A JAGDISH

v.

STATE OF HARYANA

(Criminal Appeal No. 411 of 2008)

B JUNE 29, 2016

[ABHAY MANOHAR SAPRE AND ASHOK BHUSHAN, JJ.]

Penal Code, 1860 – ss. 304 Part II and 323 – Prosecution case that free fight between relatives joined by other people to stop the fight – As a result death of Z and simple injuries to three persons C *– Conviction of appellant along with others for the offences punishable u/s. 304 Part II and s. 323 and sentenced accordingly – Upheld by the High Court – On appeal, by the appellant, held: Overwhelming evidence of three eye-witnesses proved beyond reasonable doubt that the appellant was involved in the incident and gave lathi blows causing injuries to the deceased – Findings* D *by the courts below that incident did take place as alleged by the prosecution and appellant was present on the spot along with other accused – Non-finding of the blood stains on the spot has no effect on the prosecution case – Thus, the courts below justified in holding that the prosecution was able to prove the case beyond reasonable* E *doubt against the appellant.*

Evidence – Appreciation of, by the Supreme Court – When conviction based on concurrent findings of two courts – Held: Supreme Court cannot appreciate the entire evidence de novo in a routine manner while hearing the criminal appeal – It is only when F *the impugned finding though concurrent in nature is wholly arbitrary, unreasonable or/and perverse to the extent that no judicial mind of average capacity can ever record such conclusion – On facts, no arbitrariness or/and unreasonableness noticed in the concurrent finding of the two courts below to persuade Supreme Court to re-*G *appreciate the entire evidence.*

Dismissing the appeal, the Court

HELD: 1.1 It is a settled principle of law that this Court cannot appreciate the entire evidence *de novo* in a routine manner while hearing the criminal appeal and that too when the conviction H **is based on concurrent findings of two courts. It is only when this**

Court comes to a conclusion that the impugned finding though concurrent in nature is wholly arbitrary, unreasonable or/and perverse to the extent that no judicial mind of average capacity can ever record such conclusion, the Court may in appropriate case undertake the exercise of appreciating the evidence to the extent necessary to find out the error. In the instant case, no arbitrariness or/and unreasonableness is noticed in the concurrent finding of the two courts below inasmuch as the appellant was not able to point out any kind of illegality in the finding, which would persuade this Court to re-appreciate the entire evidence. [Paras 19, 20] [171-C-E]

1.2 The courts below were justified in appreciating the evidence of PWs 2, 10 and 12 who were held to be the eye-witnesses to the incident and rightly came to a conclusion that the appellant was armed with lathi and gave blows to the deceased and was, therefore, responsible for causing death of Z. The evidence is consistent on all the material issues. There is nothing on record to suggest that these witnesses had any kind of enmity against the appellant or that they were closely related to the deceased or complainant or/and his family. In the absence of anything against these witnesses, their testimony was rightly accepted by the two courts below. [Paras 21, 23] [171-E-F, H; 172-A]

1.3 A concurrent finding of two courts, which is based on appreciation of oral evidence on a question as to whether the appellant (accused) was present on the spot, whether he gave blow to deceased and, if so, how many etc. is binding on this Court. It is more so when no illegality was pointed out in the finding warranting any interference. Further, there is no hesitation in upholding the findings of the two courts below and it is held that the incident in question did take place as alleged by the prosecution and that the appellant was present on the spot along with other accused. [Paras 22, 24] [171-F-G; 172-B]

1.4 Merely because the blood stains were not found on the spot by itself is no ground to hold that the appellant was not involved in the incident and that no such incident had taken place. In any event, in the light of overwhelming evidence of as many as three eye-witnesses, it is proved beyond reasonable doubt that the appellant was involved in the incident and being armed with

A **lathi gave blows with the lathi causing injuries to the deceased. The courts below were justified in holding that the prosecution was able to prove the case beyond reasonable doubt against the appellant. [Paras 26, 27] [172-D-E]**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.
B 411 of 2008.

From the Judgment and Order dated 06.11.2007 in Criminal Appeal No. 34 SB of 2004 passed by the High Court of Punjab and Haryana, Chandigarh.

Ms. Tripat Kaur, Rameshwar Prasad Goyal, Advs. for the Appellant.

C Sanjay Kr. Tyagi, Ms. Monika Gosain, Kamal Mohan Gupta, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed against the final judgment and order dated 06.11.2007 passed by the High Court
D of Punjab and Haryana at Chandigarh in Criminal Appeal No. 34-SB of 2004 whereby the High Court dismissed the appeal filed by the appellant herein and upheld the judgment of Trial Court dated 20.12.2003 in Session Trial No. 137/25.08.2003 convicting the appellant herein for the offences punishable under Section 304 Part II and Section 323 of the Indian Penal
E Code, 1860 (hereinafter referred to as "the IPC") and sentenced him to undergo rigorous imprisonment for five years with a fine of Rs.2000/- under Section 304 Part II of IPC and for a term of one year for the commission of the offence punishable under Section 323 of IPC. Both the sentences were to run concurrently. In default of payment of fine, to undergo further rigorous imprisonment for six months.

F 2. The prosecution case in brief is as under:

It is a case of free fight between two sets of relatives in street which was joined by other people too to get the fight stopped causing the death of Zile Singh and simple injuries on the persons of Phoola Ram, Raj Kumar and Krishan Pal.

G 3. Zile Singh, Krishan Pal, Raj Kumar and Phoola Ram are the residents of village Mowana. On 15.06.2001, at about 4.30-5.00 p.m., when Phoola Ram, after doing his day's work, was returning home and he was about to reach home, Nafe Singh armed with gandasi came and challenged and abused him and inflicted a gadasi blow on his head. On
H hearing the cry of Phoola Ram, Zile Singh and Raj Kumar, sons of Phoola

Ram and Krishan Pal, his grandson came there to rescue him. In the meantime, Jagdish armed with lathi came and inflicted lathi blow on each of his hands. Ranjit and Rameshwar also reached there and inflicted lathi blow to Raj Kumar and Krishan Pal, Dharma, son of Sadhu Ram inflicted lathi blow on his shoulder, Jagdish and Ranjit inflicted lathi blow to Zile Singh, who fell unconscious. Arjun, son of Shankar Gadaria and many other villagers rushed to the spot and rescued them from the clutches of the accused.

4. The injured persons were shifted to hospital. On 21.06.2001, Zile Singh, injured succumbed to his injuries.

5. On the statement of Phoola Ram, FIR No. 280 was registered against the accused persons at the Police Stati-on, Safidon. On the death of Zile Singh, inquest was conducted and his body was sent for post mortem. The post mortem report shows that the injuries on the body of Zile Singh-deceased were ante-mortem in nature and sufficient to cause death in the ordinary course of nature.

6. The accused persons were arrested and interrogated and the weapons were recovered. The accused persons, namely, Ranjit, Rameshwar, Dharma and Jagdish, sons of Sadhu Ram and Nafe, son of Jagdish were charged under Sections 302/324/323 read with Section 34 IPC and the case was committed to the Court of Additional Sessions Judge, Jind.

7. The prosecution examined 14 witnesses. In defence, three witnesses were examined.

8. By judgment dated 20.12.2003 in Sessions Trial No. 137/ 25.08.2003, the Trial Court convicted Jagdish, the appellant herein for the offences punishable under Section 304 Part II and Section 323 of the IPC and sentenced him to undergo rigorous imprisonment for five years with a fine of Rs.2000/- under Section 304 Part II of IPC and for a term of one year for the commission of the offence punishable under Section 323 of IPC. Both the sentences were to run concurrently. In default of payment of fine, to undergo further rigorous imprisonment for six months.

9. Nafe Singh was convicted under Section 324 and sentenced to the period already undergone by him in jail.

10. Rameshwar and Dharma were convicted under Section 323

A IPC and sentenced to the period already undergone by them. Ranjit was sentenced under Section 323 IPC and sentenced to the period already undergone by him.

11. Challenging the order of conviction and sentence of the Trial Court, appeals being Crl.A. Nos.34-SB and 637 of 2004 were filed. B The High Court, by impugned judgment dated 06.11.2007 dismissed both the appeals upholding the judgment of the Trial Court.

12. Aggrieved by the said judgment in Crl.A. No.34-SB of 2004, the appellant-accused (Jagdish) has filed this appeal by way of special leave before this Court.

C 13. Heard learned counsel for the parties.

14. Learned counsel for the appellant while assailing the legality and correctness of the impugned order submitted that the prosecution has failed to prove the case against the appellant and, therefore, both the Courts below erred in convicting the appellant under Section 304 Part II D read with Section 323 of IPC for the death of Zile Singh.

15. It was his submissions that firstly, there was no evidence to prove the complicity of the appellant in the crime, which caused death of Zile Singh; Secondly, the evidence adduced by the prosecution was not sufficient to sustain the appellant's conviction under the aforementioned E twin Sections; Thirdly, assuming that there was evidence yet both the Courts failed to properly appreciate the same,therefore, conviction is bad in law; Fourthly, since no blood stains were noticed on the spot and hence the Courts below erred in holding that the incident had taken place at the site; Fifthly, there was no evidence to prove that the appellant was present on the spot when the alleged incident took place and hence F he could not be implicated for commission of the offence; and lastly, in the absence of any injury on the appellant's body, it is difficult to hold that the appellant was involved in the commission of offence.

16. It is these submissions, which were elaborated by the learned counsel by referring to evidence on record.

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17. In reply, learned counsel for the respondent supported the impugned order and contended that no case is made out to interfere in the impugned order. Learned counsel urged that the prosecution was able to prove beyond reasonable doubt against the appellant that he was involved in the commission of offence and was present on the spot with H lathi and gave several blows to Zile Singh, which caused him the death.

Learned counsel pointed out that the entire incident was witnessed by three eye-witnesses, namely PW-2-Raj Kumar, PW-10-Kishanpal and PW-12- Complainant and their evidence was properly appreciated by the two Courts for recording the appellant's conviction for the offences in question. A

18. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal. B

19. It is a settled principle of law that this Court cannot appreciate the entire evidence *de novo* in a routine manner while hearing the criminal appeal and that too when the conviction is based on concurrent findings of two courts. It is only when this Court comes to a conclusion that the impugned finding though concurrent in nature is wholly arbitrary, unreasonable or/and perverse to the extent that no judicial mind of average capacity can ever record such conclusion, the Court may in appropriate case undertake the exercise of appreciating the evidence to the extent necessary to find out the error. C

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20. In this case, we have not been able to notice any arbitrariness or/and unreasonableness in the concurrent finding of the two courts below inasmuch as the learned counsel for the appellant was not able to point out any kind of illegality in the finding, which would persuade us to re-appreciate the entire evidence.

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21. On the other hand we find that two courts below were justified in appreciating the evidence of PWs 2, 10 and 12 who were held to be the eye-witnesses and rightly came to a conclusion that the appellant was armed with lathi and gave blows to the deceased and was, therefore, responsible for causing death of Zile Singh.

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22. A concurrent finding of two courts, which is based on appreciation of oral evidence on a question as to whether the appellant (accused) was present on the spot, whether he gave blow to deceased and, if so, how many etc. is binding on this Court. It is more so when no illegality was pointed out in the finding warranting any interference.

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23. Even then we perused the evidence of PWs 2,10 and 12 and find that it is consistent on all the material issues. It cannot be disputed that all the three witnesses witnessed the incident, which occurred in the evening. There is nothing on record to suggest that these witnesses had any kind of enmity against the appellant or that they were closely related to the deceased or complainant or/and his family. In the absence of H

A anything against these witnesses, their testimony deserves to be accepted and was, therefore, rightly accepted by the two courts below.

24. In the light of foregoing discussion, we have no hesitation in upholding the findings of the two Courts below and hold accordingly that firstly, incident in question did take place as alleged by the prosecution; B Secondly, the appellant was present on the spot along with other accused; Thirdly, the appellant was armed with lathi; and Fourthly, the appellant gave lathi blows to Zile Singh due to which he died.

25. So far as the submissions of the learned counsel for the appellant are concerned, since we perused the evidence and find no error in the C findings of the Courts below, the submissions urged deserve rejection. They have otherwise no merit being wholly based on appreciation of the evidence and the facts.

26. In our view, merely because the blood stains were not found on the spot by itself is no ground to hold that the appellant was not involved D in the incident and that no such incident had taken place as urged by the learned counsel for the appellant. We find that this ground was not urged in the Courts below. In any event, in the light of overwhelming evidence of as many as three eye-witnesses, it is proved beyond reasonable doubt that the appellant was involved in the incident and being armed with lathi gave blows with the lathi causing injuries to the deceased.

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27. In the light of foregoing discussion, the Courts below were justified in holding that the prosecution was able to prove the case beyond reasonable doubt against the appellant.

28. Since the State has not come up in appeal against the sentence F awarded to the appellant and nor the appellant has challenged the award of sentence to him, we need not examine the adequacy or inadequacy of the sentence awarded to the appellant.

29. In view of foregoing discussion, we find no merit in this appeal, which fails and is accordingly dismissed.

G 30. As a result, the bail granted to the appellant by this Court by order dated 15.05.2008 is cancelled and the appellant is directed to surrender before the Trial Court so as to enable him to undergo remaining period of sentence out of the total sentence awarded by the Courts below.

H Nidhi Jain Appeal dismissed.