

DADAN

v.

STATE OF MADHYA PRADESH THROUGH SHO, PS
SATNA (M.P.)

(Criminal Appeal No. 386 of 2007)

NOVEMBER 4, 2008

[C.K. THAKKER AND D.K. JAIN, JJ.]

Constitution of India, 1950 – Art. 136 – Appeal against conviction by Courts below – Power under Art.136 of the Constitution – Held: In exercise of such power, Supreme Court does not re-appreciate, review and re-weigh evidence which has been appreciated by Trial Court and by High Court – On facts, if Sessions Court was satisfied that the prosecution witnesses were trustworthy and relying on their testimony, conviction was recorded and High Court confirmed that part of the order, it cannot be said that by doing so any illegality had been committed by the Courts below – No interference, therefore, was called for by Supreme Court against the said finding – Penal Code, 1860 – ss. 302 r/w 149, s.326 r/w 149 and 148.

According to the prosecution, the five accused persons formed an unlawful assembly armed with deadly weapons like gupti, knife, iron rods etc. and in furtherance of the common object to cause the death of the son of PW-7 inflicting injuries on him. When PW5, brother of the deceased, tried to intervene, he was also allegedly beaten up by the accused persons and serious injuries were caused to him. The incident was allegedly witnessed by PW7; PW9, the mother of the deceased as also PW10, another brother of the deceased.

Placing reliance upon the testimony of PWs 5, 7, 9 and 10, the Trial Court convicted all the accused persons

A under s.302 r/w s.149, s.326 r/w s.149 and s.148 IPC. On appeal, the High Court acquitted one accused but confirmed conviction of the other four accused including Appellant.

B In appeal to this Court, Appellant challenged his conviction contending that when the High Court acquitted one accused and granted benefit of doubt to him, the said benefit ought to have been extended to him also and on the same set of facts and circumstances, the High Court ought not to have convicted him.

C It was contended that the iron rod allegedly used in commission of offence was not seized and on that ground also, Appellant was entitled to acquittal and further that all the prosecution witnesses were closely related to the deceased and since independent witnesses, though available, had not been examined, the High Court ought to have granted benefit of doubt to the Appellant.

E Dismissing the appeal, the Court

F HELD: 1.1. In the present case, no error can be said to have been committed either by the Trial Court or by the High Court in recording guilt of the appellant and in convicting him for the offences with which he was charged. [Para 12] [262-G-H; 263-A]

G 1.2. This Court is exercising power under Article 136 of the Constitution and is not a regular Court of Appeal. In exercise of the said power, this Court does not re-appreciate, review and re-weigh the evidence which has been appreciated by the trial Court and by the High Court. If on the basis of evidence of the aforesaid witnesses, the Sessions Court was satisfied that the prosecution witnesses were trustworthy and relying on their testimony, conviction was recorded and the High Court

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confirmed that part of the order, it cannot be said that by doing so any illegality had been committed by the courts below. No interference, therefore, is called for by this Court against the said finding. Conviction and sentence awarded by the Trial Court and confirmed by the High Court are maintained. [Paras 13 and 14] [263-B-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 386 of 2007.

From the final Judgment and Order dated 25.4.2006 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 2444 of 1998.

Anish Kumar Gupta, Deep Shikha Bharati and Rita Gupta for the Appellant.

Siddharth Dave, Jentiben A.O. and Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. The present appeal is filed by appellant Dadan—Accused No. 2 in Sessions Trial No. 39 of 1992 being aggrieved and dissatisfied with the judgment and order of conviction and sentence dated September 11, 1998, recorded by the Court of Additional Sessions Judge, Satna (Madhya Pradesh) and confirmed by the High Court of Judicature at Jabalpur, M.P. on April 25, 2006 in Criminal Appeal No. 2444 of 1998.

2. Shortly stated the facts of the case are that according to the prosecution, the incident in question took place on December 14, 1990 at 07.05 p.m. at Kabari Tola, District Satna in front of Pan shop of one Bablu. The case of the prosecution was that on the fateful day, all the accused were standing near the shop of Bablu. Jawaharlal Sahu (deceased) came there on his scooter. All the accused persons were waiting for the deceased. They formed an unlawful assembly

A whose members were armed with deadly weapons like gupti, knife, iron rods etc. The common object of the accused persons was to kill Jawaharlal. On seeing Jawaharlal, all the accused started inflicting injuries on him. Jawaharlal cried for help. His brother PW 5 Motilal who was sitting at the watch shop of
B Ramcharan Singh, immediately reached there to rescue him, but he was also beaten by the accused persons and serious injuries were caused to him. The incident was witnessed by PW 7 Hiralal, father of the deceased, PW 9 Janki Bai, mother of the deceased as also PW 10 Bharat Kumar, brother of the
C deceased. Other persons also came there. The accused fled away. Jawaharlal died due to injuries sustained by him. Motilal was taken to hospital. First Information Report was lodged immediately at 8.45 p.m. The accused were arrested on the next day, i.e. December 15, 1990. They were charged for
D commission of offences punishable under Sections 148, 302 read with 149 as also Section 307 read with 149, Indian Penal Code, 1860 (IPC). Usual investigation was carried out and the case was committed to the Court of Session by the Chief Judicial Magistrate since it was exclusively triable by the
E Sessions Court.

3. The plea of the accused was recorded. They denied having committed any offence and claimed to be tried.

F 4. At the trial, the prosecution, in support of the case, examined fifteen witnesses. The accused in their defence examined four witnesses.

G 5. The Sessions Court on the basis of medical evidence came to the conclusion and recorded a finding that Jawaharlal Sahu died due to injuries sustained by him and the death was homicidal in nature. It also recorded a finding that injuries caused to Motilal were serious in nature and they have been caused during the course of incident in which Jawaharlal Sahu lost his life.

H 6. Considering the part played by the accused and their

responsibility, the trial Court heavily relied upon the evidence of PW 5 Motilal, real brother and injured witness and PW 7, Hiralal, PW 9 Janki Bai and PW 10 Bharat Kumar. On the basis of the said evidence, it held that it was proved by the prosecution beyond suspicion that accused persons formed an unlawful assembly and in furtherance of common object to cause death of Jawaharlal, they inflicted injuries on him. All the accused were, therefore, liable to be convicted for offences punishable under Sections 148, 302 read with 149, IPC. It, however, held that it was not proved by the prosecution that the accused persons attempted to cause death of Motilal and were, therefore, not liable to conviction under Section 307 read with Section 149, IPC. But they had committed an offence of causing grievous hurt to Motilal and, therefore, were liable to be convicted for an offence punishable under Section 326 read with Section 149, IPC. The Court in the light of the said finding, ordered the accused persons to undergo rigorous imprisonment for one year for an offence punishable under Section 148; to suffer imprisonment for life for the offence under Section 302 read with Section 149 and to undergo rigorous imprisonment for three years for an offence punishable under Section 326 read with Section 149, IPC. They were also ordered to pay fine with default clause.

7. Being aggrieved by the order of conviction and sentence, out of five accused, four accused (other than Kirti Singh) preferred criminal appeals. The High Court again appreciated the evidence on record and by the judgment impugned in the present appeal held that the appeal filed by accused No. 3-Rajesh Viswakarma @ Thapa was required to be allowed. Accordingly, the appeal was allowed and his conviction and sentence was set aside. With regard to other accused, however, the court held that the trial court did not commit any error in recording finding of guilt against them and there was no substance in those appeals. Order of conviction and sentence, therefore, was confirmed.

A 8. Appellant Dadan who was accused No. 2 has challenged his conviction by filing the present appeal.

9. We have heard the learned counsel for the parties.

B 10. The learned counsel for the appellant contended that the order of conviction and sentence recorded by the trial Court and confirmed by the High Court cannot be said to be in accordance with law and it is liable to be set aside. It was also submitted that when the High Court acquitted one of the accused not believing the prosecution story and granted benefit of doubt to him, the said benefit ought to have been extended to the appellant also. When a part of the prosecution story was not believable and was not believed by the High Court, on the same set of facts and circumstances, it ought not to have convicted the appellant herein. The counsel also argued that iron rod said to have been used in commission of offence was not seized and on that ground also, the appellant is entitled to succeed. It was urged that both the courts mainly relied upon PWs 5, 7, 9 and 10. All the above prosecution witnesses were closely related to the deceased being father, mother and brothers. Though the incident took place in a busy locality and other witnesses were available, independent witnesses had not been examined and the High Court ought to have granted benefit of doubt to the appellant.

F 11. The learned counsel appearing for the State, on the other hand, supported the order passed by the High Court. According to him, on the basis of evidence on record, both the courts reached a finding against the appellant and there is no reason to interfere with the impugned judgment.

G 12. Having heard the learned counsel for the parties and having gone through the judgments of both the courts and relevant part of evidence of PW 5 Motilal, PW 7 Hiralal, PW 9 Janki Bai and PW 10 Bharat Kumar, we are of the view that no error can be said to have been committed either by the trial Court or by the High Court in recording guilt of the appellant

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herein and in convicting him for the offences with which he was charged. A

13. This Court is exercising power under Article 136 of the Constitution and is not a regular Court of Appeal. In exercise of the said power, this Court does not re-appreciate, review and re-weigh the evidence which has been appreciated by the trial Court and by the High Court. If on the basis of evidence of the aforesaid witnesses, the Sessions Court was satisfied that the prosecution witnesses were trustworthy and relying on their testimony, conviction was recorded and the High Court confirmed that part of the order, it cannot be said that by doing so any illegality had been committed by the courts below. No interference, therefore, is called for by this Court against the said finding. The present appeal, therefore, is liable to be dismissed. B
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14. For the foregoing reasons, the appeal preferred by appellant-accused No. 2 Dadan deserves to be dismissed and is accordingly dismissed. Conviction and sentence awarded by the trial Court and confirmed by the High Court are maintained. D

B.B.B.

Appeal dismissed. E