

MOTI LAL AND ANR.

v.

STATE OF M.P.

OCTOBER 3, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Penal Code, 1860—ss 302, 302/149 and 307—Deceased persons and accused, neighbours bearing animosity with each other—Over quarrel between their children, accused assaulting deceased with axe blows and also those who tried to save, resulting in death of three—High Court upholding conviction for murder—Justification of—Held: Justified—Offence committed in gruesome manner—Accused not only killed two persons but also poured kerosene on one and set her on fire—They also assaulted those who came to save—Also it cannot be said that the injuries inflicted by the accused in self-defence.

According to the prosecution case, parties were neighbours and had animosity with each other. Over a quarrel between their children, appellant-ML and S, inflicted axe blows and killed B and M. NB-wife of B and AL-husband of MB, who intervened to save M and MB were assaulted by iron pipes and axe blows. ST-daughter of AL, DV and other children were also assaulted. Appellants had dragged MB, poured kerosene and set her on fire and later she succumbed to her injuries. Accused L, HR, KB, GB and HR also participated in the commission of offence. FIR was lodged. Appellants and the other accused were charged under section 302/149, 307 and 148. Trial Court imposed death sentence upon appellants for murder of M, B and MB; and also sentenced them under section 307 IPC for attempt to murder NB and AL. It convicted other accused under section 324 IPC for causing hurt to the children. High Court held that a free fight had taken place between the parties and on the basis of the actual role played by each of the accused and that injuries on the persons of the accused had not been explained, it upheld the conviction of the appellants under section

A 302 and section 302/149 for murder of M, B and MB but reduced their sentence to rigorous imprisonment for life. It convicted appellant under section 307 IPC for attempt to commit murder of AL and imposed rigorous imprisonment for seven years. It also convicted accused JB for attempt to murder NB and accused HR for causing hurt to DV under
B section 324 IPC. It however, acquitted the other accused. Hence the present appeal.

Appellants-accused contended that keeping in view the fact that there had been a free fight, the appellants could not be said to have any intention to kill M, B and MB; and that the prosecution did not explain
C the injuries on the part of the accused persons.

Respondent-State contended that the sequence of events clearly establish the cruel manner in which an attempt had been made not only to kill three persons but to attempt to murder two others and cause
D injuries to the children; that the High Court erred in acquitting the other accused persons of the serious charges made against them; and that, had the police not intervened, the number of deceased might have increased.

Dismissing the appeal, the Court

E HELD: 1.1. It cannot be said that the appellants are not guilty of commission of the said offence. In this case existence of any common intention has been ruled out. The High Court proceeded to record its reasons only on the basis of individual acts of the appellants. No case
F has been made out that the injuries were inflicted by the appellants in their self-defence. In absence of any such case having been made out, injuries suffered by some of them pales into significance. Three persons lost their lives. The manner in which the offences have been committed was gruesome. They not only killed B and M but also dragged MB,
G poured kerosene and set her on fire. Whosoever had come to save was not spared. NB and AL had also been assaulted. Even the children were not spared. Thus, it is not a case where the appellants could be absolved of the charges of murder of M, B and MB.

[Paras 20 and 21] [299-A-D]

H 1.2. However, having regard to the fact that the State did not prefer

any appeal against the judgment of acquittal passed by the High Court against the said accused persons, it is not possible to hold that it was not a case of free fight or the other accused also had any hand therein.

[Para 22] [299-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1268 of 2006.

From the final Judgment and Order dated 13.05.2004 of the High Court of Madhya Pradesh in Criminal Reference No. 2 of 2003. Criminal Appeal Nos. 1293 & 1294 of 2003.

Sibo Sankar Mishra for the Appellants.

Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

S.B.SINHA. J. (1) Appellants- Motilal and Santosh Kumar are before us aggrieved by and dissatisfied with the judgment of conviction and sentence passed by a Division Bench of the Madhya Pradesh High Court dated 13.5.2004.

(2) The parties were neighbours. Their houses were divided only by a wall. They bore animosity with each other. The sequence of events started with defaecation by a child- Nitin in the house of Motilal.

(3) On 4.7.1999 at about 9.30 a.m. when Nitin son of deceased Munnilal was playing near a tap situated close to his house, Pushpendra son of Motilal put some mud on his clothes. Nitin went to his house and informed his father Munnilal. Munnilal came to the house of Motilal and complained in regard to the conduct of Pushpendra. Motilal, Santosh and Hariram allegedly told him that their children would act in that fashion only. Narbadiya Bai- P.W.-3 reached the spot and told them that they always picked up quarrels. Appellants herein allegedly started inflicting axe blows on Munnilal-since deceased. Narbadiya Bai tried to save him, but allegedly one Jamuna Bai inflicted a blow on her by means of an iron pipe. Appellants Kalli Bai and Guddi Bai also hurled stick blows on Narbadiya Bai. Meanwhile Baldev said to have reached at that point of time.

A Appellants inflicted axe blows on Baldev and Hariram gave a blow of Baka on Baldev. Appellants Kali and Guddi Bai are said to have given stick blows on Baldev. Appellant-Lachhu snatched the axe from Santosh Kumar and dealt a blow on the head of deceased Munnilal.

B (4) Prosecution case further is that the appellants together with Lachhu, Hariram, Kalli Bai and Guddi caught hold of Munnibai and dragged her to the door of their house. Whereas Motilal brought a cane of kerosene and sprinkled kerosene on Munnibai; Santosh put her on fire. When Amritlal, husband of Munnibai tried to save her, Santosh dealt an
C axe blow on him which Amritlal took on his hand. Amritlal, thereafter, ran away from the place of incident and informed the police. Munnibai in the meantime rushed towards a nearby well and jumped there into. Sita-daughter of Amritlal reached the place of occurrence. She was pushed into a drain by Santosh. Similar treatments were meted out to Devshree
D and other children.

(5) First information report was lodged at about 11 a.m. on the same day. All the accused persons were arrested at the spot. In fact, the arrival of police saved further deterioration of the situation.

E (6) Munnilal and Baldev died on the spot. Munnibai was rescued from the well. Her dying declaration was recorded. She succumbed to her injuries later on.

F (7) Charges under Section 302/149 I.P.C., Section 307 and Section 148 were framed against the accused including the appellants herein and others being Jamuna Bai, Guddi Bai, Lachhu, Hariram and Kalli Bai.

G (8) The learned trial Judge imposed death sentence upon Santosh and Motilal on the charge of murder of Munnilal and Baldev as also Munnibai. They were also sentenced under Section 307 of the I.P.C. for attempt to murder Nabadiya Bai and Amritlal. Other accused were also charged and convicted under Section 324 I.P.C. for causing hurt to the children.

H (9) The High Court, however, by reason of the impugned judgment opined that a free fight between the parties had taken place. It proceeded

to examine the case on the basis of the actual role played by each of the accused. Upon analysing the evidence, it was opined that only appellants are guilty of commission of offences mentioned hereinbefore. Apart from convicting Jamuna Bai for attempt to murder Narbadiya Bai and Hariram were convicted for causing hurt to Devshree under Section 324 I.P.C.. Other accused were acquitted.

(10) As indicated hereinbefore, whereas the judgment of conviction under Section 302 IPC and Section 302/149 was confirmed against Santosh Kumar and Motilal but their sentence was reduced from that of death to rigorous imprisonment for life. Santosh Kumar was also convicted for commission of an offence punishable under Section 307 I.P.C. for attempt to commit murder of Amritlal and sentenced to undergo rigorous imprisonment for seven years.

(11) Learned counsel appearing on behalf of the appellants would submit that keeping in view the fact that there had been a free fight, the appellants could not be said to have any intention to kill the aforementioned persons. Learned counsel in this behalf drew our attention to the testimony of Dr. D.K. Jain-D.W.2 as also Dr. Vijay Parmar- D.W.1, who had proved the injuries suffered by the accused persons.

(12) A feeble attempt was also made by the learned counsel to contend that as the prosecution have not explained the injuries on the part of the accused persons, the entire prosecution case must fail.

(13) Learned counsel appearing on behalf of the State, on the other hand, submitted that the sequence of events as noticed by the learned Sessions Judge itself as also by the High Court clearly establish the cruel manner in which an attempt had been made not only to kill three persons but to attempt to murder two others and cause injuries to the children.

(14) Learned counsel would submit that the High Court had committed a serious error in acquitting the other accused persons of the serious charges made against them. It was submitted that had the police not intervened, the number of deceased might have increased. It was pointed out that Munnibai was not only dragged by the accused to their own house, a cane of kerosene was brought from inside the house and

A sprinkled on her body and fire was lit. She only out of desperation jumped into the well and could be rescued only after the police arrived.

(15) Prosecution in support of its case, examined a large number of witnesses. Amongst them, Narbadiya Bai(P.W.-3) was widow of deceased Baldev, mother of deceased Munnilal and mother-in-law of deceased Munnibai, gave her version in regard to the incident in question. She fully supported the prosecution case. She gave details as to how Baldev and Munnilal were done to death and Munnibai was set on fire. She also established that when Amritlal tried to save Munnibai, was hit by an axe blow by Santosh. When Sita and Devshree reached there, Santosh pushed Sita into a drain. Devshree also received the same treatment from him. According to her, Hari Ram also dealt a blow of Baka on the thigh of Devshree.

(16) Amritlal is another prosecution witness. He was offering his prayers in his house at about 10.30 a.m. on the relevant day. When he heard some cries, he came out and saw the occurrence. Sarita (P.W.-8) was also an eye witness.

(17) The High Court, however, despite such evidences, proceeded on the basis that injuries on the persons of the accused had not been explained. As Narmadiya Bai did not name Jamuna Bai, Guddi Bai and Hari Ram as assaulting anybody, they were given the benefit of doubt.

(18) On such finding, the High Court opined that only Moti Lal and Santosh were responsible for the death of Munnilal. Similarly, as regards the death of Baldev, Santosh and Moti Lal were found to be guilty.

(19) In regard to setting Munnibai on fire, again the High Court proceeded on the basis that Santosh had dragged Munnibai and Moti Lal poured kerosene on her. Participation of other accused in his said act was not accepted. The High Court was of the opinion that the prosecution could not establish individual act of any other appellant, so far as the attempt to commit murder of Narbadiya is concerned. However, in regard to Amritlal, Santosh was found responsible for attempt to commit his murder.

H

(20) It is therefore, difficult to accept the contention of learned A
counsel for the appellant that they are not guilty of commission of the said
offence. The question as to whether they had any intention to kill or not
must not engage our serious attention as in this case existence of any
common intention has been ruled out. The High Court proceeded to
record its reasons only on the basis of individual acts of the appellants. B
No case has been made out that the injuries were inflicted by the appellants
in their self-defence. In absence of any such case having been made out,
injuries suffered by some of them pales into its significance. Three persons
lost their lives. The manner in which the offences have been committed C
was gruesome. They not only killed Baldev and Munnilal but also dragged
Munnibai to her house, poured kerosene and set her on fire. Whosoever
had come to save was not spared. Narbadiya Bai and Amritlal had
also been assaulted. Even the children were not spared.

(21) In this view of the matter, we are of the opinion that it is not a D
case where the appellants can be absolved of the charges of murder of
Munnilal, Baldev and Munnibai.

(22) The appeal is dismissed. However, having regard to the fact
that the State has not preferred any appeal against the judgment of acquittal E
passed by the High Court against the said accused persons, it is not
possible for us to hold that it was not a case of free fight or the other
accused also had any hand therein.

N.J.

Appeal dismissed.