

SHAMSUDDIN AND ORS.

v.

STATE OF M.P.

DECEMBER 18, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

*Penal Code, 1860—Sections 302, 307 read with Section 34—Communal disharmony leading to death of one and injuries to other by accused persons—Acquittal by Trial Court—Conviction by High Court—Correctness of—Held : Evidence of the injured as also the FIR does not suffer from any infirmity—Hence, order of High Court calls for no interference.*

On account of communal disharmony appellant-accused inflicted injuries to R and PW-1, as a result of which 'R' lost his life and PW-1 was injured severely. PW-2 and PW-8 witnessed the incident. PW-2 informed brother of PW-1, who thereafter lodged an FIR. Appellant-accused were charged under Section 302 and 307 read with Section 34 IPC. Trial Court acquitted the appellant-accused as the prosecution case was not supported by the evidence. High Court set aside the acquittal but held that the appellants were guilty for offence punishable under Section 324 and not Section 302 IPC. Hence the present appeal.

Appellant-accused contended that the trial Court had analysed the evidence and found infirmities which the High Court failed to notice and on surmises held the accused persons guilty; that the evidence of PW-1 does not inspire confidence, he does not speak about presence of PW-8 and his name was not also mentioned in the FIR; and that the FIR was ante-timed and was fabricated.

Respondent-State contended that the FIR was not lodged by a person who was an eyewitness, that though PW-1 was extensively questioned regarding assault on him, there was not even any suggestion regarding the assaults on the deceased; that the High Court carefully analysed the evidence of PW-1 and found to be credible; and that the High Court has analysed as to how the pleas that the FIR was not lodged at the time claimed or it was fabricated is not established by evidence on record.

**A Dismissing the appeal, the Court**

**B HELD :** The evidence of PW-1 does not suffer from any infirmity. The core of the evidence has to be seen and not any borderline's aspect. Minor variations which do not have any effect on the credibility of the evidence cannot be the basis to discard intrinsic value of the evidence. **B** Absence of PW-8's name in the FIR is really of no consequence as the FIR was lodged by the brother of PW-1 who was not an eyewitness. High Court's finding that the FIR was not fabricated does not suffer from any infirmity to take any contrary view. Furthermore, there was no cross-examination of PW-1 so far as the assaults on the deceased **C** are concerned. High Court seems to have proceeded on the premise that the fatal injury was not clearly established to have been inflicted by any particular accused, thus the case is not covered under Section 302 IPC with application of Section 34. This does not appear to be a correct or rational and reasonable approach. In any event, the State **D** has not preferred any appeal, and, therefore, no view is expressed. However, there is no infirmity in the judgment of High Court which warrants any interference. [1062-G-H; 1063-A-C]

**E** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 827 of 1997.

From the Judgment and Order dated 7.1.97 of the Madhya Pradesh High Court in CrI. A. No. 299 of 1992.

Anis Ahmed Khan, for the Appellants.

**F** Siddharth Dave and Ms. Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

**G** **ARIJIT PASAYAT, J. :** Communal disturbances have taken toll of many lives at different times. This is a sad reflection on our society, though the Constitution of India, 1950 (in short 'the Constitution') underlines in no uncertain terms that ours is a secular country, where caste, creed and religion cannot and do not have any differentiating base. One Rajunath (hereinafter referred to as 'the deceased') lost his life on account of **H** communal disharmony and another Narish Chandra (PW-1) was seriously

injured. Accused persons were stated to be the authors of the crime, who committed offences punishable under Section 302 and 307 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC').

Prosecution version as unfolded during trial is as follows:

On 21.10.90 at about 2.30 p.m. there was rising of tension on account of communal feelings in Sandhwa which is a highly sensitive town. Around mid-day, some dispute arose between two communities and in that dispute one person belonging to a particularly community was murdered and this news spread far and wide. Several incidents followed in quick succession. Some parts of the market were closed, some were in the process of being close down when police force started taking action. PW-1 runs a barber shop. He was to leave for Shastri Colony which was situated at a short distance from his shop. The deceased also lived in the same locality. At about 2.30 p.m. the deceased and PW-1 were returning home after closing their shops. When they were near the Dak Bungalow, the accused persons surrounded them and started inflicting injuries indiscriminately. The injured and the deceased tried to save their lives and started running away. The occurrence was witnessed by Mitthu Sharma (PW-2) and Premchand (PW-8). One Satyanarayan also witnessed the occurrence. PW-8 informed PW-1's brother Santosh (PW-4), who went to the police station and his statement was recorded at about 2.45 p.m. At about 2.00 p.m., Section 144 of the Criminal Procedure Code, 1973 (for short 'the Cr.P.C.') was promulgated and after short time curfew was also imposed by the administration to bring the tense situation under control. The investigating officer PW-18 reached the spot of occurrence and sent the deceased and the accused to the hospital. On the basis of information lodged investigation was undertaken and charge sheet was filed. Accused persons pleaded innocence. It is to be noted that post-mortem was conducted by PW-15 on the deceased and PW-16 examined injured PW-1. The trial Court found that the prosecution version was not supported by cogent evidence and accordingly directed acquittal.

The State of Madhya Pradesh preferred appeal before the High Court which by the impugned judgment set aside the acquittal; but held that the case is not covered by Section 302 IPC but is covered by Section 324 and sentenced the accused to undergo RI for 2 years and to pay a fine of

A Rs. 2,000. It was further directed that in case of recovery of the amount the same was to be paid to the widow of the deceased if he happened to be married, and if not, to be paid to his parents or any one of them who happened to be alive. Out of the fine recovered a sum of Rs. 2,000 was also directed to be given to PW-1. It is noted that the High Court held that the accused persons were guilty of offence punishable under Section 324 IPC as aforesaid for causing injuries to the deceased as well as PW-1.

B Learned counsel for the appellant submitted that the trial Court had analysed the evidence in great detail and found infirmities which the High Court failed to notice and on surmises held the accused persons guilty.

C It was further submitted that the evidence of PW-1 does not inspire confidence. He does not speak about presence of PW-8 and his name was not also mentioned in the first information report. It has been clearly established that the first information report was ante-timed and was fabricated. There is also no evidence to show that the same was sent to the Court.

D In response, learned counsel for the State submitted that the first information report was not lodged by a person who was an eyewitness. Though PW-1 was extensively questioned so far as assault on him was concerned, there was not even any suggestion regarding the assaults on the deceased. The High Court has analysed as to how the pleas that the first information report was not lodged at the time claimed or it was fabricated is not established by evidence on record. If the evidence of a single person who is claimed to have been injured is credible and trustworthy there is no requirement in law to insist on plurality of witnesses. In case at hand the evidence of PW-1 has been carefully analysed by the High Court and has been found to be credible.

E F G H It could not be pointed out to us as to how the evidence of PW-1 suffers from any infirmity. The core of the evidence has to be seen and not any borderline's aspect. Minor variations which do not have any effect on the credibility of the evidence cannot be the basis to discard intrinsic value of the evidence. Absence of PW-8's name in the first information report is really of no consequence as, the first information report was lodged by PW-4 who was not an eyewitness. The High Court's finding that

the first information report was not fabricated does not suffer from any infirmity to take any contrary view. It is to be noted that there was practically no cross-examination of PW-1 so far as the assaults on the deceased are concerned. The High Court seems to have proceeded on the premises that because injury no. 6 which was stated to be fatal injury was not clearly established, to have been inflicted by any particular accused, the case is not covered under Section 302 IPC with application of Section 34. This in our opinion does not appear to be a correct or rational and reasonable approach. In any event, the State has not preferred any appeal and, therefore, we do not think it necessary to express any view on that issue. However, there is no infirmity in the judgment of the High Court which warrants any interference. The appeal is dismissed. The accused persons shall surrender to custody to serve the remainder of their sentence, if any.

N.J.

Appeal dismissed.