

TULSIRAM & ORS.

v.

STATE OF M.P.

(Criminal Appeal No.869 Of 2008)

MAY 13, 2008

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

*Penal Code, 1860 – ss.325 and 323 r/w s.34 – Alleged assault on PWs 5 and 6 with lethal weapons – Causing injuries to both – Conviction of Appellants by Courts below – Challenge to – Held: From the evidence, it appears that the prosecution has not come with clean hands and the genesis becomes doubtful – PW5 himself was declared 'hostile' by the prosecution – Also, contradiction between medical evidence and evidence of PW5 with regard to number of injuries sustained by him – Further, while according to PW5, the injuries were caused by farsi, luhangi and sticks, the medical opinion showed that injuries were possible by 'hard' and 'blunt' substance and not by any 'sharp' weapon – No incise wound was found on the person of PW5 – PW6's evidence also was shaky – He was not sure as to with which weapon, he was beaten – Moreover, according to him, he lodged a report at the police station on which his signature was taken, but that report is not forthcoming – PW9 who had intervened in the scuffle, was also declared 'hostile' – His evidence also did not go to show that the incident had happened in the manner deposed by the prosecution – Considering the facts and circumstances in their totality, it cannot be said 'beyond reasonable doubt' that the accused-appellants had committed the offences with which they were charged – Conviction accordingly set aside.*

**PWs 5 and 6 were running passenger-jeep between two destinations. According to the prosecution, the accused persons demanded Rs.50/- per day per trip from PWs 5 and 6 and when they did not oblige, assaulted them**

A with lethal weapons like sticks, *farsa* and *luhangi*. Both PWs 5 and 6 were injured in the occurrence. Trial Court convicted the accused-Appellants under ss. 325 and 323 r/w s.34 IPC. High Court confirmed the conviction.

B The conviction of Appellants was challenged before this Court on various grounds, viz. that the genesis of the prosecution was doubtful; that apart from the omissions and material contradictions in the testimony of witnesses, even the medical evidence did not support the case of the prosecution; that while according to PW4 (the doctor), PW5 received only 3 injuries, PW5 himself stated that he had received 28 injuries; that PW5 had stated before the Police that there were other persons over and above accused and even those persons had assaulted him, but thereafter, totally turned round and stated on oath  
C before the Court that other persons were not there and further that the evidence of injured PW6 was of no use to the prosecution as after receiving injury, he had left the place and was not there.  
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E Allowing the appeal, the Court

HELD: 1. From the evidence, it appears that the prosecution has not come with clean hands and the genesis becomes doubtful. [Para 18] [462-A,B]

F 2. The prosecution-witnesses and in particular the star witness injured, PW5 himself was declared 'hostile' by the prosecution as it was clear that though initially his case was that over and above four persons who were before the Court, three other persons were very much present, but subsequently, he stated that they were not  
G present. Not only that three other persons were present at the scene of offence, but they were armed with weapons, their common object was to beat the witness and in fact they attacked the witness with *lathis*. The initial case,  
H however, was subsequently totally changed and the witness had gone to the extent that over and above four ac-

cused before the Court, nobody was present and he was not attacked and beaten by anyone else. According to the said witness, he had sustained several injuries (28 injuries) but according to the medical evidence, there were only three injuries on the person of PW 5. Further, according to the witness, the injuries were caused by *farsi, luhangi* and sticks. Medical opinion, on the other hand, goes to show that injuries were possible by 'hard' and 'blunt' substance and not by any 'sharp' weapon. All the three injuries referred to hereinabove also clearly prove it. They were all lacerated wounds and no incise wound was found on the person of PW5. [Paras 18, 19] [462-B-F]

3. PW6's evidence also was shaky. He was not sure as to with which weapon, he was beaten. Moreover, according to him, he lodged a report at the police station on which his signature was taken, but that report is not forthcoming. [Para 20] [462-F,G]

4. PW9 who had intervened in the scuffle, was also declared 'hostile'. His evidence also did not go to show that the incident had happened in the manner deposed by the prosecution. [Para 21] [462-G,H, 463-A]

5. Considering facts and circumstances in their totality, evidence of prosecution witnesses, particularly of the witnesses who were 'attacked', and had been declared 'hostile' (partly or fully) coupled with the medical evidence, so far as injuries sustained by PW5 is concerned and withholding of report said to have been lodged by PW6, this is not a case to reach a finding that the accused had committed the offences with which they were charged. If it is so, obviously the benefit of doubt should be given to them. It cannot be said 'beyond reasonable doubt' that the accused had committed the offences with which they were charged. The order of conviction and sentence recorded by the trial Court and confirmed by the High Court is set aside. [Paras 22, 23] [463-A-D]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 869 of 2008

From the Judgment & Order dated 11.12.2006 of the High Court of Judicature of Madhya Pradesh, Jabalpur, Bench at Gwalior in Criminal Appeal No. 210 of 2000.

B Sushil Kumar Jain, Puneet Jain, Ashwini, Archana Tiwari and Pratibha Jain for the Appellants.

C.D. Singh and Sunny Chowdhary for the Respondent.

C The Judgment of the Court was delivered by

**C.K. THAKKER, J. 1.** Leave granted.

D 2. The present appeal is directed against the judgment and order passed by the Court of Additional District & Sessions Judge, Chanchoda, District Guna on February 22, 2000 in Sessions Case No. 587 of 1997 and confirmed by the High Court of Madhya Pradesh, Jabalpur (Gwalior Bench) on December 11, 2006 in Criminal Appeal No. 210 of 2000.

E 3. The short facts of the case are that First Information Report (FIR) was lodged by one Ram Singh (PW7), son of Ram Prashad Meena resident of Kulakheda on October 1, 1997. According to the prosecution, on October 1, 1997, one Ramesh Singh was going from Anjali to Kumbhraj on motor-cycle of one Govind Singh along with Raghuv eer Singh and Hukum Singh.  
F When they reached near Khatakiya Tiraha, all accused persons who were hiding themselves in the shadow of a Mini Bus and armed with lethal weapons, like *lathi*, *farsa* and *luhang*i appeared, stopped the motor-cycle driven by Ramesh Singh and started beating him by inflicting blows. Accused-2 Bhagwan Singh caused *farsa* blow on the left hand of Ramesh, Accused-1  
G Tulsiram caused *luhang*i blow on parietal region of Ramesh Singh, Accused-4 Daku and Accused-3 Roop Singh gave *lathi* blows on legs and knees of Ramesh Singh. Raghuv eer Singh Meena came to the rescue of Ramesh Singh, but Accused-1  
H Tulsiram inflicted *luhang*i blow over his right hand. Raghuv eer

Singh Meena, hence, immediately ran away from the place of occurrence. Several injuries were caused by accused persons to Ramesh Singh. Ramesh Singh fell down and became unconscious. All the accused then took Ramesh Singh and threw him in the pit. Hari Singh, Chandan Singh and Ram Singh meanwhile came at the place of occurrence and saw the accused running away from the place. Ramesh Singh was then taken out of the pit, was placed in a Matador and was taken to the Police Station Kumbhraj. Injured Raghuveer Singh Meena also reached the Police Station.

4. According to prosecution, Ramesh Singh and injured Raghuveer Singh were plying passenger-jeep between Kumbhraj to Khatakiya and Khatakiya to Kumbhraj. The accused persons demanded Rs.50/- per day, per trip. The injured, however, did not oblige the accused which was the route cause and with a view to teach a lesson to Ramesh Singh and Raghuveer Singh, the accused persons assaulted them.

5. A case was registered against the accused for offences punishable under Sections 307, 325, 323, 147, 148, 149 and 34 of the Indian Penal Code (IPC). After usual investigation, *challan* was filed in the Court of Judicial Magistrate, First Class who passed an order of committal in view of the case being triable by a Court of Session. The accused did not plead guilty and claimed to be tried.

6. The prosecution, to prove its case against the accused, examined fourteen witnesses. The learned Additional Sessions Judge held that the prosecution was able to establish the case beyond reasonable doubt against the accused and after hearing them, passed an order of conviction and sentence. The High Court confirmed the order passed by the trial court.

7. Against the order of conviction and sentence, the appellants have approached this Court. Prayer for exemption from surrendering was rejected by this Court. The appellants thereafter surrendered and notice was issued. Records and proceedings were called for. Since neither exemption from surrender-

A. ing was granted nor the accused were enlarged on bail, the matter was ordered to be posted for final hearing.

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

B 9. The learned counsel for the appellants contended that  
both the courts committed an error in convicting the appellants. It was submitted that the genesis of the prosecution was doubtful as the prosecution has not come with clean hands. It has suppressed material facts from the Court. Apart from omissions and material contradictions in the testimony of witnesses,  
C even medical evidence does not support the case of the prosecution. It was submitted that according to PW4 Dr. A.D. Chinchurkar, Ramesh Singh had received only three injuries. Ramesh Singh, however, stated in his evidence that he had received 28 injuries. Ramesh Singh himself has stated before  
D the Police that there were other persons over and above accused and even those persons had assaulted him. Thereafter, however, he totally turned round and stated on oath before a Court of law that other persons were not there. The evidence of injured Raghuv eer Singh is of no use to the prosecution as after receiving injury, he had left the place and was not there. The  
E third person (Hukum Singh) virtually did not support the prosecution. According to the counsel, the accused persons were falsely implicated and involved because of 'business rivalry'. Ramesh Singh and Raghuv eer Singh were running taxi without any licence. When the accused persons objected to such illegal activity, they were roped in a criminal case. It was, therefore,  
F submitted that the appellants are entitled to acquittal.

G 10. It was further submitted that the courts below had committed an error of law in not considering the provisions of Sections 360 and 361 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') which enjoin the Court to release offenders on probation of good conduct if the offence is not punishable with death or with imprisonment for life. In the instant case, though the charges were framed for offences punishable under Sections 307, 325 and 323 read with Sections  
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147, 148, 149 and 34, IPC, the trial Court acquitted all the accused for an offence punishable under Section 307, IPC. The said acquittal is not challenged and it has attained finality. The conviction was recorded for offences punishable under Sections 325 and 323 read with Section 34, IPC and not for an offence punishable with imprisonment for life. It was, therefore, obligatory on the Court to consider grant of probation. Non-consideration thereof has vitiated the order of sentence. Finally, it was submitted that after the incident, the accused had remained in jail for quite some time and even after the order passed by the High Court in December, 2006, neither exemption from surrendering was granted nor they were enlarged on bail and they are in jail since then. Therefore, even if this Court finds that the order of conviction and sentence is in consonance with law, on the facts and in the circumstances of the case, the period which the appellants have already undergone in jail may be treated as sufficient.

11. The learned counsel for the State, on the other hand, supported the order passed by the trial Court and confirmed by the High Court. It was submitted that on the basis of evidence adduced by the prosecution and appreciating the depositions on oath of prosecution witnesses, both the courts below have recorded a finding that the accused had committed the offences in question and convicted them. This Court does not re-appreciate the evidence under Article 136 of the Constitution and as such, the appeal deserves to be dismissed. As to non-compliance with Sections 360 and 361 of the Code, it was submitted by the counsel that looking to the facts of the case and the manner in which the offences have been committed, no benefit of the said provisions could be extended to the accused. It was, therefore, submitted that the appeal deserves to be dismissed.

12. The learned counsel for the appellants invited our attention to the deposition of PW4-Dr. A.D. Chinchurkar. He stated that on October 1, 1997 at 5.30 p.m., Ramesh Singh, son of Madansingh Meena was brought by constable Rambharose for his medical examination. Ramesh Singh was unconscious.

A Whole body with clothes had been soiled with wet soil. Breathe and heartbeat was continuing. He found following three injuries from the person of Ramesh Singh:

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1. Lacerated wound on scalp of head 6x1 cm x 1 cm scalp thickness deep in middle of scalp on left side.
  2. One lacerated wound in 1x1x0.5 cm area on backside of head.
  3. One lacerated broken wound 2x1x1.5 cm on left hand with apparent fracture of bone.
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D 13. According to this witness, all the three injuries appeared to have been caused with 'hard and blunt' weapons. In cross-examination, the witness stated that Ramesh Singh had sustained 'only three injuries'. He further admitted that the injuries could not possibly be sustained with any sharp weapon.

E 14. Now, reading the evidence of victim Ramesh Singh, injured and the star witness of the prosecution, it is clear that according to him, he was 'attacked' by Accused No.1-Tulsiram, Accused No.2-Bhagwan Singh, Accused No.3-Roop Singh and Accused No.4-Daku. Bhagwan Singh had administered *farsi* blow on his left hand. Tulsiram had given *luhagi* blow on forehead and Daku and Roop Singh gave *lathi* blows. He stated that in his police statement, besides names of four accused, he had not mentioned any other name. In view of the above statement, the prosecution requested the Court to declare the witness 'hostile' and permission was sought to put questions which could be put in cross-examination. Such permission was granted. It was then brought on record that in the police statement, the witness had stated that over and above the accused persons, one Harsingh Meena, Ramcharan Meena and Harbhajan Meena were also present with *lathis* and they had also inflicted *lathi* blows on the witness and had thrown him in the ditch. The witness though admitted in the cross-examination that he could not say exact number of injuries he had sus-

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tained but there were more than 28 injuries on his whole body. Out of those injuries, 5-6 injuries were of grievous nature and remaining injuries were simple.

15. From the deposition of other injured witness Raghuvir Singh also, it appears that the prosecution has not come forward with all facts. In his evidence on oath, Raghuvir Singh stated that Tulsiram had given wood blow to him and then stated that Tulsiram had given *luhagi* blow to Ramesh and *lathi* blow to the witness. The witness then ran away from there out of fear. According to the witness, after running away from the place of occurrence, he went to nursery situated near Khatkiya and then reached Kumbhraj where he lodged report at Police Station, Kumbhraj. The witness asserted that the police had written his report and obtained his signature on the report. No such report, however, has been produced by the prosecution at the trial.

16. PW9-Hari Singh, in his statement admitted that he had seen the quarrel while returning from Fadalpur to Kumbhraj. According to him, the accused persons present in the Court had beaten Ramesh Singh. The witness intervened in the fight and requested the accused persons not to beat Ramesh Singh. He, however, stated that except the witness, nobody intervened in the fight. Later on, Ram Singh came there and the witness and Ram Singh pulled Ramesh out of the ditch. He further stated that besides the three accused, nobody had beaten Ramesh.

17. The Addl. Public Prosecutor, in respect of this witness (Hari Singh) also, made prayer to the Court to declare him 'hostile' and to permit to put questions which could be put in cross-examination and the permission was granted. The witness was then confronted with his police statement wherein he stated that Tulsiram Meena, Bhagwan Singh Meena, Roop Singh Meena and Daku Meena were beating Ramesh Singh with *lathi*, *luhagi* and *farsi* with intention to kill him. Though the witness denied it and went to the extent that the police did not record his statement, the contradiction had been duly established. He went to the extent that police had written wrong statement. He denied

A that accused Roop Singh Meena had beaten Ramesh Singh in his presence and that it was wrong that in collusion with accused Roop Singh, he was not giving correct evidence.

B 18. From the above evidence and discussion, it appears that the prosecution has not come with clean hands and the genesis becomes doubtful. The prosecution-witnesses and in particular the star witness injured, PW5-Ramesh Singh himself was declared 'hostile' by the prosecution as it was clear that though initially his case was that over and above four persons who were before the Court, three other persons were very much present, but subsequently he stated that they were not present. C Not only that three other persons were present at the scene of offence, but they were armed with weapons, their common object was to beat the witness and in fact they attacked the witness with *lathis*. The initial case, however, was subsequently D totally changed and the witness had gone to the extent that over and above four accused before the Court nobody was present and he was not attacked and beaten by anyone else.

E 19. According to the said witness, he had sustained several injuries (28 injuries) but according to the medical evidence, there were only three injuries on the person of Ramesh Singh. Further, according to the witness, the injuries were caused by *farsi*, *luhingi* and sticks. Medical opinion, on the other hand, goes to show that injuries were possible by 'hard' and 'blunt' substance and not by any 'sharp' weapon. All the three injuries F referred to hereinabove also clearly prove it. They were all lacerated wounds and no incise wound was found on the person of Ramesh Singh.

G 20. PW6-Raghuveer Singh's evidence also was shaky. He was not sure as to with which weapon, he was beaten. Moreover, according to him, he lodged a report at the police station on which his signature was taken, but that report is not forthcoming.

H 21. PW9-Hari Singh, who had intervened in the scuffle, was also declared 'hostile'. His evidence also did not go to show

that the incident had happened in the manner deposed by the prosecution. A

22. Considering facts and circumstances in their totality, evidence of prosecution witnesses, particularly of the witnesses who were 'attacked', and had been declared 'hostile' (partly or fully) coupled with the medical evidence, so far as injuries sustained by PW5-Ramesh Singh is concerned and withholding of report said to have been lodged by PW6-Raghuveer Singh, in our opinion, this is not a case to reach a finding that the accused had committed the offences with which they were charged. If it is so, obviously the benefit of doubt should be given to them. We accordingly hold that it cannot be said 'beyond reasonable doubt' that the accused had committed the offences with which they were charged. B C

23: For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed. The order of conviction and sentence recorded by the trial Court and confirmed by the High Court is set aside. D

24. In view of acquittal recorded by us, the question of consideration of provisions of Sections 360 and 361 of the Code and grant of benefit to the accused does not arise and we express no opinion thereon. E

25. The appeal is accordingly allowed. The conviction and sentence of the appellants is set aside.

B.B.B.

Appeal allowed. F