

[2015] 2 S.C.R. 678

BADRU RAM & ORS.

A

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 806 of 2009)

B

FEBRUARY 26, 2015.

**[SUDHANSU JYOTI MUKHOPADHAYA AND  
R.F. NARIMAN, JJ.]**

C

*Penal Code, 1860 – s. 302 – Prosecution under – Ten accused convicted by trial court – High Court acquitted six of the accused and convicted the appellants-accused – On appeal, held: conviction of appellants-accused was justified – The evidence of two injured eye-witnesses is reliable – The accused also cannot be acquitted on parity with the six acquitted accused.*

D

*Motive – Absence – Affect of – Held: Mere absence of motive does not bring lesser charge.*

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**Dismissing the appeal, the Court**

**HELD: 1. The two injured eye witnesses i.e. PW3 and PW4 not only corroborated their respective accounts but were not shaken in cross-examination. It is clear from a reading of the examination-in-chief as well as the cross-examination that short of PW.3 not being able to tell the Court as to how many injuries were received by the deceased and with what weapons, the factum of their being beaten up by the persons who were named, is not shaken. It is obvious that in the night it is very difficult to make out who hit whom and with what. The Doctor PW.8 - testified that the deaths were homicidal**

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A in nature. PW.7 and the Investigating Officer deposed as to the recovery of the weapons that were used in the incident. [Paras 5 and 7] [683-H; 685-C-E]

B 2. The appellants-accused also cannot be acquitted on the Doctrine of parity. The reasons for acquittal of the six other accused by the High Court was only because they were not named by PW3 the injured eye-witness. The Doctrine of parity cannot replace the substantive evidence of the two injured eye-witnesses namely PW3 and PW4, who have been believed concurrently by the courts below. [Para 9] [687-B-D]

C 3. It is not correct to say that this is a case which ought to be converted into a case of culpable homicide not amounting to murder under Section 304 (Part-II) IPC on the ground that the incident might have occurred on sudden provocation, there being no reason or motive. The evidence of the two injured eye-witnesses is clear – this is not a case of sudden provocation and the mere absence of motive does not bring home the lesser charge. [Para 10] [686-E-F]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 806 of 2009

F From the Judgment and Order dated 29.11.2007 of the High Court of Rajasthan at Jaipur in DBCRL No. 833 of 2006.

Vidya Dhar Gaur (A.C.), G. S. Mani (A.C.) for the Appellants.

G Shovan Mishra, Milind Kumar, George Thomas, Harsha Vinoy for the Respondent.

The Judgment of the Court was delivered by

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**R. F. NARIMAN, J.** 1. This is an appeal by four persons who have been convicted and sentenced under Section 302 read with 149 IPC, each of whom are to suffer life imprisonment and fine of Rs.500/- together with various other lesser offences all of which were ordered to run concurrently. Two persons Kamal Kumar and Om Prakash lost their lives in an incident which took place on 11th November, 1999. 11 persons were charge-sheeted, one of whom, Shiv Lal, died during trial. The learned Additional Sessions Judge (Fast Track) No. 2 Jhunjhunu convicted the other 10 accused of the murder of Kamal Kumar and Om Prakash and sentenced all of them to life imprisonment. In the judgment impugned in this appeal, six persons were acquitted as they were not named by the star witness Radhey Shyam – PW.3 in the *pancha bayan*. 4 persons, namely, Badru Ram, Sita Ram, Ramavtar and Lakshman were, however, found guilty by the High Court and were sentenced under Section 302 IPC to life imprisonment.

2. Heard Mr. Vidya Dhar Gaur and Mr. G.S. Mani, learned Amicus Curiae for the appellants and Mr. Shovan Mishra, learned counsel for the State.

3. The complainant Radhey Shyam – PW.3, made a complaint on 12th November, 1999 that he was one of four brothers, two of whom were murdered in the incident which took place at 11.15 p.m. on the previous day, i.e., on 11th November, 1999. In his evidence, he stated:

“It was around 11.15 pm on 11th November 1999. We were four brothers, I Radhey Shyam was the eldest, Om Prakash was younger to me, Kamal Kumar was younger to Om Prakash and Matu Ram was the youngest. Bhagwana Ram is my elder Uncle. Bhagwana Ram has agricultural land and electric well near our Dhani. We have taken the land of Bhagwana for

A cultivation on half-sharing basis. On the date of incident, at 11.15 pm I was sitting near the well and was looking after the electricity. We had sown gobhi (vegetable) in the field and my brothers Kamal Kumar and Om Prakash were watering the fields. From the side of Mandrella Road near the pyao, loud noises were heard. I came out and saw that my brothers Kamal and Om Prakash. were shouting "Bhai, hamare ko bachao. Hamare ko Badru Ram, uske ladke Shiv Lal, Sita Ram, Ramavtar, Lakshman, Shish Ram Mahesh aur unki aurate Nanchi, Nanadi, Jamuna aur Lalita hume mar rahe hain. Aakar ke hame jaldi bachao." Then I started calling for Rakesh, Chaju Ram, Gopi Ram, Babu Lal, Ram Singh that "my brothers are being beaten. Come fast" and reached my brothers at the spot of incidence. On reaching there I saw that Badru had lathi in his hand, Shiv Lal had lathi in his hand, Sita Ram had lathi in his hand, Ramavtar had barchi-like axe in his hand, Lakshman had gandasi in his hand, Mahesh and Shish Ram had lathis in their hands and all the four women Nanchi, Nanadi, Yamuna, Lalita had lathis in their hands. All these were beating my brothers. Ramavtar and Lakshman were continuously hitting with barchi-like gandasi and axe. I said that "why are you beating them. Leave them." Shiv Lal, Badru Ram, Nanchi Devi, Sita Ram then left Kamal and Om Prakash and stated attacking me. I received several injuries on my head and my hand was broken. They also made several attacks to kill me. When my brother's son Rakesh came there to our rescue then these persons started to hit him too. In the meantime, Gopi Ram, Chaju Ram, Babu Lal, Ram Singh reached the spot of incident. On seeing them, the accused persons left us and ran away. Then Gopi Lal, Babu Ram etc. brought the vehicle of Mahinder and took me, Om

Prakash, Kamal and Rakesh to the B.D. Hospital in the jeep. My brothers Kamal Kumar and Om Prakash died on the way due to their injuries. I and Rakesh were admitted to the Khaitan Hospital, Jhunjhunu. Accused persons had beaten us on the Mandrella Road near the well and pyao. At about 2.30 am police came to B. D. Hospital, Jhunjhunu. My statement was recorded and the same is exhibit P-9. When the statement was read out to the witness he himself stated that this was the statement which he had given to the Police. Due to injuries caused during the incident, I was not in a position to put my signatures therefore I put my thumb impression on my statement exhibit P-9 and also on the police proceeding related documents I had put my thumb impression. My medical examination and X-ray was done. Police seized and sealed and marked my blood stained clothes one pant and one shirt vide furd exhibit P-10 on which my thumb impression is at point 'X'. Accused wanted to grab the land of our uncle Bhagwana Ram and were unhappy with us. Therefore, they beat me and my brothers. I know the accused persons out of which Jamuna and Lalita are present in the Court. I also know the rest of the accused persons.”

4. Similarly, Rakesh – PW.4, Radhey Shyam’s nephew and the son of the deceased Om Prakash who was the second injured eye witness also deposed, corroborating the statement of his uncle – PW.3. His statement is as follows:-

“The incident happened on 11.11.99. It was 11.15 pm at night and I was studying at home. My father and uncles and my baba Radhey Shyam had gone to the well to water the field because the electricity used to come there at night. On hearing “*Mañ diya, bachao*”

A     *bachao*”, I ran towards the well. These cries of *bachao*,  
B     *bachao* were of Om Prakash, Kamal and Radhey  
C     Shyam and then I ran towards the well. When I ran and  
reached near pyao near Mandrella Road, I saw that  
D     Badru Ram, Badru Ram’s sons – Shiv Lal, Sita Ram,  
E     Ramavtar, Lakshman, Mahesh, Shish Ram and their  
F     womenfolk Nanchi, Lalita, Jamuna were there. Among  
G     these persons, Ramavtar had *barchi*-like axe in his  
hand, Lakshman had *gandasi* in his hand, and all the  
accused had lathis in their hands. All the accused  
persons were assaulting my father Om Prakash, my  
uncles Kamal Kumar and Radhey Shyam with sharp  
weapons and lathis.

D     I also shouted “*Bachao, bachao*” and that the accused  
E     persons are assaulting and beating my father and  
uncles etc. On hearing my cries, Chaju Ram, Babu Lal,  
F     Sam Singh, Chandgi Ram and Gopi Ram came running.  
G     When I cried *bachao bachao*, all the accused persons  
started beating me too. All the above persons who came  
running on hearing my cries rescued us and the accused  
persons left us and went away. After that I, Radhey  
Shyam, Kamal and Om Prakash were taken in a jeep  
to the hospital. Kamal and Om Prakash died on the  
way as a result of the injuries. I and Radhey Shyam  
were admitted in the hospital. I know the assaulters  
among whom Lalita and Yamuna are present today in  
the Court and I know rest of the accused too. My medical  
examination and X-ray was done in the Jhunjhunu  
hospital.”

5. These two injured eye witnesses not only corroborated their  
respective accounts but were not shaken in cross-examination.  
PW.3 – Radhey Shyam, stated in cross-examination:-

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"I cannot tell as to how many injuries were received by Kamal before I reached there and also cannot tell how many injuries were received by Om Prakash but both these persons were beaten up because I did not see as to who was beaten up with what weapons. Therefore I cannot say how many injuries were caused with barchi and axe. When I reached there fight was going on. I did not see the time and I cannot tell for how long the fight went on. I did not see the blood lying on the land. I do not know whether there was blood on the jeep or not. All the accused persons assaulted Rakesh and I cannot tell which accused caused how many injuries. It is wrong to suggest that I was not present on the spot and therefore I am not able to tell about the different injuries."

6. Similarly, PW.4 – Rakesh Kumar, stated in cross-examination:-

"We reached the hospital at around 1.30 am. Police came to the hospital at around 2 am. After sometime I fell asleep and I do not know upto what time the police remained there. I woke up in the morning. I was awake till 2 am. My statement was recorded at 2 am and thereafter the police did not come to me. Yamuna was married at Sikar. I do not know how as to many days prior to the incident she was married. In the police statement exhibit D-3, I did not mention about studying at home, I do not know why police had written this. In exhibit D-3 I got it written that I had heard the noises coming from Mandrella Road *pyao* and then I reached there, I do not know why this is not written in the Police statement exhibit D-3. I had stated about accused persons carrying different weapons, but I do not know

A why this is not written in exhibit D-3. I had told about  
separate assaults on my father and uncles with sharp  
weapons, I do not know why this is not written in exhibit  
D-3. I had stated in exhibit D-3 about my making noises  
B in which we had told about assault. It is wrong to state  
that I am deposing falsely because my uncle and father  
were injured. I did not see any injury on the accused  
persons in this incident. It is wrong to suggest that I am  
deposing falsely.”

C 7. It is clear from a reading of the examination-in-chief as well  
as the cross-examination that short of PW.3 not being able to  
tell the Court as to how many injuries were received by the  
deceased and with what weapons, the factum of their being  
D beaten up by the persons who were named is not shaken. It is  
obvious that in the night it is very difficult to make out who hit  
whom and with what. The learned Additional Sessions Judge  
painstakingly went through the evidence of all 14 witnesses  
including the two injured eye witnesses and the Doctor PW.8 -  
E who testified that the deaths were homicidal in nature. PW.7  
and the Investigating Officer deposed as to the recovery of the  
weapons that were used in the incident. The Investigating  
Officer PW.13 stated that according to the voluntary information  
of the accused Ramavtar one axe was seized and sealed.  
F Similarly, *lathis* were recovered from the others – from Badru  
Ram which was recovered from water behind his house, from  
Shiv Lal from plants and bushes behind his house and a  
*gandasi* from the statement of accused Lakshman from a field  
where brinjals were planted. The same is with respect to the  
G lathi recovered at the instance of accused Sita Ram.

8. The courts below have painstakingly gone through the  
evidence and have relied heavily upon the evidence of two  
injured eye witnesses and the Investigating Officer together  
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with the opinion of Dr. J.P. Bugaliya – PW.8 stating that the cause of death was coma as a result of injury to the brain and shock due to internal and external hemorrhage. A

9. Learned *Amicus Curiae* appearing on behalf of the appellants have argued that since the High Court has acquitted six persons, on the Doctrine of parity the appellants before us should also be acquitted. We find from the High Court judgment that the reasons for acquittal of the six other accused is only because they were not named by Radhey Shyam in the Parcha Bayan. The State is not in appeal before us on this finding of the High Court. The Doctrine of parity cannot replace the substantive evidence of the two injured eye-witnesses mentioned above, who have been believed concurrently by the courts below. B C D

10. The further argument by the learned *Amicus Curiae* on behalf of the appellants is that this is a case which ought to be converted into a case of culpable homicide not amounting to murder under Section 304 Part-II IPC because according to learned *Amicus Curiae* seeing the overall circumstances of the case, the incident might have occurred on sudden provocation, there being no reason or motive. This contention has only to be stated to be rejected. The evidence of the two injured eye-witnesses is clear – this is not a case of sudden provocation and the mere absence of motive does not bring home the lesser charge. E F

11. We find no infirmity in either of the judgments below and confirm them. The appeal is, accordingly, dismissed. G

Kalpana K. Tripathy

Appeal dismissed.

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