

**NON-REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 1779 OF 2019**

[Arising out of SLP (CrI) No. 8410 of 2016]

Jodhraj & Anr.

.. Appellant(s)

Versus

State of Rajasthan

.. Respondent(s)

WITH

**CRIMINAL APPEAL NO.1780 OF 2019**

[Arising out of SLP (CrI) No. 5350 of 2017]

**J U D G M E N T**

**M. R. Shah, J.**

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 19.01.2016 passed by the High Court of Judicature for Rajasthan, Jaipur Bench in DB Criminal Appeal No. 549 of 2012 by which the High Court has confirmed the conviction of the appellants herein – original Accused Nos. 1 and 12 for the offences punishable under Section 302 r/w Section 149 of the IPC, the original Accused have preferred the present appeal.

2. By the impugned Judgment and Order, the High Court has acquitted the respondent herein Bhanwar Lal - Original Accused No. 3. Therefore, the State has preferred an appeal against his acquittal.

3. The case of the prosecution is that on 22.5.2005 in the night at 9.30 P.M., in the revenue estate of village Kadiyavan, 14 persons namely Jodhraj s/o Mathura Lal, Hemraj s/o Birdhi Lal, Bhanwar Lal s/o Mathura Lal, Mathura Lal s/o Baldev, Dwarka Lal s/o Ram Narayan, Dev Kishan s/o Ram Narayan, Prakash @ Om Prakash s/o Birdhi Lal, Naval @ Naval Kishore s/o Birdhi Lal, Badri Lal s/o Kanwar Lal, Ram Prasad s/o Narayan @ Ram Narayan, Prabhu Lal s/o Birdhi Lal, Jagdish Prasad s/o Mathura Lal, Ram Dayal s/o Ram Narayan and Pooran Mal s/o Ram Narayan, constituted unlawful assembly and caused injuries to Hariram, as a result of which, on the intervening night of 22<sup>nd</sup> May and 23<sup>rd</sup> May of 2005, Hariram died.

3.1 That all the accused came to be tried by the Learned Trial Court for the offences punishable under Sections 147, 148, 323/149, 324/149, 326/149, 3/2 r/w 149 and 379 of the IPC.

3.2 To prove the case, the prosecution examined in all 18 witnesses including PW2 Om Prakash and PW3 Ram Dayal – so called eye-witnesses. The prosecution also brought on record the documentary evidence such as injury report relating to deceased Hari Ram. In the Injury Report, the following injuries were found on the deceased Hari Ram:

- “(i) abrasion 1 cm X 1 cm, right side of forehead, simple, blunt.
- (ii) Incised wound, 7 cm X 1cm, muscle deep, right side of neck, obliquely, simple, sharp.
- (iii) Incised wound, 20cm X 7 cm, intestine coming out, anterior on abdomen, longitudinal, grievous and dangerous to life, sharp.”

3.3 Upon appreciation of evidence, the Learned Trial Court convicted five accused – Jodhraj, Bhanwar Lal, Dwarka Lal, Jagdish Prasad, Pooran Mal for the offences under Sections 148, 302/149 and 379 IPC and acquitted rest of the accused by giving them benefit of doubt. The Learned Trial Court imposed punishment for life so far as the convicted accused are concerned.

3.4 Feeling aggrieved and dissatisfied with the Judgment and Order dated 11.05.2012 passed by the Learned Trial Court, the convicted accused preferred appeal before the High Court. Against the order of acquittal of some of the accused, the State also preferred an appeal before the High Court. By the impugned Judgment and Order, the High Court has acquitted Original Accused No. 3 – Bhanwar Lal by giving him benefit of doubt, not believing the deposition of very PW2 and PW3. However, at the same time, relying upon the deposition of PW2 and PW3, the High Court has confirmed the conviction of the appellants herein – Jodhraj and Jagdish Prasad – original Accused Nos. 1 and 12.

3.5 Being aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court confirming their conviction, original Accused Nos. 1 and 12 – Jodhraj and Jagdish Prasad have preferred the present Appeal. Against the order of acquittal passed by the High Court acquitting the accused Bhanwar Lal, the State has also preferred the appeal. Both the appeals are heard together.

4. Learned Counsel appearing on behalf of the appellants – convicts Jodhraj and Jagdish Prasad has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in confirming the conviction of the appellants.

4.1 It is vehemently submitted by the Learned Counsel appearing for the appellants-convicts that the High Court has confirmed the conviction of the appellants solely relying upon the deposition of PW2 and PW3. It is submitted that the statements of PW2 and PW3 under Section 161 of the Cr.P.C. were recorded after 18 days. The statements made by PW2 and PW3 were in exaggeration. It is submitted that the grounds on which Bhanwar Lal and others came to be acquitted, namely, not believing the deposition of PW2 and PW3, the same shall be applicable to the appellants also. It is submitted that therefore no reliance can be placed upon the deposition of PW2 and PW3 so far as the appellants/accused are concerned. It is submitted that except the deposition of PW2 and PW3, the High Court has not relied upon and/or considered any other evidence.

5. Learned Counsel appearing on behalf of the State has vehemently submitted that even the High Court has committed a grave error in acquitting Bhanwar Lal.

5.1 It is submitted by the Learned Counsel appearing on behalf of the State that Injury No.3 was attributed to Accused – Jagdish Prasad which proved to be fatal. It is submitted that prior incident has been proved from the deposition of PW2 – Om Prakash. It is further submitted that PW2 in his deposition viz. the eye-witness of the occurrence has specifically attributed Injury No. 3 to Jagdish Prasad. It is submitted that to that extent the deposition of PW 2 is reliable and believable and therefore the Trial Court as well as the High Court have rightly convicted Jagdish Prasad. It is submitted that even another Accused – Jodhraj has also participated in the incident and Injury No.2 was attributed to him and therefore he has been rightly convicted by the Learned Trial Court and confirmed by the High Court.

6. Learned Counsel appearing on behalf of the acquitted accused – Bhanwar Lal has supported the impugned Judgment and Order passed by the High Court acquitting Bhanwar Lal. It is submitted

that cogent reasons have been given by the High Court while acquitting Bhanwar Lal and, therefore, the acquittal of Bhanwar Lal is not required to be interfered with.

7. Heard the Learned Counsel for the respective parties at length. We have gone through the entire evidence on record and the Judgment and Order passed by the Learned Trial Court as well as the impugned Judgment and Order passed by the High Court.

At the outset, it is required to be noted that the Learned Trial Court convicted five accused out of 14 accused who came to be tried for the offences under Sections 148, 302/149, 379 of the IPC. The prosecution heavily relied upon the deposition of PW2 and PW3 who claimed to be the eye-witnesses. The prosecution also relied upon the so-called dying declaration; however, the dying declaration has not been believed. In an appeal, the High Court has further acquitted another Accused Bhanwar Lal on the ground that the statement of PW2 Om Prakash and the statement of PW3 Ram Dayal under Section 161 of the Cr.P.C. were recorded after a period of 18 days and that the statement of Ram Dayal was exaggerated

and more and more persons of the family were tried to be implicated. Therefore, the High Court was of the opinion that recording the statement under Section 161 Cr.P.C. of Om Prakash PW2 and Ram Dayal PW3, leaves no doubt that both the witnesses took benefit of delay and for the three injuries on the person of the deceased Hariram, out of which one was abrasion, the witnesses have resorted to implicate 14 accused. Thus, the blemish on the part of the witnesses, calls upon us to sift grain from the chaff. Thus, the High Court did not accept the deposition of PW2 and PW3 so far as the accused Bhanwar Lal is concerned. However, at the same time, relying upon the statement of very two witnesses PW2 and PW3, the High Court has confirmed the conviction of the Appellants – Jodhraj and Jagdish Prasad. Therefore, considering the facts and circumstances of the case, we are of the opinion that if the deposition of PW2 and PW3 are not reliable qua one of the accused on the grounds stated hereinabove and one of the accused came to be acquitted by giving benefit of doubt, the same benefit ought to have been given to the other accused also, unless there is some further material/evidence against the other accused. As



observed hereinabove, except relying upon the deposition of PW2 and PW3, there is no other evidence implicating the appellants-Accused convicts. Under the circumstances, in the absence of any further evidence implicating the accused-convicts, the High Court has materially erred in confirming the conviction of the appellant solely relying upon the deposition of PW2 and PW3 whose deposition has been doubted by the High Court and not relied upon by the High Court so far as one of the accused is concerned, the same reasoning should be applied in the appellants' case also which weighed with the High Court while acquitting Bhanwar Lal. So far as the acquittal of Bhanwar Lal is concerned, we are in complete agreement with the view taken by the High Court. Cogent reasons have been given by the High Court for not believing the deposition of PW2 and PW3.

8. In view of the reasons stated hereinabove, the appeal preferred by accused Jodhraj and Jagdish Prasad is hereby allowed. The impugned Judgment and Order passed by the High Court and the Judgment and Order passed by the Trial Court convicting them for the offences under Sections 302/149 IPC are hereby quashed and

set aside and both of them are acquitted for the offences for which they were tried, by giving them benefit of doubt. The accused be set at free forthwith, if not required in any other case. The appeal preferred by the State challenging the impugned Judgment and Order passed by the High Court acquitting the accused – Bhanwar Lal is hereby dismissed.

.....J.  
(ASHOK BHUSHAN)

.....J.  
(M. R. SHAH)

New Delhi,  
November 29, 2019.