

HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRA No. 356/2008

Dulu @ Basant & Anr.

Vs.

State of Madhya Pradesh

[Single Bench : Hon'ble Smt. Anjali Palo, Judge]

Ms. Anuradha Patel, learned counsel for the appellant.

Shri Ramesh Kushwah, Panel Lawyer for the respondent/State.

**ORDER
(02/03/2017)**

1. This appeal has been preferred under Section 374 of the Cr.PC against the judgment and sentence passed by the Ist Addl. Session Judge, Damoh in Session Trial No. 293/1999 whereby the appellants have been convicted under Section 307 read with Section 34 of IPC and awarded sentence to undergo 5 years of rigorous imprisonment and fine of Rs. 1000/-.

2. In brief, case of the prosecution is that on 31.03.1999 at about 10:00 pm, complainant Lakhanlal was travelling on his tractor which was driven by Nanhe Bhai. Sarpanch Malkhan and Hari Ram were also traveling on the said tractor. One Rajendra was sitting on the trolley attached to the tractor. When the tractor reached near *Prakash Dhaba*, one unknown person rushed from behind and commanded them to stop

the tractor or he would fire the gun. Driver of the tractor Nanhe Bhai did not stop the tractor due to which the unknown person fired the gun. One bullet from the gun hit Lakhanlal on the left side of his chest. The villagers rushed Lakhanlal to the District Hospital, Damoh. FIR was lodged by Lakhanlal in the Police Station Pathariya, District Damoh.

3. After due investigation, charge-sheet was filed against the appellant under Section 307/34 of the IPC before the concerned Court. Learned Trial Court found that the allegations narrated in the FIR were fully corroborated by the testimony of the complainant Lakhanlal (PW-3). The injuries found on the complainant/Lakhan was duly proved by Dr. Jamnadas Patel (PW-1). Dr. Patel (PW-1) stated that the injury found on the body of the complainant Lakhanlal was gunshot injury which is sufficient to cause the death of Lakhanlal. Learned Trial Court also found that at the time of incident, both the accused persons were present on the spot. The complainant / Lakhanlal (PW-3) identified them as per the identification memo (Ex-P/4) at District Jail Damoh. The same was also proved by Rajendra (PW-5). Other witnesses also proved the proceeding of identification parade. Learned Trial Court after relying upon the testimony of the prosecution witnesses has passed the order of conviction against the appellant under Section 307/34 of IPC and convicted both the appellants under Section 307 read with Section 34 of IPC and awarded sentence of 5 years RI and fine.

4. This appeal has been filed against the aforesaid judgement and order on the grounds that the injured Lakhanlal gave dying declaration

at 1:50 am on 01.04.1999 in which he stated that he could not identify the assailant in the identification parade. The identification parade was not properly held by the prosecution and evidence with regard to the same is contradictory. Seizure of gun has not been properly proved by the prosecution. The prosecution failed to produce cogent evidence to prove the charges against the accused persons. Therefore, the impugned judgement and sentence are not sustainable and deserves to be set aside.

5. The main issue for consideration in this appeal is as to whether the Trial Court has committed any illegality in convicting and sentencing the appellants under Section 307/34 of the Indian Penal Code.

6. I have considered the submissions made by learned counsel for the parties and have perused the record.

7. During the arguments, learned counsel for the appellants contended that now they have not challenged the impugned order regarding conviction of the appellants under Section 307/34 of the IPC. Learned counsel for the appellants also contended that under Section 320 of Cr.PC, compromise petition has been filed by both the parties on 18.03.2009. As per the order dated 09.04.2009, factum of compromise has already been verified by the Registrar (Judicial). Since offence under Section 307 of IPC is not compoundable, factum of compromise shall be taken into consideration at the time of disposal of the appeal. In this regard, learned counsel for the appellant stated that the appellants have already undergone half of the sentence.

8. On the aforesaid grounds, they were bailed out by the order passed

on 23.10.2009 by this Court. As per the learned counsel for the appellant, the appellants were in custody for about 1103 days. Learned counsel for the appellant prayed that the impugned sentence of the appellant be reduced to the period of sentence already undergone by the appellants.

9. It is the case where gun shot injury that was caused to the complainant Lakhanlal was sufficient to cause his death. Learned Trial Court passed the order of conviction against the appellants under Section 307/34 of IPC and sentenced them for 5 years RI with fine of Rs. 1000/-. Learned Panel Lawyer for the State also agreed that the appellants have undergone more than half of the jail sentence.

10. In case of **Ramlal vs. State of Jammu & Kashmir [AIR 1999 SC 895]** Hon'ble Apex Court referred to the decision in the case of **Y.Suresh Babu vs. State of Andhra Pradesh [(1987 2 JT (SC) 361]** wherein it is held that the major offences for which the accused have been convicted were no doubt non-compoundable, but the fact of compromise can be taken into account in determining the quantum of sentence.

11. Keeping in view that the matter has been amicably settled between the parties seven years ago. Meanwhile they are living without any enmity in a cordial relationship. More than a decade has elapsed. In the meantime, the parties have sorted out their differences.

12. Looking to the facts and circumstance of the case, the submissions made by learned counsel for the appellants are found to be acceptable. In the result, upholding the judgment of conviction recorded by learned

trial Court, the accused/appellants are awarded jail sentence for the period already undergone by them. The appeal, to that extent, is allowed. Their bail bonds are discharged. They be set at liberty forthwith, if not required in any other case.

13. A copy of this judgment be sent to learned trial Court for information with a direction that result of this appeal will be duly communicated to the appellants and report of such compliance be transmitted to the Registry for placing the same in the record of this appeal.

(Smt. Anjali Palo)
Judge

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