

DEO NARAIN

v.

STATE OF U.P.

(Criminal Appeal No. 750 of 2005)

JULY 28, 2010

**[HARJIT SINGH BEDI AND CHANDRAMAULI KR.  
PRASAD, JJ.]**

*Penal Code, 1860:*

*s.302/149 – Double murder – Conviction of all the six accused by trial court – Pending appeal four of them died – High Court dismissed the appeal qua the two surviving accused who filed SLP before Supreme Court – SLP dismissed qua one of the accused and leave granted to appellant – HELD: It is true that the factum of causing or not causing an injury would not always be relevant where the accused is sought to be roped in with the aid of s.149 – At the same time, where the animosity between parties is admitted with a series of murders and attempts to murder inter se and political rivalries going back for years together, a case of false implication is also a clear possibility – It is for this reason that the courts sift the evidence to separate the grain from chaff and to see that in a case of admitted animosity and a large number of accused, some corroborating evidence to support the eye witness account must be looked for – In the instant case, five of the accused have been attributed significant roles in the two murders whereas the appellant has been given an omnibus role of causing lathi injuries to one of the victims – Several persons including the appellant were armed with lathis – The only allegation against him is that after the victim had fallen down on being shot at, the appellant, along with others, caused him injuries with lathis – The injury report shows that the so-called lathi injuries are all abrasions*

A *of very small dimensions – Such injuries could not have ordinarily been caused by lathis – In this view of the matter, it cannot be said with complete certainty that the appellant was one of those who had been involved in the incident – Therefore, in this background, the appellant is acquitted giving him the benefit of doubt.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 750 of 2005.

C From the Judgment and order dated 16.07.2004 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1681 of 1981.

Subodh S. Patil, Aarohi Bhalla, Sujata Kurdukar for the Appellant.

D Shail Kumar Dwivedi, AAG, T.N. Singh, Shekhar Sharma, Chandra Prakash Pandey for the Respondent.

The following order of the Court was delivered

E **ORDER**

1. Six persons in all namely Raj Narain, Deo Narain, Shiv Singh, Vijay Singh, Raj Bahadur Singh and Anirudh Singh were brought to trial for offences punishable under Section 302 read with 149 of the Indian Penal Code for having committed the double murder of Ram Swarup and Ram Pratap Singh. They were all convicted by the trial court. While their appeal was pending in the High Court, Raj Narain, Vijay Singh, Raj Bahadur Singh and Anirudh Singh passed away. The High Court, accordingly, went into the matter qua Deo Narain and Shiv Singh, the two surviving accused, and vide the impugned judgment, dismissed the appeal. A Special Leave Petition was thereafter filed in this Court by the two convicted accused. By order dated 12th May, 2005, this Court dismissed the Special Leave Petition vis-à-vis Shiv Singh and granted leave to the

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present appellant. It is in this situation that the matter is before us and has been heard at length. A

2. The facts of the case are as under:

2.1 At about 7:00a.m. on 4th June, 1980 a quarrel took place in which Ram Pratap Singh, deceased, was assaulted by one Shiv Ram Yadav near village Hyderpur. Ram Pratap Singh sustained a simple injury on his leg and after returning home he along with his brother Jai Singh – P.W. 7 and several others including Raj Bali etc. and Ram Swarup deceased left the village on two bicycles to lodge a report at the Bidhnu Police Station. Jai Singh – P.W. 7 and Raj Bali were on one bicycle where as the second bicycle was being plied by Ram Swarup with Ram Pratap Singh sitting on the pillion. Ram Swarup and Raj Bali were also carrying their licensed weapons. As the party neared village Harbaspur at about 8:00a.m., Raj Narain and Vijay Singh armed with guns, Raj Bahadur with a pistol, and Deo Narain, Shiv Singh and Anirudh Singh armed with lathis emerged suddenly from their hiding place. Vijay Singh and Raj Bahadur opened fire on Ram Pratap Singh as a result whereof he fell down from the cycle whereas Raj Narain fired on Ram Swarup with the result that the gun fell from his hand. Ram Swarup attempted to run away. In the meanwhile, as Raj Bahadur was about to open fire with his pistol on Ram Pratap Singh, Raj Bali fired at him with his licensed gun. Anirudh Singh and Shiv Singh thereafter snatched the gun of Ram Swarup and Anirudh Singh picked up the gun of Raj Bali and all of them chased Ram Swarup who ran for his life towards a tube well. Shiv Singh and Anirudh Singh thereafter fired at him killing him instantaneously. Deo Narain as well as the other accused also assaulted Ram Swarup with their weapons. Ram Pratap Singh too was killed in the attack. An FIR was, accordingly, lodged at the police station by P.W. 7 and on the completion of the investigation the accused were brought to trial and convicted and sentenced for the various offences under which they had been charged. As already mentioned above, we are now

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A concerned only with the appeal of Deo Narain as four of the other accused have died and the special leave petition filed by Shiv Singh has been dismissed in limine.

B 3. Mr. Subodh Patil, the learned counsel for the appellant has pointed out that there was a clear doubt as to the participation of the appellant in the incident as no specific role had been attributed to him as the injuries caused to Ram Swarup with a lathi had been attributed to three accused. It has also been pointed out that there was admitted animosity between the parties as would be evident from the FIR itself and C also from the statements of P.W. 7 and P.W. 8 which was to the effect that several criminal litigations had been initiated between them and they had different political affiliations as well and for this reason also the possibility of false implication of a large number of persons from one group could not be ruled out. D He has further pointed out that the Bench hearing the Special Leave Petition had noticed the difference in the participation of Shiv Singh and Deo Narain and had declined to grant leave to Shiv Singh.

E 4. Mr. T.N. Singh, the learned counsel for the State of U.P. has, however, submitted that there were four blunt weapon injuries on the person of Ram Swarup, one of the deceased, and as such appellant had been rightly convicted under Sections F 148 and 302/149 of the IPC and the mere fact that he may or may not have caused any specific injury would be of no effect as the common object of the unlawful assembly to commit murder was writ large on the facts of the case.

G 5. We have heard the learned counsel for the parties and have considered the arguments advanced before us.

H 6. It is true, as contended by Mr. T.N. Singh, that the factum of causing an injury or not causing an injury would not always be relevant where the accused is sought to be roped in with the aid of Section 149 of the IPC. At the same time, where the animosity between parties is admitted with a series of murders

and attempted murders interse and political rivalries going back for years together, a case of false implication is also a clear possibility. It is for this reason that the Courts sift the evidence to separate the grain from the chaff and to see that in a case of admitted animosity and a large number of accused some corroborating evidence to support the eye witness account must be looked for. We find that several persons were armed with lathis including Deo Narain, the appellant herein. The only allegation against him is that after Ram Swarup had fallen down near the tube well after being shot, the appellant, along with the others, had caused him injuries with lathis. We have also gone through the so called lathi injuries. They are all abrasions of very small dimensions. We are of the opinion that such injuries could not have ordinarily been caused by lathis. In this view of the matter, it cannot be said with complete certainty that he was one of those who had been involved in the incident. It bears repetition that five of the other accused have been attributed significant roles in the two murders whereas the appellant has been given an omnibus role of causing lathi injuries to Ram Swarup, only. We are, therefore of the opinion that in this background the appellant would be entitled to the benefit of doubt. We, accordingly, allow this appeal and order his acquittal. He shall be released forthwith if not wanted in connection with any other case.

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Appeal allowed.