

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 441 OF 2010

DEVI SINGH

Appellant(s)

VERSUS

STATE OF MADHYA PRADESH

Respondent(s)

J U D G M E N TBANUMATHI, J.:

(1) This appeal arises out of judgment and order dated 12th August, 2008 passed by the High Court of Madhya Pradesh at Gwalior in Criminal Appeal NO.74 of 2001 in which the appellants, namely, Devi Singh and Vijay Singh were convicted under Sections 326 and 324 I.P.C. and sentence of imprisonment imposed upon them by the Trial Court under Section 326 was reduced from three years to two years by the High Court while maintaining the sentence of imprisonment of three years imposed upon the appellants-accused by the Trial Court under Section 324 I.P.C.

(2) During the pendency of this appeal, second appellant-Vijay Singh died consequently his name was struck off from the array of the parties vide order dated 15th May, 2009 and appeal abated.

(3) On the date of occurrence i.e. 20th December, 1995, deceased-Chunni Lal was going to his *khaliyan* (field) along

with his cattle and his cattle entered the fields of Harijans and an altercation took place between Toran, Lalia & Krishna on one side and Balam & others including the appellants on the other.

(4) Case of the prosecution is that Phool Chand (PW-13) and Udham Singh (PW-1) were attacked in the said incident. Chunni Lal and Udham Singh, injured persons, went to the police station where in the Diary statement, the statement of Chunni Lal was recorded (Ex.P-38), based upon which and initially case was registered under Sections 307, 147, 148 and 149 I.P.C. After Chunni Lal succumbed to his injuries, F.I.R. was altered to Section 302 I.P.C. The Trial Court *inter alia* convicted the first appellant-Devi Singh under Section 326 I.P.C. for causing injuries to injured witness-Uddham Singh (PW-1) and under Section 324 I.P.C. for causing injuries to the deceased-Chunni Lal and sentenced him to undergo imprisonment for three years. For conviction under Section 326 I.P.C. he was sentenced to undergo rigorous imprisonment for three years. In the appeal, as noted above, the High Court affirmed the conviction of the appellant-Devi Singh under Section 326 I.P.C. and Section 324 I.P.C. but reduced the sentence of imprisonment only under Section 326 I.P.C. and maintained the sentence of imprisonment under Section 324 I.P.C.

(5) We have heard Ms. Pragati Neekhara, learned counsel appearing for the appellant and Ms. Swarupama Chaturvedi, learned counsel appearing for the respondent-State and also

perused the impugned judgment of the High Court and considered the evidence/materials on record.

(6) Learned counsel for the appellant has taken us through the evidence of Phool Chand (PW-13) to contend that Phool Chand (PW-13) has not stated anything about the appellant-Devi Singh in causing injuries to the deceased-Chunni Lal and, therefore, the conviction of the appellant under Section 324 I.P.C. for causing injuries to the deceased-Chunni Lal is not sustainable. Learned counsel for the appellant has also submitted that Udham Singh (PW-1) has turned hostile and in the absence of any overt evidence, the Trial Court as well as the High Court ought not to have relied upon Ex.P-38, the alleged statement, recorded from Chunni Lal (since deceased) to convict the appellant.

(7) The conviction of the first appellant-Devi Singh is based upon the evidence of Phool Chand (PW-13) who was also injured in the occurrence and Ex.P-38, diary statement, recorded from deceased-Chunni Lal by the Investigating Officer.

(8) As pointed out by the Trial Court in Ex.P-38, the deceased-Chunni Lal has clearly stated about the overt act of the appellant-Devi Singh and Vijay Singh (deceased-accused) who had attacked him with *lathis*. Chunni Lal sustained injuries on his left thigh and on left occipital region of the head as stated in the post-mortem certificate and evidence of Dr. M.K. Jain (PW-4). The statement of Chunni Lal in Ex.P-38 is strengthened by the medical evidence of Dr. M.K. Jain (PW-4).

The appellant-Devi Singh was convicted under Section 324 I.P.C. for causing injuries to the deceased-Chunni Lal. Conviction of the appellant under Section 324 I.P.C. is based upon the proper appreciation of oral evidence and Ex.P-38 - Diary statement of the deceased-Chunni Lal and the medical evidence. We do not find any good ground to interfere with the conviction of the appellant under Section 324 I.P.C. Since injuries caused by Devi Singh also contributed to the death of Chunni Lal, in our considered view the conviction of the appellant-Devi Singh under Section 324 I.P.C. may not have been proper. He should have been placed on par with the other accused. However, since the State has not preferred any appeal against the same, we are not inclined to go into the correctness of the same.

(9) So far as the question of sentence is concerned, the High Court for the conviction under Section 326 I.P.C. has reduced the sentence of imprisonment of the appellant from three years to two years but maintained the sentence of imprisonment under Section 324 I.P.C. as three years. Since the occurrence was of the year 1995, way back 23 years ago, in which the appellant-Devi Singh allegedly wielded *lathi* in causing injuries to the deceased-Chunni Lal, having regard to the passage of time and the nature of weapon wielded by the appellant and also considering the facts and circumstances of the case, the sentence of imprisonment of the appellant-Devi Singh under Section 324 I.P.C. is reduced to two years. However, conviction of the appellant-Devi Singh under Section 326 and

sentence of imprisonment of two years is affirmed.

(10) The appeal is partly allowed.

(11) The appellant shall surrender within a period of four weeks from today to serve the remaining sentence failing which he shall be taken to custody. The appellant shall be entitled to set off the sentence of imprisonment, if any, already undergone by him.

(12) A copy of this order be sent to the concerned trial court for necessary action.

.....J.
(R. BANUMATHI)

.....J.
(INDIRA BANERJEE)

NEW DELHI,
SEPTEMBER 5, 2018.