

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2021

(Arising out of SLP (Crl.) No.239 of 2020)

ASHARAM TIWARI

....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH

...RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

Leave granted.

2. The appellant, A2, assails his conviction and sentence under Sections 302/34, 324/34, 325/34 and 323, IPC to life imprisonment and lesser punishments. Four accused persons were put on trial, the appellant being one of them, for an occurrence that took place on 23.10.2006 at about 4.00 pm. Two persons were deceased and three injured. Accused no. 3 and accused no. 4, who are not before us, have also been convicted under Section 302. Accused no. 1 has been convicted alike the appellant.

3. The genesis of the occurrence lay in certain lands purchased by PW-1, from the father of the appellant. Peeved, the appellant along with the co-accused came to the lands of PW-1 and asked him to return the lands to him. On refusal by PW-1, the accused are said to have threatened the witness and assaulted PW-1, his wife PW-4, their 12 years old son Ramashankar who was deceased within twenty four hours during course of treatment and their minor daughter. The appellants are then said to have proceeded to the house of Ramdas, the brother of PW-1, and shot him dead in presence of his son PW-2.

4. Learned counsel for the appellant submits that he was possessed of a lathi only. Two of the co-accused, A3 and A4, were armed with a country-made pistol and an axe respectively. Death of the two persons is ascribed to injuries caused by axe and firearm respectively and not by lathi. The third accused was also possessed of a lathi. The allegation of assault with lathis is omnibus. It cannot be said with certainty that the appellant also assaulted. The appellant did

not share any common intention with the other accused and has been implicated at the behest of the village sarpanch. His defence of alibi has not been considered properly. All three witnesses being related, false implication is evident because none of the independent witnesses have been examined. The defence of the appellant under Section 313, Cr.P.C. has not been properly considered.

5. Learned Additional Advocate General appearing for the State submitted that common intention is apparent from the fact that the four accused came armed together on the lands of PW-1. Having failed in their threats to him for return of the lands, all of them assaulted PW-1, PW-4, their daughter and minor son. The accused then went together to the house of the second deceased Ramdas and assaulted him also. The appellant was well aware of the co-accused carrying a country-made pistol and axe. The recovery of a bloodstained lathi and clothes of the appellant pursuant to his confession conclusively establish common intention.

6. We have considered the submissions on behalf of the parties and perused the evidence on record.

7. The appellant was unhappy that his father had sold lands to PW-1 and wanted them back. The four accused came to the lands of PW-1 and threatened him to return the lands. On his refusal to do so, A3 and A4 first assaulted him with an axe. A1 and the appellant assaulted him with lathis. PW-4, and her two children came to the rescue of PW-1. They were also assaulted and injured. A3 and A4 assaulted Ramashankar on the head with the blunt edge and sharp edge of an axe respectively. The appellant and A1 also assaulted him with lathis. He died 24 hours later during the course of the treatment at the hospital.

8. The accused persons then together went to the house of the second deceased, Ramdas, the brother of PW-1. Accused no.3 shot him dead while Accused no.4 assaulted him with the sharp edge of an axe. The appellant and A1 assaulted him with lathis. PW-2 was an eye witness to the assault.

9. The post-mortem report of the deceased Ramdas revealed the following injuries:

- i. Contusion 8x6 cm on right arm (inflicted with hard and blunt weapon)*
- ii. Contusion 6x5 cm in mid of left arm (inflicted with hard and blunt weapon)*
- iii. Lacerated wound 4x1 cm deep upto the skin on the right brow (inflicted with hard and blunt weapon)*
- iv. Ingress injury 5x3 cm which was oval shaped in the stomach (inflicted with a firearm)*
- v. Egress injury 32 cm on the right side at the back at the level of 5th lumbar vertebra (firearm).*

10. The post-mortem report of the deceased Ramashankar revealed the following injuries:

- i. Incised wound injury of 5cm in temporal area.*
- ii. Fracture and blood clotting.*
- iii. 4x2 cm injury which was stitched on the right side of parietal area.*
- iv. Incised wound on the left shoulder*
- v. Injuries on the neck and forehead with hard and blunt object.*

11. PW-1 and PW-4 are both injured witnesses. They have both been found to be reliable and truthful. We see no reason why they would falsely implicate another, when the deceased was their own minor son. Similarly, PW-2 is the

son of the second deceased, an eye witness to the killing of his father at home. The failure to examine any available independent witness is inconsequential. It is the quality of the evidence and not the number of witnesses that is relevant. It is nobody's case of the accused that PW-1 and PW-4 were not injured in the same occurrence or that PW-2 was not an eye witness.

12. The number and nature of hard blunt injuries on the two deceased make it apparent that the assailants were more than one. Injuries by hard and blunt substance corroborate the evidence of the injured witnesses and PW-2 of assault on the two deceased by lathis also. Common intention is evident from the accused persons coming to the lands of PW-1 armed and intimidating him to return the lands followed by assault upon him and those who came to his rescue. The accused then immediately proceeded to the house of the second deceased. The recovery of a bloodstained lathi and bloodstained clothes of the appellant on his confession, leaves us satisfied, on a cumulative appreciation of the evidence, that the accused were actuated by a common

intention. The conviction of the appellant therefore calls for no interference.

13. It was lastly submitted before us that the appellant has completed over 14 years of custody including remission and that he is 72 years old. Notwithstanding our refusal to interfere with the conviction and sentence, if the appellant makes an application for premature release, it is for the authorities to consider the same in accordance with law. The appeal is dismissed.

.....**J.**
[R.F. NARIMAN]

.....**J.**
[NAVIN SINHA]

NEW DELHI
JANUARY 12, 2021.