

**HIGH COURT OF RAJASTHAN AT JODHPUR**

Bench: Hon'ble Dr. Justice Pushpendra Singh Bhati and Hon'ble Mr. Justice Rajendra Prakash Soni

Date of Decision: 29th May 2024

Case No. :

D.B. CRIMINAL APPEAL NO. 473/1989

**APPELLANT(S):**

1. MOHANA RAM,
2. CHANDMAL (appeal abated),
3. BIRDICHAND,
4. KANARAM (appeal abated),
5. MAHENDRAKUMAR,
6. SHIVLAL,
7. KAILASH,
8. RAMURAM .....Appellants

**VERSUS****RESPONDENT(S):**

**THE STATE OF RAJASTHAN .....Respondent**

Legislation:

Sections 302/149, 325/149, 323 & 147 of the Indian Penal Code (IPC)

Section 374(2) of the Cr.P.C.

Section 108 of the Indian Evidence Act, 1872

Section 4 of the Probation of Offenders Act, 1958

Subject: Criminal appeal challenging conviction and life imprisonment for murder. The appeal scrutinizes the role of each appellant in the context of common intention and individual liability.

**Headnotes:**

**Criminal Law – Conviction Under Common Intention – Appellants convicted for offences under Sections 302/149 IPC – Court finds material contradictions in eyewitness testimonies – Appellants not proven to have individually caused fatal injuries – Conviction under Section 302/149 IPC set aside, convictions under Sections 147, 323, 325/149 IPC maintained [Paras 1-18].**

**Eyewitness Testimony – Reliability – Several prosecution witnesses turned hostile – Injured eyewitness could not identify attackers due to darkness – Court notes inconsistencies and contradictions in statements regarding involvement of accused in causing fatal injuries [Paras 12-14].**

**Evidence and Delay – Incident reported with two-hour delay – Bloodstained lathis recovered but blood group undetermined – Court finds prosecution failed to conclusively link appellants to fatal injuries [Paras 8, 16].**

**Joint Liability – Applicability of Section 149 IPC – Material contradictions in evidence regarding common intention – No direct evidence linking surviving appellants to causing fatal injuries – Court emphasizes requirement for clear evidence of common object for joint liability [Para 17].**

**Decision – Appeal Partly Allowed – Convictions under Section 302/149 IPC quashed – Convictions under Sections 147, 323, 325/149 IPC maintained – Benefit of Section 4 of the Probation of Offenders Act extended – Appellants' bail bonds discharged [Paras 18-19].**

**Referred Cases:**

Bhajan Singh v. State of Punjab, (1978) 4 SCC 77

Sarman &Ors. v. State of Madhya Pradesh, Criminal Appeal No.302 of 1981

Appabhai v. State of Gujarat, AIR 1988 SC 696

Shivraj Bapooore Jadhav v. State of Karnataka, 2003 Cr.L.R. (SC) 609

Ganeshi Lal v. State of Maharashtra, 1992 Cr.L.R. (SC) 443

State of Himachal Pradesh v. Jeetsingh, 1999 Cr.L.R. (SC) 193

State of Haryana v. Teksingh&Ors., 1999 Cr.L.R. (SC) 326

Gangadhar v. State of Orissa, (2002) 8 SCC 381

Representing Advocates:

For Appellant(s): Ms. Taniya Tuli, Amicus Curiae

For Respondent(s): Mr. B.R. Bishnoi, Public Prosecutor

## **Judgment**

1. This criminal appeal under Section 374(2) Cr.P.C. has been preferred claiming the following reliefs:

*“It is therefore, respectfully prayed that this appeal may kindly be accepted and accused appellants may be acquitted of all the charges levelled against them.”*

2. The matter pertains to an incident which occurred in the year 1987 and the present appeal has been pending since the year 1989.
3. The accused-appellants laid a challenge to the judgment of conviction and order of sentence dated 29.11.1989 passed by the learned Sessions Judge, Merta, in Sessions Case 2/88 (State of

Rajasthan Vs. Mansukh &Ors.), whereby the accused-appellants have been convicted for the offence punishable under Sections 302/149, 325/149, 323 & 147 IPC. For the offence punishable under Section 302/149 IPC, the accused appellants have been sentenced for life imprisonment and fine with default clause; whereas, for the offence punishable under Sections 325/149, 323 & 147, the accused-appellants were ordered to be released, while extending them the benefit of Section 4 of the Probation of Offenders Act, 1958.

3.1. The accused-appellants Chandmal, Mansukhram and Babulal, had expired, and therefore, the instant appeal qua them stood dismissed as abated.

3.2. Qua accused-appellant Kanaram, since his whereabouts were not known for last more than seven years, and thus, a presumption of his death was drawn under Section 108 of the Indian Evidence Act, 1872 and thus, while holding that he was no longer alive, the instant appeal qua him as well, stood dismissed as abated.

4. As the pleaded facts and the record would reveal, on 02.10.1987, at about 7:30 p.m., the complainant-Kishan Lal (PW.18) alongwith his uncle-Madan Lal, Mansab Khan and one Yasin were going towards the market to have tea and when reached near '*Teliyon Ki Masjid*', from the side of the garden of *Shahji Dharmshala Baag*, near Novelty Montessori School, all the ten accused persons, armed with *lathis* and hockeys, came with common motive, and started beating the complainant's uncleMadan Lal, whereupon Lalaram&Rajuram, who were nearby and coming after undertaking the work of labour in *Kumharo Ka Baas*, came to the rescue of Madanlal; thereupon, the accused persons also started

beating the said two persons as well. The said treatment was meted out by the accused persons to certain other persons, namely, Ratan Lal, Ramlal and Bhanwarlal and Lachchi, who came to the rescue to the complainant party.

4.1. As a result of the same, Madanlal and Ratanlal sustained fracture in hands, Rajuram sustained head injuries and the bloodoozing was there on the said vital part of his body, apart from other grievous injuries sustained by him, resultantly, Rajuram, being in unconscious state, fell on the spot. Thereafter, certain persons, namely, Banshilal, Ghasiram, Kunaram & others, came to the spot.

4.2. The said incident was reported by the complainant-Kishanlal on the said date i.e. 02.10.1987, vide written report (Ex.P-9), before the Police Station, Kuchaman City at about 8:30 p.m., on the basis whereof an FIR bearing No.113/87 was registered against the accused persons for the offences under Section 147, 148, 149, 307 & 323 IPC, and the investigation accordingly commenced thereafter. However, since on the same date i.e. 02.10.1987 itself, in the night, Raju, succumbed to the injuries and died, therefore, the offence under Section 302 IPC was also added against the accused persons. After investigation, the police filed charge-sheet against the accused persons for the offences under Sections 147, 148, 149, 302, 325 & 323 IPC before the competent court. Thereupon, the said competent court, committed the matter, owing to the case registered and investigated under the aforesaid provisions of law, committed the matter to the learned Trial Court.

5. The learned Trial Court framed the charge against accusedappellants for the offence under Sections 147, 325/149, 323/149

& 302 IPC and charged accused-Mansukhram and Kanaram (since expired) under Section 302 IPC and as against the remaining accused-appellants, the charge was framed for the offence under Section 302/149 IPC. the said charges were read over to the accused-appellants; the accused-appellants denied the same, and sought due trial, and the trial accordingly commenced thereafter before the learned Trial Court.

6. During the course of trial, the evidence of 22 prosecution witnesses were recorded and 65 documents were exhibited on behalf of the prosecution, whereas, the accused-appellants brought forth 2 documents and 1 witness in support of defence. Subsequently, the accused-appellants were examined under Section 313 Cr.P.C. where they denied all the charges and pleaded their innocence, and the trial accordingly commenced.

7. Thereafter, upon hearing the contentions of both the parties as well as considering the material and evidence placed on record, the learned Trial Court, convicted and sentenced the accusedappellants, as above, vide the impugned judgment of conviction and order of sentence dated 29.11.1989, against which the present appeal has been preferred on behalf of the accusedappellants.

8. Learned counsel for the accused-appellants submitted that out of 22 witnesses produced by the prosecution, 10 witnesses i.e. P.W.1 to P.W.10 had turned hostile during the trial, including Madanlal (PW.3), who was not only an injured eyewitness, but also the person with whom the accused persons had come to fight; during the cross-examination P.W.3 had turned hostile stating that at the time of incident, the sky had turned dark and he lost consciousness in the middle of the fight and did

not see who hurt him and only found the names of the accused on the next day.

8.1. It was further submitted that there was no intention on the part of the accused persons to injure the deceased as is reflected from the statement of P.W.3; instead the deceased himself had intervened in the ongoing fight during the course of which, in an unfortunate event, the said injuries were sustained by him.

8.2. It was also submitted that there was a delay of two hours in reporting the said incident to the police, when in fact the police station was only half a kilometre away from the place of incident. 8.3. It was further submitted that the accused persons particularly, Birdichand, Kanaram and Ramuram had injuries inflicted on their bodies as well, and the same remained unexplained by the prosecution witnesses; furthermore, both the sides were involved in a personal dispute with regard to a land and the present matter was one of private defence.

8.4. It was also submitted that though *lathis* with blood stains were recovered, but PW.21 Bundu Ali (*Motbir*) stated in his testimony that the police officials had informed him that two *lathis* that had blood stains were tied together in a cloth, and thus, he had put his signature on Ex.P-7 & Ex.P-8 - *Fard Baramadgi Lathi*; in furtherance, the blood group of blood stains have not been determined in the FSL Report i.e. Ex.P-65, thereby creating a doubt in the prosecution story.

8.5. It was further submitted that insofar as the joint liability under Section 149 IPC is concerned, there is no ocular witness to corroborate the prosecution version, from the very inception. It was also submitted despite Ex.P-11 revealing presence of numerous shops, none of the

shopkeepers has been examined and the testimony of the complainant PW.18 Kishan Lal is not wholly reliable, given the fact that the prudence does not permit a person to be a mere spectator when his immediate relatives are being victimized with such alleged grave injuries by ten individuals.

8.6. In support of such submissions, learned counsel relied upon the following judgments:

- a) *Bhajan Singh Vs. State of Punjab (1978) 4 SCC 77;*  
*and*
- b) *Sarman & Ors. Vs. State of Madhya Pradesh*  
*(Criminal Appeal No.302 of 1981 decided by the*  
*Hon'ble Apex Court on 07.08.1992).*

9. On the other hand, learned Public Prosecutor appearing on behalf of the State, while opposing the aforesaid submissions made on behalf of the accused-appellants, submitted that even though 10 witnesses so produced by the prosecution had turned hostile during trial, however the same does not necessarily imply that the testimony given by rest of the witnesses should also be discarded.

9.1. It was further submitted that there was no delay in lodging of the FIR as the incident in question took place around 7:30 p.m. in the evening and a written report in connection therewith was given to the concerned police station by 8:30 in the evening, as has been rightly observed by the learned Trial Court.

9.2. It was also submitted that P.W.12, 13, 14, 16 clearly stated in their respective statements seeing the deceased being hit by Mansukhram and Kanaram (since expired) on the head; furthermore, as per the



medical report prepared by P.W.15-Dr. Narendra Kumar, there were three injuries that were caused to the deceased on his head, and even just a single one was sufficient to cause death.

9.3. It was further submitted that though blood stained *lathis* were recovered from the accused persons.

9.4. It was also submitted that a bare perusal of the record would reveal that the accused-appellants had arrived at the place of incident with a clear intention and premeditation to kill PW.3 Madan Lal, but during the scuffle, Raju Ram sustained injuries on his head, resulting into his demise; the said intention and preplanning is further fortified from the fact that the complainant party and the accused party were having personal enmity with each other, owing to the long standing dispute between them in relation to a land.

9.5. In support of such submissions, reliance has been placed on the following judgments:

- (a) *Appabhai Vs. State of Gujarat, AIR 1988 SC 696;*
- (b) *Shivraj Bapooore Jadhav Vs. State of Karnataka, 2003 Cr.L.R. (SC) 609;*
- (c) *Ganeshi Lal Vs. State of Maharashtra, 1992 Cr.L.R. (SC) 443;*
- (d) *State of Himachal Pradesh Vs. Jeetsingh, 1999 Cr.L.R. (SC) 193;*
- (e) *State of Haryana Vs. Teksingh&Ors., 1999 Cr.L.R. (SC) 326;and*
- (f) *Gangadhar Vs. State of Orissa, (2002) 8 SCC 381.*

10. Heard learned counsel for the parties as well as perused the record of the case, alongwith the judgments cited at the Bar.

11. This Court observes that while Kishan Lal, his uncle Madan Lal and two other persons were out to drink tea in the evening, 10 persons came with *lathis* and started beating Madan Lal, whereafter Raju Ram (deceased) alongwith Lala Ram also came there and tried to rescue Madan Lal. However, the accused started beating Lala Ram and Raju Ram as well; during the ongoing tussel, Ratan Lal, Ramlal and Bhanwarlal and Lachchi also reached the place of incident and tried to rescue them from the accused persons, but they were also got injured during the said fight. During the incident, Raju Ram received injuries on the head resulting in his demise on the same day.

12. This Court further observes that 10 witnesses i.e P.W.1 to P.W.10 produced by the prosecution had turned hostile during the trial, including P.W.1 Yasin and P.W.2 Mansakh Kha, who as per the written report given by P.W.18 Kishan Lal (nephew of P.W.3) were allegedly present during the time of incident; however, both P.W.1 and P.W.2 in their respective statements deposed that neither of them saw the incident itself taking place.

13. This Court also observes that P.W.3 Madan Lal (injured eye witness) deposed during his statement that at the time of incident, it was dark out and he could not see the accused persons, and that, during the fight, he had lost consciousness in the middle of it and it was only on the next day that he found the names of the accused persons.

14. This Court further observes that prosecution witnesses P.W.12, P.W.13, P.W.14 & P.W.16, all four of them, who were also present at the time of incident and got injured during the said fight, had in their

statements deposed seeing Mansukhram and Kanaram (since expired) hitting Raju Ram (deceased) on his head.

14.1. This Court also observes that in his statement P.W. 12 RatanLal deposed that he saw accused-Mansukram and accusedKanaram inflicting blow on the deceased's head and that other accused persons were also involved in beating the deceased; whereas the other prosecution witnesses P.W.13, P.W.14 & P.W.16 had clearly deposed in their statements that they had seen accused-Mansukhram and accused-Kanaram (since expired) hitting the deceased on his head.

14.2. This Court further observes that PW.12 deposed in hisstatement that all the present accused-appellants had caused injuries to the deceased, but at the same time P.W.13, P.W.14 & P.W.16, who were also the eye witnesses, deposed that only accused-Kanaram and accused-Mansukhram, (since expired) both since deceased, caused injuries to the deceased, and thus, it is crystal clear that there are material contradictions in the depositions made by the eye witnesses, in regard to causing injuries to the deceased.

15. This Court further observes that as per Ex.P/33-Postmortem Report, four injuries were found on the head of the deceased and there were injuries on his hand and feet as well; as per the statements given by P.W.15 Dr. Narendra Kumar as well as the opinion given by him in Ex.P/33, the deceased died due to brain trauma causing respiratory arrest, owing to the fatal injuries sustained on his head and such injuries were sufficient to cause death of the deceased.

15.1. This Court also observes that the above-mentioned prosecution witnesses that were present at the time of the incident though stated seeing accused-Mansukhram and accused Kanaram (since expired) hitting the deceased on the head, however, there has been no mentioning of other co-accused of being involved in hitting the deceased on his head, which ultimately led to the demise of Raju Ram.

16. This Court further observes that as per the Ex.P/64-FSL Report, the blood group of the stains taken from the *lathis* recovered from the accused could not be determined, owing to the fact that the blood had disintegrated.

17. This Court also observes that the injury caused to the deceased by accused-Mansukhram (since deceased) and accused Kanaram (since deceased), which fact was supported by the statements of eye witnesses i.e. PW.12, PW.13, PW.14 & PW.16; though these prosecution witnesses have deposed that they themselves were beaten by the present accused-appellants, however, they have not deposed that there was any involvement of the accused-appellants in causing murder of the deceased.

17.1. This Court further observes that it is true that the accused appellants were involved in crime in question, but they are not accused of causing any injury to the deceased or aiding in causing injury to the deceased, which resulted in his demise.

17.2. It has also come on record that the main accused Kanaram and Mansukh Ram (since expired) had already expired and as mentioned above, the instant appeal qua them stood dismissed as abated.

18. This Court also observes that the learned Trial Court in the impugned judgment had failed to consider that the surviving accused-appellants had caused injuries to the other persons, and not to the deceased, and thus, the surviving appellants could not have been prosecuted and convicted for the offence punishable under Section 302 IPC.

18.1. Thus, it is evident from the present facts and circumstances that the elements of Section 300 IPC are not made out qua the present accused-appellants, and as such, no intention/bodily injury/knowledge can be attributed to the present surviving accused-appellants.

18.2. This Court further observes that the present appeal is pending for last about 35 years and age of the present surviving appellants is more than 50 years.

18.3. In furtherance, the learned Trial Court vide the impugned judgment had given the benefit of Section 4 of Probation of Offenders Act, 1958 to the present accused-appellants, as regards their conviction for the offences punishable under Sections 147, 323 and 325/149 IPC and that all the present surviving accused appellants have approximately undergone the custody for a period of 08 months, and also there nothing on record which could show that they have committed any other crime after suspension of the sentence awarded to them by the learned Trial Court.

18.4. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case, this Court, while maintaining the conviction for the offences under Section 147, 323, 325 read with 149 IPC

and also maintaining the conditions of imposed by the learned Trial Court vide the impugned judgment while extending the benefit of Section 4 of the Probation of Offenders Act, 1958 qua the said offences, the conviction of the surviving accused-appellants under Section 302/149 IPC is quashed and set aside. The bail bonds of the present surviving appellants qua the offence under Section 302/149 IPC stand discharged.

19. The instant appeal stands ***partly allowed***, in the above terms. The record of learned Trial Court be sent back forthwith.

20. This Court is thankful to Ms. Taniya Tuli, who has rendered her assistance as Amicus Curiae, on behalf of the accusedappellants, in the present adjudication.