

STATE OF M.P.

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v.

ASHOK & OTHERS ETC.

(Criminal Appeal Nos.2096-2098 of 2009)

JULY 01, 2015

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**[PINAKI CHANDRA GHOSE AND
UDAY UMESH LALIT, JJ.]**

Penal Code, 1860: s.302 r/w s.149 – Murder – Prosecution case that the victim-deceased was caught by the accused and petrol poured over him and lit fire – Deceased ran from the spot – Respondents surrounded him and attacked him with sword and burning tyre – Trial court convicted all the accused – High Court granted benefit of doubt to the respondents on the premise that they had reached the spot after the commission of offence and as such the charge of formation of unlawful assembly by them was not established – Appeal against acquittal of respondents – Held: Role of respondents in the commission of crime was clearly made out from the dying declaration as well as testimony of the eye witness – The sequence of narration certainly showed that they were waiting in ambush – It may be that only two of them set the deceased afire but the others definitely ensured by surrounding the deceased that he would not be allowed to escape – It was a crime which was committed by all of them guided by same purpose, acting in concert achieving the result that was desired – The intent of the entire assembly was clear, eloquently established by their presence, preparedness and participation – The order of acquittal is set aside and conviction order by trial court is restored – Appeal – State’s appeal against acquittal.

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A Allowing the appeals, the Court

B HELD: 1. Statement Ext. P-20 leading to the registration of crime as well as statement Ext. P-17 recorded by the Executive Magistrate are dying declarations by the victim-deceased. Both these statements are consistent and name the respondents and state the role played by them in surrounding the deceased and giving cries that he be beaten and should not be left. In the face of such assertions, it is impossible to accept that these respondents arrived at the scene of occurrence after the crime was completed. Their role is that of participants in the crime who did not allow the deceased to escape by encircling him. The finding rendered by the High Court is against the record. [Para 9] [1081-A-C]

E 2. Both the statements clearly referred to the presence of PW13. It was PW13 who immediately ran home and intimated the fact that the deceased was set afire, to the inmates of the house. Consequently PW4 and PW15 arrived at the scene of occurrence. The deceased was then removed to the hospital. In his testimony PW13 stated that while the deceased was burning, respondent 'V' threw a burning tyre upon him and original accused threw a sword at him. The post mortem clearly showed an incised injury in the back suffered by the deceased, which completely supported such assertion. The presence of said PW13 was completely established. He was eye witness to the occurrence. In the light of the eye witness account and the post mortem report, it is quite clear that the respondents were present when the deceased was burning alive. The sequence of narration certainly showed that they were waiting in ambush. It may be that only two of them set the deceased afire but the others

definitely ensured by surrounding the deceased that he would not be allowed to escape. Further, throwing of burning tyre and the sword would also indicate the active role played by them. Even if one of them was ready with a sword, that is clearly indicative of the level of preparedness on their part and there is no reason how they could not be said to be members of unlawful assembly. It was a crime which was committed by all of them guided by same purpose, acting in concert achieving the result that was desired. The intent of the entire assembly was clear, eloquently established by their presence, preparedness and participation. [Paras 10, 11] [1081-D-H; 1082-A-C]

CRIMINALAPPELLATE JURISDICTION: Criminal Appeal Nos. 2096-2098 of 2009.

From the Judgment and Order dated 11.01.2007 of the High Court of Judicature of M. P. at Jabalpur in Criminal Appeal Nos. 170/95, 841/95 and 369/96.

Vanshaja Shukla, Mishra Saurabh for the Appellant.

Akshat Shrivastava, Sarabjit Dutta for the Respondents.

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J. 1. These appeals by special leave challenge the Judgment and Order dated 11.01.2007 passed by the High Court of Judicature of Madhya Pradesh, Jabalpur bench at Jabalpur in Criminal Appeals Nos. 170 of 1995, 841 of 1995 and 369 of 1996 by which respondents Ashok s/o Banshilal Vedehi, Raju @ Rajendra s/o Banshilal Vedehi, Gullu @ Rajesh s/o Banshilal Vedehi, Gouri Shankar s/o Banshilal Vedehi, Vidhna @ Ramdas s/o Lallulal Kewat, Surendra s/o Harilal Vedehi were acquitted by the High Court of all the charges leveled against them.

A 2. According to the prosecution one Tikaram son of Chote
Lal Pandey after finishing his duty was returning home at 8:00
p.m. on 11.04.1989. On the way he met his younger brother
PW13 Sheetal Prasad. Both were coming on bicycles, PW13
B being 10-15 feet behind said Tikaram. When Tikaram reached
Tilwaraghat he was stopped in front of the house of Hari Maharaj
by Dibbu @ Devendra by catching his bicycle. Said Dibbu
then poured petrol over him and Jittu @ Jitendra burnt him by
igniting a match stick. Tikaram started burning and ran from
C the spot. He was surrounded by present respondents and two
others namely Harilal and Banshilal. All of them exhorted to
beat him and to burn him and that he should not be allowed to
run from the spot. Respondent Vidhna @ Ramdas threw a
burning tyre upon him. While Tikaram was running helter-
D skelter, Harilal threw a sword at him. Tikaram ran to the house
of PW3 Vinod and fell there. PW3 extinguished the fire. The
incident was witnessed by PW13 who ran to the house and
conveyed the fact of Tikaram having been set afire to the
E inmates of the house. As a result, PW4 Ravindra Kumar
Pandey son of said Tikaram and PW15 Laxmi Prasad Pandey
rushed to the scene of occurrence. Tikaram disclosed to both
PWs 4 and 15 that he was set afire in the aforesaid manner
and by the persons mentioned above. Tikaram was then
removed to Medical College Hospital, Jabalpur.

F 3. On receiving information, PW16 inspector R.P. Singh
went to the casualty ward and enquired about the condition of
Tikaram with letter Ext.P-30. PW18 Dr. A.C. Nagpal gave
G certificate that Tikaram was conscious and in a position to
speak. PW16 inspector R.P. Singh thereafter took the
statement of said Tikaram, translation of which is to the
following effect:

H “Sir, I am residing at Ramnagra. Today I was going to
Ramnagra after performing my duty on Petrol Pump. This

incident occurred at Tilwaraghat opposite the house of Hari Maharaj. I was going by my cycle. My brother Sheetal Prasad was following me. Dibbu caught hold my cycle and stopped me and poured petrol on me from a Jug and Jeetu set fire on me by a Match Box. My body started burning. Hari, Surendra, Bigna, Ashok, Bansi, Raju and the son of sister of Bansi Maharaj who lives in Kamla Nagar who has beard, the younger son of Bansi Gullu and 2-3 other persons from city their names I do not know, surrounded me. I ran away and entered into a room of house of Vinod Kumar situated nearest and they all were crying "Maaro Maaro Sale Ko, Bachne Na Paye" and I fell down there. There were so many persons present who have seen this incident. There is an old enmity and quarrel was going on between us and Dibbu etc. For taking revenge from the said enmity today they poured petrol on me and set on fire, in order to kill me. My whole body has been burnt. My clothes also have been burnt. Report has been read over and the same has been written as stated by me. Please investigate the matter."

4. Pursuant to the aforesaid statement recorded at 8:30 p.m. Dehati Nalishi Ext. P-20 was lodged and crime was registered. Tikaram was shifted to ward no. 11 for further treatment. On the same night panchnama was prepared by said PW16. In the night of 11.04.1989 and 12.04.1989 PW5 Executive Magistrate S.P. Meshram recorded statement Ext. P-17 of said Tikaram. The statement was recorded after due certification from doctor about consciousness and fitness of said Tikaram. The translation of the statement Ext. P-17 is as under:-

"On 11.04.1989 at about 8 O'clock in the evening I was going to my home in Ramnagra from Jabalpur. Near Tilwaraghat Dibbu alias Devendra poured petrol on my

A body and Jittu alias Jitendra burnt me by igniting the
matchstick. At that time I was going on a bicycle on the
road. They stopped me and did this act. My younger
brothers Sheetal and Manohar were about 15 Ft. behind
me. I had enmity with Dibbu and Jittu from before. So they
B did this to me. Hari, Banshi, Ashok, Raju, Gaurishankar,
Gullu, Surendra and Vidhna were the persons who
assaulted me.”

5. On 12.04.1989 at about 8:15 p.m. Tikaram succumbed
C to his injuries. On 13.04.1989 at 10:30 a.m. post mortem on
the body of said Tikaram was conducted by PW17 Dr. D.K.
Sakalle. According to the post mortem following facts were
noticed:

D “There were third degree burns on the body of the
deceased on the scalp, all around neck, face, ears, lips,
all over the trunk except the upper joint of the thighs, over
scrotum and penis all around both upper limbs except tips
and nails of fingers on right side. Third degree burns
E present all around left thigh, on right thigh all around except
the back part and over upper part of the left leg and the
middle part of the right leg. There were blisters in some
parts of the left leg due to burns. Similarly there were some
blisters on the back of the right leg. There was inflammation
F around the burn injuries. The deceased was burnt about
90%. Apart from the burn injuries the following injuries were
also there on the body of the deceased. Incised wound
obliquely on back of chest. It was 4” long, 1” broad and
maximum depth was 3/4”. It contained a clot of blood and
G there was an abrasion on its left side. There was no injury
in any internal organ of the deceased.”

6. After due investigation charge sheet was filed and 10
accused persons were sent for trial. The prosecution examined
H twenty witnesses while three witnesses were examined in

[UDAY UMESH LALIT, J.]

defence. Dying declarations namely statements Exts.P-20 and P-17, so also oral declarations as deposed by PWs 4 and 15 and the eye-witness account through PW13 were principally relied upon by the prosecution. Accepting the case of prosecution, the trial court convicted all the accused. Accused Dibbu @ Devendra and accused Jittu @ Jitendra were found guilty under section 302 I.P.C. and section 148 I.P.C. while others namely the present respondents along with Harilal and Banshilal were found guilty under section 302 read with section 149 I.P.C. Accused Dibbu @ Devendra and accused Jittu @ Jitendra were sentenced to life imprisonment under section 302 I.P.C. and to rigorous imprisonment of one year under section 148 I.P.C. All the other accused were sentenced to life imprisonment under section 302 read with section 149 I.P.C. and to rigorous imprisonment for 6 month under section 147 I.P.C.

7. All convicted accused persons challenged their conviction and sentence by filing Criminal Appeal Nos. 170 of 1995, 841 of 1995 and 369 of 1996. During the pendency of said appeals it was reported that accused Harilal and Banshilal had died and as such their appeals were declared to have abated. The High Court after going through the record found that the case of the prosecution was fully established as against accused Dibbu @ Devendra and accused Jittu @ Jitendra. The High Court however gave benefit of doubt to the respondents on the premise that they had reached the spot after the commission of offence and as such the charge of formation of unlawful assembly by them was not established. The observations by the High Court in that behalf were as under:

“Considering the over-all evidence on record, it is proved beyond reasonable doubt that Dibbu alias Devendra and Jittu alias Jitendra have committed the offence. The case of Dibbu and Jittu is established by the prosecution beyond reasonable doubt in commission of offence. As regards

A other appellants in all the connected appeals are concerned, they are entitled for the benefit of doubt. It is narrated in the dying declaration and Dehati Nalishi that they reached the spot after the commission of offence. Therefore, formation of unlawful assembly by them is not established.”

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C The judgment of the High Court affirming their conviction and sentence has not been challenged by the accused Jittu @ Jitendra and Dibbu @ Devendra. The judgment to the extent it acquitted the present respondents of all the offences is presently under challenge at the instance of the State of Madhya Pradesh in these appeals by special leave.

D 8. Ms. Vanshaja Shukla, learned advocate appearing for the State submitted that the role of the present respondents in the commission of crime was clearly made out from the dying declarations as well as from the testimony of the eye witness. The Injury as found in the post mortem also supported the eye witness account, which in turn indicated the role played by accused other than those who stand convicted by the High Court. In her submission, the view taken by the High Court was completely unsustainable. Mr. Akshat Srivastava learned advocate appearing for the respondent supported the judgment of the High Court. It was submitted that the principal role as alleged in the dying declarations was not as regards the present respondents and as such they were rightly granted benefit of doubt by the High Court.

G During the course of hearing it was submitted that respondent no.6 namely Surendra s/o Harilal Vedehi had died during the pendency of these appeals. The learned counsel appearing for the State was directed to ascertain the fact. Accordingly death certificate of said respondent no.6 has been filed on record indicating that he died on 01.10.2014. We therefore direct that the proceedings stand abated as against

said respondent no.6.

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9. Statement Ext. P-20 leading to the registration of crime as well as statement Ext. P-17 recorded by the Executive Magistrate are dying declarations by Tikaram. Both these statements are consistent and name the present respondents and state the role played by them in surrounding Tikaram and giving cries that he be beaten and should not be left. In the face of such assertions, it is impossible to accept that these respondents arrived at the scene of occurrence after the crime was completed. Their role is that of participants in the crime who did not allow Tikaram to escape by encircling him. The finding rendered by the High Court is against the record.

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10. Both the statements clearly referred to the presence of PW13. It was PW13 who immediately ran home and intimated the fact that Tikaram was set afire, to the inmates of the house. Consequently PW4 and PW15 arrived at the scene of occurrence. Tikaram was then removed to the hospital. In his testimony PW13 stated that while Tikaram was burning, respondent Vidhna @ Ram Das threw a burning tyre upon him and original accused Harilal threw a sword at him. The post mortem clearly shows an incised injury in the back suffered by said Tikaram, which completely supports such assertion. Having gone through the record we find the presence of said PW13 completely established and accept him to be eye witness to the occurrence. It is relevant to note that the High Court has also not disbelieved the testimony of PW13.

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11. In the light of the eye witness account and the post mortem report it is quite clear that the respondents were present when Tikaram was burning alive. The sequence of narration certainly shows that they were waiting in ambush. It may be that only two of them set Tikaram afire but the others definitely ensured by surrounding Tikaram that he would not be allowed to escape. Further, throwing of burning tyre and

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- A the sword would also indicate the active role played by them. Even if one of them was ready with a sword, that is clearly indicative of the level of preparedness on their part and we see no reason how they could not be said to be members of unlawful assembly. It was a crime which was committed by all
- B of them guided by same purpose, acting in concert achieving the result that was desired. The intent of the entire assembly was clear, eloquently established by their presence, preparedness and participation. Though we are conscious that while considering an appeal against acquittal we should be
- C extremely slow in interfering, in our considered view the assessment made by the High Court in the present case is completely unsustainable and against the record.

- D 12. We therefore allow these appeals, set-aside the judgment and order of acquittal rendered by the High Court and restore the judgment of conviction and sentence as recorded by the trial Court against the respondents. The respondents shall be taken in custody forthwith to serve the sentence awarded to them.

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Devika Gujral

Appeals allowed.