



heated altercation between the parties; that thereafter the accused-appellants and the other accused persons formed an unlawful assembly and carrying lathis and other weapons in their hands they chased the deceased and entered into his house and thereafter assaulted him with the said weapons which ultimately proved fatal. PW5, mother of the deceased, also allegedly sustained injuries while trying to save her son at the hands of the accused.

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The trial court convicted the appellants and the other accused persons under Sections 148, 302 read with Sections 149, 452 and 325 read with Section 149 of IPC and sentenced them to RI for 1 year under Section 148 of IPC, life imprisonment under Section 302 read with Section 149 of IPC and RI for 2 years under Section 452 and Section 325 read with Section 149 of IPC. The conviction and sentence of the appellants was confirmed by the High Court, and therefore the instant appeal.

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Dismissing the appeal, the Court

HELD: 1. PW-5, in her evidence, has stated that their cows had damaged the crops standing in the field of accused-Badri. She also explained that when accused-Badri was trying to take away their cows to the cattle pond, her son reached there and there was heated altercation between them. According to her, the incident took place near their house and the fields of the accused are also situated opposite to her house. She explained that after entering into her house, the accused persons gave lathi blows to the deceased and when she intervened, she was also beaten up and her left hand was broken. She specifically named the persons including the present appellants who inflicted fatal blows on the chest of her son. It is further seen from her evidence that her injured son was taken to the Police Station and it was he who made a complaint about the occurrence and from

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A there he was taken to the hospital for treatment, however,  
 he died on the way to hospital. Inasmuch as PW-5 was  
 an injured witness, who, in fact, tried to save her son at  
 the hands of the accused, after going into her entire  
 statement, this Court concurs with the conclusion arrived  
 B at by the trial Court as well as the High Court insofar as  
 the present appellants are concerned. The evidence of  
 PW-5 and conviction based on her statement is  
 acceptable and sustainable. PW-11, son of the deceased,  
 is also an eye-witness to the incident. He witnessed the  
 C incident and narrated the whole story alleging the role  
 played by each one of the accused but his statement was  
 recorded after 14 days and no explanation was offered  
 for the same. Even if the evidence of PW-11 is eschewed,  
 there is no reason to disbelieve the version of injured eye-  
 witness (PW-5), mother of the deceased. [Paras 7, 8 and  
 D 10] [204-C-G; 205-C, G-H; 206-A]

2. The High Court has rightly concluded that the  
 present appellants have caused fatal blows due to which  
 the deceased succumbed to injuries while on the way to  
 E hospital. Also, as per the medical evidence, the injuries  
 received by him at the instance of the present appellants  
 were sufficient to cause death in the ordinary course of  
 nature. [Para 11] [206-B-C]

F 3. The plea of appellants for leniency in sentence  
 cannot be accepted since the prosecution has  
 established its case beyond reasonable doubt,  
 particularly, the role of the appellants who caused fatal  
 injuries. Since the conviction under Section 302 is being  
 G affirmed, the Court cannot impose a lesser sentence than  
 what is prescribed by law, however, taking note of the  
 age of appellant no. 2, he is free to make a representation  
 to the Government for remission and if any such  
 representation is made, it is for the Government to pass  
 H appropriate orders as per the rules applicable. In the

circumstances, the sentence cannot be altered to the period already undergone as requested by the appellants. [Para 12] [206-C-F]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 673 of 2008.

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From the Judgment & Order dated 25.08.2005 of the High Court of Madhya Pradesh bench Gwalior in Criminal Appeal No. 82 of 1992.

Lakhan Singh Chauhan, Anil Shrivastav for the Appellants.

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Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

**P. SATHASIVAM, J.** 1. This appeal has been filed against the judgment and order dated 25.08.2005 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 82 of 1992 whereby the Division Bench of the High Court partly allowed the appeal and confirmed the judgment dated 02.04.1992 passed by the II<sup>nd</sup> Additional Session Judge, Shivpuri, Madhya Pradesh in Session Case No. 157/1989 against the appellants herein under Sections 148, 302 read with 149, 452 and 325 read with 149 of the Indian Penal Code, 1860 (for short 'IPC').

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## 2. Brief facts:

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(a) As per the prosecution, on 09.09.1989, at about 12 noon, two cows belonging to Badri (since deceased) entered into the field of Ramjilal and Badri (accused), who is having the same name as that of the deceased and damaged the crops standing in the field which resulted into an altercation between them. During altercation, Badri (since deceased) inflicted a lathi blow on the head of accused-Badri and, thereafter, he ran away from the spot. Thereafter, the appellants herein along with

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A Ramjilal, Badri, Roshan and Brijmohan carrying luhangi (lethal  
weapon) and lathis in their hands reached the house of Badri  
(since deceased).

B (b) It is the further case of the prosecution that Chintu Mahte  
(Appellant No. 2 herein) dragged him from his house and  
Ramswaroop (Appellant No. 1 herein) gave a luhangi blow on  
the left rib of the deceased. Ramjilal and Chintu Mahte gave  
lathi blows on his neck and left rib respectively. Roshan gave  
a lathi blow on his neck and Badri (accused) gave a lathi blow  
C on his left cheek. The above said acts of the accused resulted  
into severe injuries on the body of the deceased which were  
sufficient to cause death in the ordinary course of nature.

(c) During the above said incident, Gourabai (PW-5),  
D mother of the deceased, rushed to save her son whereupon the  
accused Badri gave a lathi blow on her right hand due to which  
she also sustained injuries.

(d) On the very same day, i.e. on 09.09.1989, Badri (since  
E deceased) along with his mother and son-Narayan (PW-11)  
lodged an FIR at Police Chowki Amol Patha based on which  
Crime No. 12/1989 under Sections 147, 148, 149, 325 and  
452 of IPC was registered against the accused persons.  
Thereafter, Badri (since deceased) was immediately rushed to  
the hospital for medical examination and treatment but he died  
F on the way. Gourabai (PW-5) – the injured was also referred  
for medical examination.

(e) After completion of the investigation, a charge sheet  
was filed against all the accused persons for the offences  
punishable under Sections 148, 302 read with Sections 149,  
G 452 and 325 read with Section 149 of IPC and the case was  
committed to the Court of IInd Additional Session Judge,  
Shivpuri and numbered as Session Case No. 157/1989.

(f) The Additional Session Judge, by judgment dated  
H 02.04.1992, convicted all the accused persons under Sections

148, 302 read with Sections 149, 452 and 325 read with Section 149 of IPC and sentenced them to suffer rigorous imprisonment (RI) for 1 year under Section 148 of IPC, life imprisonment under Section 302 read with Section 149 of IPC and RI for 2 years for the offences punishable under Section 452 and Section 325 read with Section 149 of IPC. A  
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(g) Aggrieved by the judgment and order of the Additional Session Judge, all the accused persons preferred an appeal being Criminal Appeal No. 82 of 1992 before the High Court of Madhya Pradesh, Bench at Gwalior. C

(h) By impugned judgment and order dated 25.08.2005, the High Court confirmed the conviction and sentence of accused Ramswaroop and Chintu Mahte (appellants herein) under all the charges. The appeal in respect of accused Badri was abated due to his death during the pendency of the appeal. D  
The High Court set aside the conviction of rest of the appellants therein, namely, Ramjilal, Roshan Lal and Brij Mohan under Section 302 read with Section 149 of IPC while affirming the conviction under Sections 148, 452 and 325 read with Section 149 of IPC and modified the sentence to the period already undergone. E

(i) Questioning the conviction and sentence, Ramswaroop and Chintu Mahte, the appellants herein filed the above appeal.

3. Heard Mr. Lakhan Singh Chauhan, learned counsel appearing for the appellants-accused and Ms. Vibha Datta Makhija, learned counsel appearing for the respondent-State. F

4. The only point for consideration in this appeal is whether the prosecution has established its case against the present appellants beyond reasonable doubt? G

5. Since the present appeal relates to Ramswaroop and Chintu Mahte (appellants herein), there is no need to traverse the role of all the other accused. There is no serious dispute about unlawful assembly by the accused persons and initial H

A incident of causing damage of crops by the cows of the complainant. It is also clear from the materials placed by the prosecution that after the altercation in the field, all the accused armed with lathis and weapons in their hands chased the deceased and entered into his house.

B 6. The prosecution heavily relied on the evidence of the injured eye-witness Gourabai, who is none else than the mother of the deceased, who also sustained injuries while saving her son at the hands of the accused. She was examined as PW-5.

C 7. Gourabai (PW-5), in her evidence, has stated that their cows had damaged the crops standing in the field of Badri. She also explained that when accused-Badri was trying to take away their cows to the cattle pond, her son Badri (since D deceased) reached there and there was heated altercation between them. According to her, the incident took place near their house and the fields of the accused are also situated opposite to her house. She explained that after entering into her house, the accused persons gave lathi blows to the E deceased and when she intervened, she was also beaten up and her left hand was broken. She specifically named the persons including the present appellants who inflicted fatal blows on the chest of her son. It is further seen from her evidence F that her injured son was taken to the Police Station and it was he who made a complaint about the occurrence and from there he was taken to the hospital for treatment, however, he died on the way to hospital. Inasmuch as PW-5 being an injured witness, who, in fact, tried to save her son at the hands of the accused, after going into her entire statement, we concur with G the conclusion arrived at by the trial Court as well as the High Court insofar as the present appellants are concerned.

H 8. It is not in dispute that PW-5 also sustained injuries while saving her son and was present at the spot. She was medically examined by Dr. R.K. Goel (PW-14), who submitted the report which states as under:

"He had seen two contusions. One of size 3 cm x 2 cm on the middle of right forearm, above this injury, there was a lacerated wound of size 1 cm x ½ cms. Swelling was also there and the same was paining on touching. The other contusion was on the upper side of left forearm of size 1 cm x 1 cm. For injury No.1 X-ray examination was advised. Injury No.2 was found simple in nature. Both the injuries were caused by some hard and blunt object. Ramkishan (PW-10) is the witness of inquest report as well as notice (Ex.P/24) which was issued to him for preparation of the same."

In such circumstance, we fully accept the evidence of PW-5 and conviction based on her statement is acceptable and sustainable.

9. *Coming to the injuries sustained by the deceased at the hands of the accused, Dr. S.P. Jain (PW-4) had performed the post mortem on the dead body and found the following injuries:*

"1. One contusion over left Pectoral region extending upto amilla of size 8 cm x 4 cm.

2. One abrasion of right side of chest lower part of size 5 cm x 1 cm.

On opening of chest, fractures were found on the 4th, 5th, 6th and 7th rib. Pleura was also found torn. The middle and upper part of left lung was also found torn. About one litre of blood had collected in pleura cavity. Both the chambers were empty. Injuries were caused by hard and blunt object within twenty four hours. His examination report is Ex.P/7. In the re-examination he has submitted that the injuries mentioned in the post mortem report (Ex.P/7) were sufficient to cause death in the ordinary course of nature."

10. Narayan (PW-11), son of the deceased, is also an eye-witness to the incident. He witnessed the incident and narrated the whole story alleging the role played by each one of the accused but his statement was recorded after 14 days and no

A explanation was offered for the same. Even if we eschew the evidence of PW-11, as observed earlier, there is no reason to disbelieve the version of injured eye-witness (PW-5), mother of the deceased.

B 11. The High Court has rightly concluded that the present appellants, viz., Ramswaroop and Chintu Mahte have caused fatal blows due to which Badri succumbed to injuries while on the way to hospital. Also, as per the medical evidence, the injuries received by him at the instance of the present appellants were sufficient to cause death in the ordinary course of nature.

C 12. Finally, learned counsel for the appellants while pointing out that Ramswaroop (Appellant No. 1 herein) has served 7 years, 4 months and 18 days in jail and Chintu Mahte (Appellant No. 2 herein), aged about 80 years, has served 6 years, 4 months and 18 days, pleaded for leniency. We are unable to accept the above claim of the learned counsel for the appellants since the prosecution has established its case beyond reasonable doubt, particularly, the role of the appellants who caused fatal injuries. Since we are affirming the conviction under Section 302, the Court cannot impose a lesser sentence than what is prescribed by law, however, taking note of the age of Chintu Mahte (Appellant No. 2 herein), he is free to make a representation to the Government for remission and if any such representation is made, it is for the Government to pass appropriate orders as per the rules applicable. In the above circumstance, the sentence cannot be altered to the period already undergone and the said request of the counsel for the appellants is rejected.

E 13. Under these circumstances, there is no merit in the appeal, on the other hand, we fully agree with the conclusion arrived at by the High Court. Consequently, the appeal fails and the same is dismissed.

B.B.B.

Appeal dismissed.

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