

[2011] 11 S.C.R. 377

MAHESH & ANR.

v.

STATE OF MADHYA PRADESH
(Criminal Appeal No. 503 of 2008)

SEPTEMBER 13, 2011

**[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]**

Penal Code, 1860 – s. 302/34 – Conviction and sentence under – Altercation between parties resulting in fatal gun shot injuries to deceased by main accused – Trial court convicted the main accused u/s. 302 and sentenced him to life imprisonment and three years rigorous imprisonment under Arms Act – However, acquitted appellants (co-accused) on the ground of some embellishment in the prosecution case – High Court upheld conviction of the main accused as also passed similar order of conviction against the appellants – Appeal by the appellants – Held: PW 1 who filed the information with the police was not an eye-witness – As such non-mentioning about the role played by the appellants in the First Information Report not fatal to the prosecution case – Also recording of the statements of eye-witnesses after 8 days not fatal to the prosecution case since the police officer gave a plausible and possible explanation for same – Motive for the offence is established – There was an enmity between the complainant party and the accused persons – Prosecution examined at least three eye-witnesses to the occurrence of the incident who stated as to how the incident happened as also the different and various role played by the accused persons – Witnesses examined were relatives of the deceased and, thus there is no ground and reason why they should be disbelieved as also why they would not speak the truth – Prosecution witnesses stated that appellants held the hand of the deceased and also at the same time exhorted the main

A *accused to bring the gun and to fire upon the deceased so as to kill him, which is corroborated – Thus, it is proved and established that the appellants had the common intention of killing the deceased – They intentionally become a party to commit the murder of the deceased – Order of conviction and sentence passed against them by the High Court, is upheld*
B *– Doctrine of constructive criminal liability – Evidence – Witnesses.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 503 of 2008.

C From the Judgment and Order dated 09.08.1999 of the Division Bench of High Court of Madhya Pradesh at Gwalior in Criminal Appeal No. 388 of 2001.

D P.C. Agarwal, Ambuj Agarwal, Nitin Singh and Santosh Singh for the appellants.

Aishwarya Bhati, Jyoti Upadhyay, Kiran Singh, Rajnesh Bhaskar, Sanjoli and C.D. Singh for the Respondent.

E The following order of the Court was delivered

O R D E R

1. This appeal is directed against the judgment and order dated 16.11.2007 passed by the Madhya Pradesh High Court, Jabalpur Bench at Gwalior in Criminal Appeal No. 388 of 2001.
F By the aforesaid judgment and order, the Division Bench of the High Court has not only confirmed the order of conviction and sentence of Shri Ramdutt, who was convicted by the Trial Court under Section 302 of the Indian Penal Code and sentenced him
G to undergo imprisonment for life and for 3 years rigorous imprisonment under the Arms Act but also set aside the order of acquittal passed by the Trial Court in the cases of Mahesh and Kanhaiyalal.

H 2. The High Court by passing the impugned judgment and

order has convicted both the aforesaid accused persons under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life. The sum and substance of the aforesaid order of conviction and sentence is that all the three accused persons have now been convicted under Section 302 read with Section 34 of the Indian Penal Code and, therefore, all of them have been sentenced to undergo rigorous imprisonment for life.

3. The prosecution story in brief is that on 1.11.1993, the complainant Badri Lal(PW 1) along with Rambabu (PW 3), son of deceased Kirori, went to their chilly field to water the same. The said field was adjacent to the field of Mahesh and Ramdutt who, at that point of time, were watering their field. When asked by the complainant and Rambabu about watering their field, Mahesh and Ramdutt told them that they can water their field only after watering of their field is completed by them.

4. It is alleged that on hearing this, PW 1 and PW 3 came back to their village to go back again in the afternoon, when while trying to release water to their field, they were assaulted by Ramdutt and Mahesh. It is alleged that after the said incident, Ramdutt and Mahesh came back running to the village and PW 1 and PW 3 also came behind them. When PW 1 and PW 3 reached the door, they heard the sound of gunshot fire. On hearing the sound, they ran towards the said direction, when on way, they saw Ramdutt and Mahesh running with guns in their hands. It is alleged that when Ramdutt and Mahesh saw PW 3, Mahesh fired a gunshot at Rambabu (PW 3) who saved himself by lying down. Thereafter, PW 1 and PW 3 reached in front of the door of Ramnarayan and Devi Prasad when PW 1 saw the body of his younger brother Kirori, lying dead on the ground, being hit by a gunshot which had hit him on chest and stomach. The body was surrounded by Deviprasad, Ramnath, Kirori's wife Malti, Rambabu's wife Sunita and other members, daughters-in-law and daughters.

5. At that stage, Malti told PW 1 that on hearing the news

A of altercation at the field, Kirori was going towards the field when Ramdutt, Mahesh and Kanhaiya who were standing at their door and that Ramdutt, with the licenced single barrel gun of his father Kanhaiya, fired a shot at Kirori which had hit him near the abdomen as a result of which Kirori fell down and died.

B 6. The First Information Report was filed by PW 1 at about
 C 3.15 p.m. at the Police Station which is 14 kms away from the
 D village. On receipt of the First Information Report, a criminal
 E case was registered and the police started investigation, during
 F the course of which all the three accused persons were arrested.
 Charge-sheet was filed as against all the three accused persons. Pursuant to filing of chargesheet, trial was held during the course of which several witnesses were examined by the prosecution. The defence also examined one witness in support of their defence. The statements of all the three accused persons were recorded under Section 313 of the Cr P.C. and thereafter, the learned Trial Court, by the judgment and order passed on 9.8.1999, convicted Ramdutt under Section 302 IPC and passed an order sentencing him to life imprisonment and 3 years rigorous imprisonment under Arms Act, respectively. So far as the other two persons are concerned, namely Mahesh and Kanhaiya Lal, the present appellants, the Trial Court acquitted them on the ground that there had been some embellishment in the prosecution case like the allegation that the said accused persons holding the hand of the deceased at the time of firing upon them by Ramdutt.

G 7. Ramdutt (A1) and the State filed appeals before the High Court. Both the said appeals were taken up together and the same were disposed of by the common order by the High Court whereby the High Court not only upheld the order of conviction passed against Ramdutt but also passed a similar order of conviction and sentence as against Mahesh and Kanhaiya Lal who were acquitted by the trial court.

H 8. Being aggrieved by the aforesaid order of conviction by the High Court, Mahesh and Kanhaiya Lal, appellants herein,

have filed the present appeal in which notice was issued. So far as the Ramdutt - first accused is concerned, he has not filed any appeal and, therefore, it appears that he has accepted the order of conviction and sentence passed by the trial court and then, affirmed by the High Court. The present appeal, therefore, relates to the order of conviction and sentence passed against Mahesh and Kanhaiya Lal who are appellants before us.

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9. We have heard the learned counsel appearing for the parties on this appeal who have taken us through the entire evidence on record as also the contents of the two judgments passed by the Trial Court and also by the High Court.

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10. The contention that is raised by the learned counsel appearing for the appellants is that in the First Information Report which was filed by PW 1 at the earliest point of time after the incident, the role now attributed to the appellants herein were not mentioned at all and, therefore, there could not have been an order of conviction and sentence as against the two appellants. It was also submitted by him that the statements of the alleged eye-witnesses were recorded by the police after about 8 days of the occurrence and, therefore, there was enough scope to make out a make believe story and also to put in an embellishment and improvement relying on which the appellants are sought to be convicted.

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11. According to the learned counsel appearing for the appellants, there were number of independent witnesses who were allegedly present at the time of occurrence of the incident, but none of them was examined and, therefore, the High Court should have doubted the manner in which a specific role is being attributed to the appellants herein. The learned counsel submits that there was no enmity between the parties and, therefore, there was no motive for commission of the crime, at least by the present appellants. He has also submitted that there are two versions which are sought to be raised and, therefore, the benefit of the same should go to the appellants herein.

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A 12. We have considered the aforesaid submissions which
were refuted by the learned counsel appearing for the
respondent. She has drawn our attention to the evidence on
record to submit that some of the translation of the deposition
included in the paper book prepared by the appellants is not
B truly reflecting the accurate statement made by the persons in
the Court.

13. In order to appreciate the aforesaid contentions, we
have also examined the original records and on such perusal,
we find that some of the English translations which have been
C placed before us by filing an additional paper book are indeed
not the true reflection of the statements made by the witnesses
before the Court.

14. Be that as it may, we would like to examine each of
D the contentions raised by the learned Counsel appearing for
the appellants in the light of the records. So far as the first
contention regarding informant not stating anything about the
role of the appellants in the First Information Report is
concerned, we find that the aforesaid First Information Report
E was submitted by PW 1 who was not an eye-witness to the
incident. Although it has come in evidence that he was informed
about the incident by PW 2, PW 4 and PW 5 immediately on
his reaching the place of occurrence of the incident, yet since
he was not the eye-witness to the incident, he may not have
F stated the said fact in the First Information Report for which it
cannot be said that the entire prosecution case should falter.
Besides, it is an established law that so far as the First
Information Report is concerned, it is only a report submitted
informing the police about the commission of the crime. It is
not required that the said First Information Report should
G contain a detailed and vivid description of the entire incident.
Further, it cannot be expected from the informant, especially,
when the informant is a relative of the injured/deceased to give
each and ever minute detail of the incident in the First
Information Report. Therefore, PW 1 who had filed the
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information with the police not being an eye-witness, it cannot be said that non mentioning about the role played by the present appellants in the First Information Report would be in any manner fatal to the case of the prosecution. A

15. So far as the contention regarding recording of the statements by the police after 8 days of occurrence of the incident is concerned, a proper and appropriate explanation has been given by the Police Officer, who recorded the statements, stating that he had recorded the statements after about 8 days of the occurrence of the incident because religious rituals were going on. Due to the aforesaid reason, their statements could not have been recorded on 4.11.1993 which is also written in the case diary. In that view of the matter and there being a plausible and possible explanation given for recording the statements of eye-witnesses after 8 days, the same cannot, in any manner, demolish or vitiate the prosecution case. B C D

16. It is also submitted by the counsel appearing for the appellants that there was no enmity between the parties which could establish the motive for the commission of crime. The said contention, on the face of it, is not acceptable for we find on records that the present appellants and the informant had an altercation in the field and because of the said altercation, the deceased came out of his house and was going to the field during the process of which the aforesaid incident had occurred wherein he was shot dead as alleged by the prosecution. Therefore, the motive for the offence is established. There was an enmity between the complainant party and the accused persons and, therefore, the aforesaid submission is found to be baseless. E F G

17. The prosecution has examined at least three eye-witnesses to the occurrence of the incident who have stated as to how the incident had happened. They have also stated the different and various role played by the accused persons. Since eye witnesses were available and examined, there was H

A no necessity of examining any other witness, inasmuch as,
there is no necessity for the prosecution to multiply witnesses
to prove and establish the prosecution case. There is no
requirement in the law of evidence that any particular number
of witnesses is to be examined to prove something. The
B evidence has to be weighed and not to be counted. The
witnesses who were examined were relatives of the deceased
and, therefore, there is no ground and reason why they should
be disbelieved. There is also no reason why they would not
speak the truth so as to see that the actual guilty persons are
C convicted.

18. It is also submitted that there has been an improvement
and embellishment in the prosecution case and the role of the
appellants have been exaggerated so as to see that all the
members of the family are punished and are sent to jail.
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19. In order to appreciate the said contention, we have
looked into the records. In fact, we find that the English
translation provided by the appellants in the additional paper
book of the evidence of PW-2 on the role of the appellants in
the incident alleged appears to be incorrect. Same is the case
E with the deposition of PW-4. The statements made by the said
witnesses regarding the alleged role of the present appellants
in the incident the English translation provided appears to be
wrong. In that view of the matter, we perused the original
F depositions of the two witnesses which have been recorded in
Hindi. On going through the same, we find that PW2 and PW4
have specifically stated that the present appellants were holding
the deceased by his hands and also exhorted Ramdutt to bring
the gun and to shoot at the deceased. The aforesaid
G statements of giving exhortion and holding the hand of the
deceased and Ramdutt coming with the gun and fired at him
are corroborated. It clearly proves and establishes from the said
fact that the present appellants also had the common intention
of killing the deceased. It is established from the records that
they had intentionally become a party to commit the murder of
H the deceased.

20. Section 34 of the Indian Penal Code provides that if two or more persons intentionally do an act jointly, the position in law would be just the same as if each of them has done the offence individually by himself. This doctrine of constructive criminal liability is well-established in law. The very fact that the appellants were holding the hand of the deceased and also at the same time exhorting Ramdutt to bring the gun and to fire upon the deceased so as to kill him speaks volume and also prove and establish that they have done the act intentionally so as to see that the deceased is fired upon and shot dead.

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21. In that view of the matter, we find no infirmity in the judgment and order passed by the High Court setting aside the order of acquittal so far the present appellants are concerned. We uphold the order of conviction and sentence passed against them and dismiss the appeal.

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22. The applications which are pending, are also disposed of in terms of the aforesaid order.

N.J.

Appeal dismissed.