased sustained injury in any type of accident. Thus, there is no reason to disbelieve the statement of Dr. D.K. Sharma (PW-23) and postmortem report Ex-P/40.

12/ On the basis of the above, it is proved that the deceased sustained four injuries over his head, which are homicidal in nature. So

far as injuries of victim Mukesh Singh Bhadoriya is concerned, he categorically stated in his statement that he was beaten by iron rod and wooden stick, due to which, he sustained certain injuries. Dr.Nishant Sharma (PW-27), who conducted MLC of victim Mukesh Singh Bhadoriya deposed that one lacerated wound size 1x 1 cm has been found on left shoulder and abrasion size 1 x ½ cm was found on the back . Both the injuries were simple in nature and caused by hard and blunt object within 24 hours of MLC Ex.-P/79). The appellants did not challenge the statement of Dr. Nishant Sharma and MLC Ex-P/79, therefore, on the basis of aforesaid medical evidence, it is proved that victim sustained simple injury in the incident.

13/ Now, a question remains open, whether appellants are the author of the crime ?. Sole eye witness Mukesh Singh Bhadoriya (PW-1) has categorically stated that on 18/07/2021 at about 8.40 pm, he alongwith deceased/constable Brijraj went near bit no. 1 for collecting information in civil uniform. When they reached near Multanpura in front of house of Ibrahim Aldad, at that time, accused Raghu @ Sarfaraz, Maqsood, Yusuf, Ashiq, Shahzad, Banja Muchwala, Iliyas, son Badshah and Taqdir Shah came there and appellant Raghu was armed with katta and iron rod and accused Maqsood, Yusuf and Ashiq were armed with iron rod and other accused persons were armed with lathies. They surrounded them. Appellant Raghu fired gun shot by katta at them. They fell down on earth and escaped themselves from gun shot. Accused persons were saying that both came here daily to get hold of us. Today, they would kill them. Thereafter, the accused persons surrounded them and started beating them by iron rod and wooden sticks. He fled away

from the spot to save himself, but accused persons started beating deceased Brajraj and caused injuries over his head. After hearing hue and cry, constable Jitendra and Rakesh came there, then accused persons fled away from the spot. They took the deceased to hospital, but he was declared dead.

14/ Jitendra (PW-5) also corroborated in his statement that he reached on the spot after hearing hue and cry made by Mukesh Singh Bhadoriya. He saw in the light of motorcycle that appellant Raghu @ Sarfaraz, Ashiq Gulla, Maqsood Batala, Yusuf Gulla were armed with iron pipes and Imtiyaz Shah, Taqdir Shah Rais, Shahjad Galla were armed with lathies and they were beating deceased/ constable Brijraj, who fell down in gutter (*nali*) and blood was oozing from his head. When he ran towards them, the accused persons fled away from the spot. Ajit Singh (PW-4) also deposed that when reached on the spot, constable Brajraj was lying in gutter and blood was oozing out from his head. Jitendra, Mukesh Singh Bhadoriya and Rakesh informed that accused persons Raghu @ Sarfaraz, Maqsood, Yusuf, Ashiq, Shahzad, Banja Muchwala, Iliyas, son Badshah and Taqdir Shah committed Marpeet with them.

15/ Rakesh Singh (PW-10) also supported the same by stating that when he reached on the spot, he saw the incident in the light of motorcycle and accused persons were beating him by means of iron rod and wooden sticks and saying that they would kill them. When he reached the spot, the accused persons ran away from the spot.

16/ Although learned counsel for the appellants contended that

witnesses Mukesh Singh Bhadoriya (PW-1), Jitendra (PW-3), Ajit Singh (PW-4), Rakesh (PW-10) are police constables and colleagues of constable/deceased Brijraj. Since they are interested witnesses, therefore, their statements cannot be relied upon.

17/ Hon'ble Supreme Court in the case of **Mahaveer Singh Vs. State of MP reported in (2016) 10 SCC 220** held that it is to be seen that, although the evidence of a chance witness is acceptable in India, yet the chance witness has to reasonably explain the presence at that particular point, more so when his deposition is being assailed as being tainted, therefore, this witness cannot be relied upon.

18/ Although deceased Brijraj, injured Mukesh Singh Bhadoriya, Ajit, Rakesh were working in police department as constable, but they were performing their official duty at the time of the incident; they have no common intention for falsely implication of the appellants therefore, they cannot be considered as interested witnesses.

19/ Learned counsel for the appellants contended that there are material contradictions and omissions in the statements of these material witnesses with their police statements. Although some of the contradictions and omissions have been found in the statements of these witnesses, but the same are trivial in nature and there is no reason to make any doubt upon their presence on the spot at the time of incident.

20/ The Hon'ble Apex Court in the case of **State of A.P. Vs. Pullugummi Kasi Reddy Krishna Reddy reported in (2018) 7 SCC 623** has held as under:-

“Discrepancies which do not shake the credibility of

the witnesses and the basic version of the prosecution case to be discarded. If the evidence of the witnesses as a whole contains the ring of truth, the evidence cannot be doubted.”

21/ From close scrutiny of the statement of testimony of all these witnesses, this court is of the considered view that the trial court has rightly held that such contradictions and omissions are trivial in nature and same is neither material nor sufficient to discard their testimony which are duly corroborated by statement of each other.

22/ The Hon'ble Apex Court in the case of **State of M.P. Vs. Chhaakkilal and others and Ramveer and Chhaakki Lal and another reported in 2018 (4) Crimes 238 (SC)** has observed that finding recorded by trial Court is entitled to great weight. The same cannot be interfered with unless vitiated by serious error. It is also observed that the evidence as a whole having a ring of truth cannot be discarded merely because the maker is a related witness. Conviction can be based on evidence of solitary eye witness. It is further observed that omissions or lapses in investigation cannot be a ground to discard the prosecution case which is otherwise credible and cogent. Ocular testimony of eye witness cannot be discarded lightly [see : **Darshan Singh Vs. State of M.P reported in 2016(3) MPLJ(Cri.) (SC) 410**]

23/ Investigating Officer Musa Khan (PW-16) deposed that he wrote Dehati Nalishi Ex.-P/1 at the instance of complainant Mukesh Singh Bhadoriya and reached on the spot and prepared Naksha Panchanama Ex.-P/38 and P/39. He recorded the discovery statement of accused Ashiq Gulla and Javed Ratlami and arrested them vide arrest

memo Ex.-P/41 and P/42. Inspector Ashutosh Mishra (PW-22) deposed that he arrested accused person vide arrest memo Ex.-P/54 and P/55 and on the statement of disclosure statement, he recovered pistol / katta (Article A/17) and cartridges (Article A/18 to Article A/20) from the possession of appellant Raghu @ Sarfaraz and Maqsood Batala. Police Station In-charge Inspector Sanjeev Mule (PW-26) similarly deposed that he had arrested accused Takdeer Shah, Rais, Shahjad, Iliyas through arrest memo Ex.-P/16 to P/19 and also recorded their disclosure statements vide Ex.-P/20 to P/23 and recovered iron rod and wooden stick from their possession through seizure memo Ex.-P/24 ro P/27. Thereafter, he sent all these seized weapons for query report to CMO, District Hospital, Mandsaur and query report is Ex.-P/62. Then he sent all the articles to FSL Sagar for its chemical examination and DNA profile report through Ex.-P/68. Ex.-P/69 has been received from FSL Sagar.

24/ Statements of all the Investigating Officers are well supported by other witnesses of arrest memo, seizure memo and disclosure statements. Although some of the seizure witnesses have turned hostile and not supported the case of the prosecution, but the Investigating Officers have no enmity with the appellants and no motive of any false implication in the alleged incident, therefore, on the basis of statements of aforesaid witnesses, arrest memo, seizure memo and disclosure memo, it is proved that incriminating articles have been recovered from the possession of the appellants, but it is noteworthy that FSL Ex.-/68 and DNA Ex-P/69 have been found and blood clots have been found on the seized weapon and matched with the blood sample of

the deceased in respect of appellants Takdeer Shah, Iliyas, Shahjad, Rais @ Banjha Muhasewala, Raghu @ Sarfaraz, Maksood and Yusuf Gulla, therefore, on the basis of DNA profile report, prosecution has proved its case against the appellants Takdeer Shah, Iliyas, Shahjad, Rais @ Banjha Muhasewala, Raghu @ Sarfaraz, Maksood and Yusuf Gulla.

25/ So far as case against appellant Ashiq Gulla (Criminal Appeal no. 1313/2012) is concerned, it is noteworthy that DNA report EX-P/69 was not found positive in respect of seizure of iron pipe from the possession of appellant Ashiq Gulla, therefore, his presence and participation in the instant case also become doubtful, hence the prosecution has failed to connect appellant Ashiq Gulla with the instant offence and in absence of incriminating evidence, appellant Ashiq Gulla deserves for acquittal.

26/ After scrutinizing entire evidence laid by prosecution, it is established beyond reasonable doubts that appellants Takdeer Shah, Iliyas, Shahjad, Rais @ Banjha Muhasewala, Raghu @ Sarfaraz, Maksood and Yusuf Gulla (except appellant Ashiq Gulla) had conspired with common object to commit murder of deceased Brijraj and cause injury to victim Mukesh Singh Bhadoriya and in furtherance of their common object, they committed murder of the deceased and caused injuries to victim Mukesh Singh Bhadoriya, while they were discharging their official duty as police constable at the time of the incident, therefore, we do not find that the trial Court has committed any illegality or irregularity in assessing the statements of the prosecution witnesses. The prosecution has proved its case beyond reasonable doubts, therefore, conviction and sentence of appellants Takdeer Shah, Iliyas, Shahjad,

Rais @ Banjha Muhasewala, Raghu @ Sarfaraz, Maksood and Yusuf Gulla under sections 148, 302/149 and 332/149 of IPC is hereby upheld. Criminal Appeals filed on behalf of the appellants except appellant Ashiq Gulla is hereby **dismissed**.

27/ However, Criminal Appeal no. 1313/2012 filed on behalf of **appellant Ashiq Gulla is hereby allowed** and he is acquitted from all the charges under sections 148, 302/149 and 332/149 of IPC. He be released from jail forthwith, if not required in any other offence,

28/ Disposal of the property shall be as per the order of the trial Court. Let a copy of this judgment be sent to concerned trial Court for information and necessary compliance.

A copy of this judgment be kept in the record of all the connected Criminal Appeals .

CC as per rules.

(VIVEK RUSIA)
JUDGE

(ANIL VERMA)
JUDGE

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