

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.462 OF 2019

SITA RAM & ORS.

...Appellants

VERSUS

STATE OF RAJASTHAN

...Respondent

O R D E R

This appeal by special leave is directed against the judgment and final order dated 21.09.2016 passed by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Criminal Appeal No.175 of 1983.

The crime in the instant case was registered pursuant to the reporting made by one Moti Ram to the effect that on 02.08.1982 when his mother and wife, in the company of his brother Phoolchand, had gone to the agricultural field situated at Khasra No.210, Hanumaan son of Noparam, Mangu son of

Noparam, Surja son of Noparam, Sitaram son of Hanuman, Jagdish son of Mangu, Prahlad son of Surja, Ganesh son of Mangu, Mangla s/o Hanuman, Mahabaksh son of Hanuman, Tulchi wife of Hanuman, Fuli w/o Mangu, Rama w/o Surja, Anchli w/o Jagdish, Gulabi w/o Sitaram, Mangli daughter of Mangu, Guldi d/o Hanuman, Sankri d/o Surjaram, Sajan s/o Hanuman, came there armed with sickles and cudgels and started assaulting his mother and wife. His younger brother Phoolchand ran back to the residence and reported the incident to his father Ghadsee Ram and brother Shyam Lal upon which they ran to the place of incident. The assailants opened an assault on them, which resulted in Ghadsee Ram sustaining injury on his head and back while his brother Shyam Lal sustained grave injuries with sickle.

On such reporting, initially crime under Sections 147, 148, 325, 324, 323, 149 read with 382 of the Indian Penal Code, 1860 ('the IPC', for short) was registered with Police Station Khatu Shyamji, District Sikar, Rajasthan.

After the death of Ghadsee Ram, the offence under Section 302 of the IPC came to be added.

In the post-mortem conducted by PW4 Dr. M.M. Mishra, deceased Ghadsee Ram was found to be having following external injuries:

- "1. Stitched wound 2" long, on left parietal area of scalp, transerves.
2. Swelling 2" x 1" on left temporal area of scalp.
3. Lacerated wound, 1" x 1/5" x 1/5" on right occipital area of scalp.
4. Bruise 2" x 2", on left frontal area of scalp.
5. Abrasion 1½" x ½" on upper 1/3rd on left leg, front.
6. Lacerated wound 3/4" x 1/10" x 1/10" on left cheek.
7. Bruise 2" x 1" on middle of right arm, laterally.
8. Abrasion 2" x 1" on lower 1/3rd of right leg medially.
9. Abrasion 1" x 1/10", on middle left leg, medially.
10. Abrasion 4" x 1/2" on the middle of right chest, back, oblique.
11. Abrasion 1/2" x 1/10" on back, left huber area.

12. Abrasion 1/2" x 1/2" on left knee, back.
13. Abrasion 1/2" x 1/4", on right knee front.
14. Bruise 2" x 2" on back of left hand.
15. Bruise 1" x 1" on back of left wrist."

The post-mortem also indicated the following internal injuries:

- "1. There was fracture of left frontal bone of skull.
2. There was sub-dural haematoma on left parietal bone below the fracture site.
3. There was laceration of brain on left frontal bone.
4. There were fractures of III and IV metacarpals of left hand.
5. There was fracture of upper end of femur."

According to the medical report, the internal injuries caused as a result of external injuries were sufficient in the ordinary course of nature to cause death. According to the medical opinion, all the injuries were caused by a blunt object such as "Lathi" and all injuries were ante-mortem.

Meera wife of Moti Ram who was injured in the transaction had suffered following injuries:

- "1. Lacerated wound, 1 $\frac{3}{4}$ " x $\frac{1}{4}$ " x $\frac{3}{8}$ " on left parietal region of scalp.
2. Bruise, $2\frac{1}{2}$ " x 1", on lower $\frac{1}{2}$ of lateral side of left thigh.
3. Abrasion, $\frac{1}{2}$ " x $\frac{1}{8}$ " on left cheek.
4. Echymosis with tenderness on lower $\frac{1}{3}$ rd of left thigh, just above knee joint, anterio-laterally."

Ms. Barji, the mother of the informant was found to have suffered the following injuries:

- "1. Incised wound $\frac{5}{8}$ " x $\frac{1}{8}$ " x $\frac{3}{8}$ ", on upper $\frac{1}{3}$ rd of right leg on front.
2. Swelling with crepitation at II metacarpal bone on left hand.
3. Complained of pain with tenderness on lower $\frac{1}{2}$ of left leg on lateral side.
4. Bruise, 3" x 1", on middle $\frac{1}{3}$ rd, of right thigh on lateral side.
5. Complained of pain on left lumbar region of back."

It is pertinent to mention here that two of the persons from the side of the accused also suffered injuries in the transaction.

Accused Jagdish was found to have received the following injuries:

- "1. Incised wound 1" x 3/8" x 1", on left side of neck.
2. Bruise with echymosis, 3" x 1 1/2", on lower 1/2 of left leg on lateral side."

According to the medical opinion on record, injury no.1 was caused by a sharp cutting weapon.

Another accused Prahlad had suffered the following injuries.

- "1. Incised wound, 2 1/4" x 1" x 3/8", on dorsum of left hand towards thumb.
2. Incised wound, 1 1/2" x 1/8" x 1/8", on lower 1/3rd of left forearm on back on radial side.
3. Abrasion 1/2" x 1/8", on upper 1/3rd of left forearm on radial side."

In this case also, injuries no.1 and 2 were caused by sharp cutting weapon.

It must also be noted that the Investigating Officer PW11 Mr. Amilal accepted the fact that with respect to the same transaction, there were two

cross versions in the form of First Information Report filed in the present case as well as the reporting made at the instance of the side of the accused. As a matter of fact, reporting made by the accused was earlier in point of time pursuant to which First Information Report No.75 of 1982 in respect of the offences punishable under Sections 447 and 323 of the IPC was registered.

Out of 16 persons, who were sent up for trial, the Trial Court convicted eight male persons while acquitting rest of the accused including four female accused. Those eight persons, namely, Hanuman, Manguram, Surja Ram, Sitaram, Mangla Ram, Prahlad, Jagdish and Ganesh, were found guilty of the offences punishable under Sections 147, 302/149, 325/149 and 323 of the IPC and sentenced to suffer life imprisonment in respect of the offences punishable under Section 302 and 302/149 IPC and for other subsidiary sentences for the remaining offences.

The convicted accused being aggrieved, filed D.B. Criminal Appeal No.175 of 1983 in the High Court.

During the pendency of said appeal, the convicted accused Hanuman, Mangoo Ram, Surja Ram and Jagdish died whereafter proceedings with respect to these accused stood abated.

While considering the role played by rest of the convicted accused, the High Court by its judgment and order dated 21.09.2016, which is presently under challenge, did not find any case for interference. Affirming the view taken by the Trial Court, the appeal was dismissed by the High Court

During the pendency of the instant proceedings, a submission was raised that appellants no.2 to 4, namely, Mangla Ram, Prahlad and Ganesh were juveniles on the date when the incident had occurred and, as such, they were entitled to the benefit in terms of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('the J.J. Act, 2000', for short) and the Juvenile Justice (Care and Protection

of Children) Act, 2015 ('the J.J. Act, 2015', for short).

Since this Court in *Abuzar Hossain alias Gulam Hossain v. State of West Bengal*, (2012) 10 SCC 489, had ruled that the claim of juvenility could be raised at any stage and even for the first time before this Court though not pressed before the Trial Court and the Appellate Court by order dated 06.03.2019 this Court referred the issue of juvenility of the appellants no.2 to 4 for consideration by the Sessions Court, District, Sikar, Rajasthan.

The Report in that behalf has since then been received, according to which convicted accused/appellants no.3 and 4, namely, Prahlad and Ganesh respectively, were juveniles on the day of the incident. In view of the said assertion, said convicts/accused were directed to be released on bail, which facility these two accused are still enjoying.

We have heard Mr. Ashok Arora, learned Advocate for the appellants and Mr. Harsha Vinoy, learned Advocate for the State.

Considering the totality of the circumstances on record, it emerges:

- a) The deceased had died as a result of injuries which were suffered by a blunt object, such as, lathi.
- b) Not a single injury could be associated with any sharp cutting weapon.
- c) Similarly, most of the injuries suffered by the injured prosecution witnesses were also by a blunt object.
- d) The record indicates that the place of occurrence was in an agricultural field situated at Khasra No.210.
- e) The evidence suggests that said agricultural field was a subject matter of dispute between the parties.
- f) Two of the accused persons themselves also suffered injuries and some of those injuries were by sharp cutting weapons.

g) The incident was stated to have occurred when initially there was an exchange of words between the ladies which then got converted into an incident where blows were exchanged.

In the premises, in our considered view, the matter would be covered by Exception fourthly to Section 300 IPC and as such, the crime in question would not be "murder" but "culpable homicide not amounting to murder".

In the totality of the circumstances, in our view, all the accused would be principally guilty of the offences under Section 304-II and Section 304-II read with Section 149 of the IPC.

We have been given to understand that the accused Sita Ram and Mangla Ram have completed about six years of sentence. In the fitness of things, the appropriate sentence for the principal offence under Section 304-II and 304-II read with 149 of the IPC ought to be six years of imprisonment. If the accused have completed six years of sentence, they be released forth-with

unless their custody is required in connection with any other offence.

As regards, two of the accused, namely, Prahlad and Ganesh, whose juvenility has been confirmed by the concerned Sessions Judge, we direct that they be dealt with in terms of Section 20 of the J.J. Act, 2000 and Section 25 of the J.J. Act, 2015.

With these observations, the instant appeal stands allowed to the extent indicated hereinabove.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(BELA M. TRIVEDI)

New Delhi,
October 28, 2021.