

STATE OF M.P.

v.

MAKHAN @ MADAN & ORS.

(Criminal Appeal Nos. 46-47 of 2003)

OCTOBER 16, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.]

*Penal Code, 1860; Ss. 148, 302 r/w s.149:*

*Assault and murder by forming an unlawful assembly – Deceased succumbed to the injuries inflicted by accused persons – F.I.R. – Trial Court found accused persons guilty of committing offences punishable under Ss.148 and 302 r/w s.149 IPC and sentenced them to undergo rigorous imprisonment for life etc. – Acquitted by High Court by discarding testimony of eye witnesses – Correctness of – Held: Correct – There was discrepancy in the statement of witnesses as regards the place of occurrence and also the identity of accused persons – Hence, no infirmity found in the impugned order warranting any interference – Testimony of witnesses – Reliance upon.*

**Respondents, accused persons, were convicted by the trial Court for committing murder of the deceased. The issue which arose for determination before the Supreme Court in this criminal appeal was as to whether the High Court erred in acquitting the accused persons by discarding the evidence of relative eye witnesses.**

**Dismissing the appeals, the Court**

**HELD: 1.1 The High Court with reference to evidence of PW1, wife of the deceased, noted that in the First Information Report it was stated that the place of occurrence is Kanji House Bazar Bohalla but in court the witnesses stated that the accused persons had assaulted the de-**

A ceased by lathi and rod at the residence of PW 7, Sarpanch of the gram panchayat. (Para – 5) [510-C-D]

B 1.2 PW 5 stated in her examination in chief that she had seen the accused persons assaulting the deceased with fists and slaps but in cross examination she had stated that when she reached the police station alongwith PW 1 they had disclosed that the deceased was lying in injured condition and had not disclosed the names of the accused persons. (Para – 5) [510-E-F]

C 1.3 PW5 stated that they had reached the police station at about mid night. But the FIR was registered early morning on the next day. PW2 in his statement had stated that he could not identify any of the accused persons due to darkness. If that be so, the evidence of PW1 and PW5, that they had clearly identified the accused persons cannot be believed. It is true that even in darkness known persons can be identified from the manner of speech, style of walking and several other peculiar features. But the evidence of PW2 was to the effect that because of darkness none of the accused persons could be identified. (Para – 5) [510-G-H; 511-A-B]

F 2. There is discrepancy not only as regards the place of occurrence but also on several vital aspects like non-disclosure and non-possibility of identification. Hence, judgment of the High Court does not suffer from any infirmity to warrant interference. (Para – 5) [511-B]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal Nos. 46-47 of 2003

G From the final Judgment and Order dated 28.3.2001 of the High Court of Madhya Pradesh, at Jabalpur in Criminal Appeal Nos. 959 and 960 of 1990

C.D. Singh, Aditya Singh and Sunny Choudhary for the Appellant.

H

S.K. Gambhir, Dr. Kailash Chand, Anil K. Sharma and T.N. Singh for the Respondents. A

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in these appeals is to the judgment of a Division Bench of Madhya Pradesh High Court at Jabalpur directing acquittal of the respondents who are hereinafter referred to as the 'accused'. The accused persons faced trial for alleged commission of offence punishable under Sections 148, 302 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). They were found guilty by the Additional Sessions Judge, Betul in ST case No. 169 of 1989 and were convicted and sentenced to undergo rigorous imprisonment for one years and life respectively. B C

2. Prosecution version in a nutshell is as follows:

On 15.7.1989 Premlal (hereinafter referred to as the 'deceased') had called a doctor for treatment of his sister and while he was returning after seeing off the doctor and reached near Kanji House Bazar Bohalla, accused persons had altercation with him and in order to kill, assaulted him by sticks and rod. They also threatened to set on fire his motorcycle at which Laxmi Bai and Maniya Bai (PW5) went there where they saw accused persons assaulting the deceased by rod and lathi as also by fists and slaps. The deceased was shouting for help. Later he became unconscious and fell down and the accused persons fled away from the place of occurrence. Thereafter the deceased was taken by his wife Somti Bai (PW1) and Maniya Bai (PW 5) to their house in unconscious condition. Report of the incident was given at 4.30 AM to the police station at Sarni, which is at a distance of about 9Km from the place of incident. Premlal was sent for medical examination to Primary Health Centre from which he was referred to Padhar Hospital for treatment. Premlal succumbed to his injuries on 20.7.1989. After his death, his dead body was sent for postmortem examination which was conducted by Dr. V.K. Shrivastava (PW 14). In the opinion of the doctor Premlal died due to coma on account of head injury. After investigation charge sheet was filed. D E F G H

A Since the accused persons pleaded innocence, the trial was held. The trial court as noted above found the accused persons guilty and convicted them. In appeal, however, the High Court directed the acquittal.

B 3. Learned counsel for the appellant submitted that the High Court should not have discarded the evidence of the eye witnesses.

4. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

C 5. It is to be noted that the High Court with reference to evidence of Somti Bai, PW1 noted that in the First Information Report it was stated that the place of occurrence is Kanji House Bazar Bohalla but in court the witnesses stated that the accused persons had assaulted the deceased at the residence of Deoli D (PW 7) the Sarpanch of the gram panchayat by Lathi and rod. According to Lachhu (PW 2) the deceased was assaulted on the way while he was coming from the house of Sarpanch (PW 7) whereas according to Somti Bai (PW1), the deceased was assaulted in front of the house of the Sarpanch. Maniya Bai (PW E 5) stated in her examination in chief that she had seen the accused persons assaulting the deceased with fists and slaps but in cross examination she had stated that when she reached the police station alongwith Somti Bai (PW 1) they had disclosed that the deceased was lying in injured condition and had not disclosed the names of the accused persons. In contrast Somti Bai (PW 1), Lachhu (PW2) and Maniya Bai (PW5) stated that F the name of the accused was in the first information report. In her cross-examination she clearly admitted that police told them that they would make enquiry and if report was found false they would be in trouble. Additionally, Maniya Bai (PW5) stated that G they had reached the police station about mid night. But the FIR was registered early morning next day. Lachhu (PW2) in his statement had stated that he could not identify any of the accused persons due to darkness. If that be so, the evidence of H Somti Bai (PW1) Maniya Bai (PW5), that they had clearly iden-

tified the accused persons cannot be believed. It is true that even in darkness known persons can be identified from the manner of speech, style of walking and several other peculiar features. But the evidence of PW 2 was to the effect that because of darkness none of the accused persons could be identified. In the instant case not only there is discrepancy as regards the place of occurrence but also on several vital aspects like non-disclosure and non-possibility of identification.

6. In view of what has been stated above, the judgment of the High Court does not suffer from any infirmity to warrant interference. Appeals are dismissed accordingly.

S.K.S.

Appeals dismissed.