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Cr. A. No.

151

CRIMINAL APPEAL UNDER SECTION 374 (2)

Division Bench (Criminal)

OF THE CODE OF CRIMINAL PROCEDURE, 1973

Accused
(In Jail)

son of Ramkishilawan Verma;

2. Manoj Nahle, aged 19 years,

son of Namdeo Nahle, Kunbi by caste;

Both residents of Bajrangpara, Kohka,

P.S. Supela, District Durg, M.P.

versus

Respondent: The State of Madhya Pradesh

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Cr.A.No.151 of 2000

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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL No. 151 of 2000

MANOJ NAHLE

---- **Appellant**

In Jail

Versus

STATE OF MADHYA PRADESH (NOW STATE OF CHHATTISGARH)

---- **Respondent**

Appeal Under Section 374 (2) of the Code of Criminal Procedure, 1973

For appellant : Mrs. Kiran Jain, Advocate.
For Respondent/State : Mr. Ravindra Agrawal, P.L.

**Hon'ble Shri Justice Navin Sinha, Acting Chief Justice &
Hon'ble Shri Justice Inder Singh Uboweja, J.**

JUDGMENT

Judgment dictated on Board by Hon'ble Mr. Justice Navin Sinha

16.01.2015

The present appeal arises from judgment of conviction dated 30.12.1999 passed by the 1st Additional Sessions Judge, Durg, in Sessions Trial No. 253/99 sentencing the two appellants under Sections 147, 148 and 302/149 I.P.C. to one year and two years and life imprisonment respectively directed to run concurrently.

2. The appeal stands abated against Appellant No.1 Balram as he is stated to have been deceased during pendency of the appeal according to the police report received.

3. P.W.1 Vijay Lokhande, brother of the deceased Raju @ Rajesh Lokhande lodged *Dehati Nalishi*, Exhibit P1 on 3.3.1999 at about 22:30 hours stating that Appellant, Balram along with five to six unknown were assaulting his brother with *lathi* and sword. He intervened and was taking his brother away who fell down. The appellant and Balram again assaulted his brother, who died. The witness was himself injured and his M.L.C. was conducted by P.W.12 Dr. Lal Mohammed, marked Exhibit P18 mentioning incised wound on the left index finger and abrasion on the index finger. The injuries were stated to be simple in nature caused by sharp cutting hard object and rough object respectively.

4. The postmortem of the deceased was done on 04.03.1999 marked Exhibit P14, by P.W.11 Dr. A.P.Savant. Death was opined due to excess haemorrhage and shock attributable to a large number of injuries, twenty three in number including several incised wounds, as mentioned in the postmortem report.

5. P.W.1 Vijay Lokhande being an injured eye witness is found to be completely reliable for reasons discussed hereinafter. In his defence under Section 313 Cr.P.C., the Appellant contended false implication because of his having lodged a report against the deceased earlier in the evening for an altercation at about 7:00 – 7:30 hours.

6. Learned counsel for the Appellant submitted that names of the others allegedly involved in the assault has not been mentioned. No specific allegations have been made with regard to who assaulted in what manner and caused which injury. P.W.1 was a solitary eye witness, related to the deceased. As an interested and related witness it will not be safe to convict the Appellant on his solitary testimony. The deceased had

criminal antecedents and it is possible he was killed by others in a different manner.

7. Learned counsel for the State opposed the appeal submitting that the credibility of P.W.1 Vijay Lokhande as reliable injured eye witness cannot be doubted and this alone is sufficient to uphold the conviction.

8. We have considered the submissions as also the evidence on record. P.W.1 Vijay Lokhande, brother of the deceased is an eye witness to the assault on the deceased. He has vividly described the first assault on the deceased by the Appellant and Balram. Thereafter, he has also deposed with regard to the second assault by them on the deceased when he was trying to take away his injured brother. Nothing has been elicited in cross-examination to doubt the credibility of the witness because he may have been related to the deceased. In cross-examination, no question has been asked suggesting that he was not eye witness and that the appellant had had not assaulted the deceased but that the deceased was assaulted by another at any other location and in a different manner.

9. P.W.1 Vijay Lokhande is himself an injured witness in the same episode. The credibility of an injured witness in the same occurrence carries greater weight. The witness has deposed that he had no animosity against the appellant. The appellant in his statement under Section 313 Cr.P.C. has mentioned that he had an altercation with the deceased earlier in the evening for which he had lodged a Rojnamchasanha but did not make any attributions against the witness. Even if the deceased had slapped the appellant as was stated in the police report that cannot justify the nature of murderous assault made. In (2013) 14 SCC 581(Mohd. Ishaque v. State of W.B.) it was observed :-

"16....It is trite law that the testimony of injured witnesses is entitled to great weight and it is unlikely that they would spare the real culprit and implicate an innocent person...."

10. The witness was the brother of the deceased injured himself in the same incident. Having eye witnessed the murderous assault on his brother, naturally he would be the most interested person to ensure that the real culprit was brought to book and not that another was falsely implicated letting go the person whom he had witnessed making the assault. No question was asked on behalf of the Appellant in cross-examination to the witnesses attributing any reason for false implication. It is the quality of the evidence and not the quantity that matters. There may be instances where no independent witness may be available and only a relative may be available. Merely because the witness was related that does not make him an interested witness in absence of any plea why the witness was keen for his false implication.

11. In view of the credible eye witness account by P.W.1 Vijay Lokhande, it is not considered necessary to deal with the confession, seizure and the F.S.L. report which are all but corroborative evidence only. The contention that the nature of assault attributed to each has not been mentioned leaves us unimpressed. In a mob assault it is not possible to give a graphic description of the assault with minute details.

12. In view of the fact that there is no evidence produced to controvert the depositions of the witnesses commencing from Dehati Nalishi till deposition in Court that the Appellant was accompanied by Balram and five to six others whom he could not identify with the defence not having been able to prove that there were no others or that the Appellant was not



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involved in the incident, the conviction for murderous assault with a common object stands established.

13. The three defence witnesses have only deposed that the deceased had criminal antecedents. That cannot aid the defence in any manner as no evidence has been led to suggest that the deceased because of his criminal antecedents may have been killed by some other, in a different incident, at a different location.

14. In conclusion, we find no reason to interfere the judgment of conviction. The bail bonds of the Appellant are cancelled. He is directed to surrender forthwith and/or be taken into custody for serving out the remaining period of sentence.

15. The appeal is dismissed.

Sd/-
Acting Chief Justice

Sd/-
Inder Singh Uboweja
Judge

Anjani
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