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**(1998) 05 MP CK 0003**

**Madhya Pradesh High Court**

**Case No:** Criminal A. No. 2 of 1988

Devi Singh and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision:** May 9, 1998

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 174(1)
- Penal Code, 1860 (IPC) - Section 149

**Citation:** (1999) ILR (MP) 1180 : (1999) 1 JLJ 259 : (1999) 1 MPLJ 354

**Hon'ble Judges:** Rajeev Gupta, J; R.P. Gupta, J

**Bench:** Division Bench

**Advocate:** Rajendra Singh, for the Appellant; Riyaz Mohd, Government Advocate, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Rajeev Gupta, J.

The appellants, in all eight in number, have preferred this appeal against the impugned judgment dated 21-12-1987, passed by Additional Sessions Judge, Khurai, District Sagar in S. T. No. 117/87, whereby the appellants stand convicted under Sections 148 302/149 (appellant No. 7 Anirudh Singh u/s 302 simpliciter) and 324/149 of the Indian Penal Code (for short the IPC), with sentences of rigorous imprisonment for 1 year, imprisonment for life and rigorous imprisonment for 1 year each respectively.

The prosecution case, in short, is that:-

(A) Accused Devi Singh, who was issue-less, had asked Khoob Singh (since deceased) and his brother Shivraj, who were residents of a village in Tehsil Sironj, to come and settle down in his village Dhana. Accused Devi Singh also offered Khoob Singh and Shivraj his agricultural land situated in village Dhana for cultivation and persuaded them

to sell their agricultural land situated in Tehsil Sironj. Accused Devi Singh is said to have kept with him the consideration received in the above transaction of sale of land and in exchange handed over possession of a piece of his agricultural land situated in village Dhana about 10-12 years prior to the incident. Accused Devi Singh neither executed a sale deed of the above piece of land in favour of Khoob Singh and Shivraj, nor got the same mutated in their names. Though Khoob Singh and Shivraj cultivated the above piece of land peacefully for about 10-12 years, but thereafter some differences developed between them and accused Devi Singh, thereupon tried to take back the possession of the above land, but they did not allow him to do so. As accused Devi Singh was not handing over the consideration received by him against the sale of the agricultural land, situated in Sironj, Khoob Singh and Shivraj did not give the possession over the land situated in village Dhana. Accused Devi Singh, being issue-less, was keeping accused Anirudh Singh, Raghuraj Singh and Shivraj Singh, who were his nephews, with him in village Dhana.

(B) In the above strained background of relations between the parties, at about 8.30 AM, in the morning of 24-5-85, when Khoob Singh was brushing his teeth, all the accused persons came in a tractor to his house, and asked Khoob Singh to accompany them as the time for him to die had come. Accused Devi Singh, Shivraj Singh and Anirudh Singh were armed with guns, whereas Balram, Raghuraj and Sher Singh with farsas, and the" remaining two; Hari Singh and Gajraj with Lohangi and lathi respectively. On Khoob Singh's refusal to accompany them, accused Anirudh Singh caught hold of him and then all the accused persons made him to sit on the tractor forcibly and thereafter took the tractor towards river side. Shivraj and Sheelrani, brother and wife of Khoob Singh respectively, rushed towards the village raising alarm that Devi Singh and others were taking away Khoob Singh forcibly. In response Munna, Prakash, Kammodha, Mulla, Udda, Mangal, Tijua and Ganpat rushed towards river side. As the tractor carrying the accused persons and Khoob Singh and the above mentioned villagers had followed different routes, for reaching the river side, they happened to come in front of each other at a place known as "Halkai Ka Khere". Shivraj and Sheelrani, by standing in front of the moving tractor, forced the accused persons to bring the tractor to a halt. As soon as the tractor became stationary, Khoob Singh jumped out of it and tried to run away. At this juncture, all the accused persons also jumped out of the tractor and Devi Singh exhorted the other accused persons to shoot at him, whereupon Anirudh Singh fired at Khoob Singh. Another Shot was fired at Khoob Singh by accused Devi Singh. Khoob Singh fell on the ground and died an instantaneous death. The villagers, who had come there to save Khoob Singh, were also assaulted by the accused persons as a result of which Mangal, Udda and Mulla sustained several external injuries. The accused persons thereafter fled away. The villagers then brought the body of Khoob Singh in the village and the same was kept in the taparia of Kammodha.

(C) As they got the information that the accused persons were way-laying on the way to Police Station Bhangarh. Shivraj went to Police Station Bina and lodged the First

Information Report at 3.45 PM. As the place of incident fell within the territorial jurisdiction of Police Station Bhangarh, this report was forwarded to Police Station Bhangarh, giving rise to the registration of a case at Crime No. 4/85, for the offences under Sections 147 148 302/149 323/149 and 342 of the Indian Penal Code.

(D) After observing the necessary formalities the body of Khoob Singh was sent for post-mortem examination. The Autopsy Surgeon found two wounds of entry and two wounds of exit on the body of deceased Khoob Singh, as detailed in Post-Mortem Report Ex. P/35. In his opinion, the cause of death of deceased Khoob Singh was severe hemorrhage due to the gun shot injury over his chest. On medical examination, injured Mulla was found to have sustained 4 contusions, 1 lacerated wound and 1 abrasion as detailed in the injury report Ex.P/33-A. Udda was also found to have sustained 5 external injuries as detailed in his injury report Ex.P/32-A. Another injured Mangal was found to have sustained 1 contusion, vide injury report Ex./31-A. During the course of investigation, one lathi each from accused persons Hari Singh and Gajraj Singh, one farsa each from accused Seth @ Sher Singh, Raghuraj and Balram; and, one rifle each from accused Devi Singh and Anirudh Singh were seized. After completing the investigation, police Bhangarh charge-sheeted all the eight accused persons for the commission of the offences u/s 147 148 342 302/149 and 323/149 of the Indian Penal Code.

The accused persons abjured their guilt and pleaded false implication. Accused Devi Singh, taking the specific plea of alibi, pleaded that as he had suffered a heart-attack, he was admitted as an indoor patient, in the Hospital at Mungaoli from 16-5-1985 to 30-5-1985.

At the trial, prosecution examined as many as 28 witnesses whereas the accused persons examined 10 witnesses in their defence. On a close scrutiny of the evidence on record, the trial court held it proved that deceased Khoob Singh had sustained gun shot wounds in the morning of 24-5-1985, and had died a homicidal death. Similarly, injured persons; Mulla and Udda were also found to have sustained multiple external injuries, whereas Mangal was found to have sustained one contusion in the same incident. Relying upon the evidence of the eye-witnesses and the other circumstantial evidence on record, the trial court held the accused persons guilty of forming an unlawful assembly with the common object of committing murder of Khoob Singh and of causing injuries to Mulla, Udda and Mangal and of commission of murder of Khoob Singh and of causing injuries to Mulla, Udda and Mangal by some/all of the members of the above unlawful assembly, in prosecution of their above common object and, therefore, convicted and sentenced them, as mentioned above.

We have heard Shri Rajendra Singh and Shri S. C. Dart, Senior Counsel for the appellants, and Shri Riyaz Mohammad, Government Advocate, for the State.

The learned counsel for the appellants vehemently argued that the evidence of the eye-witnesses suffers from serious infirmities and the trial court has erred in not giving due weight to these serious infirmities and in recording the appellants' conviction. The learned counsel further contended that the trial court has erred in rejecting the plea of alibi of accused Devi Singh, though the same stands established beyond doubt on the ocular and documentary evidence led in defence. Yet another submission of the learned counsel for the appellants was that even if it is held that accused Anirudh Singh and Devi Singh had caused gun shot injuries to deceased Khoob Singh, the other six accused persons cannot be held liable vicariously with the aid of Section 149 of the IPC, as the proved facts of the present case fall short of establishing the common object of the unlawful assembly as that of committing murder of Khoob Singh.

Taking the above double barrel attack, of the learned counsel for the appellants, head on, the learned Government Advocate strenuously contended that out of the eye-witnesses relied upon by the trial court, three namely; Mulla, Udda and Mangal, are injured eye-witnesses and at least their presence on the place of occurrence is beyond any dispute and their evidence alone, by itself, is sufficient for establishing the charge of murder against the accused persons. The learned Government Advocate went on to argue that the manner in which all the eight accused persons had actively participated in the incident of violence and that three out of these eight were armed with fire arms, and the other five were also armed with weapons like farsa, lathi and lohangi, and that the accused persons even after shooting Khoob Singh dead, continued to participate in the incident of violence by causing multiple external injuries on three injured persons Mulla, Udda and Mangal, establish beyond any shadow of doubt that the common object of the unlawful assembly was to commit murder of Khoob Singh and to cause injuries to the persons who come in their way. The learned counsel, therefore, submitted that the trial court has rightly convicted all the eight accused persons under Sections 148 302/149 and 324/149 of the IPC, and no interference in this appeal is warranted.

The facts that deceased Khoob Singh had sustained gun shot wounds and had died a homicidal death, and that injured persons Mulla, Udda and Mangal had sustained external injuries on 24-5-1985, were neither disputed at the trial nor are under challenge before us in this appeal. That apart, there is overwhelming evidence, ocular and medical, on record for establishing the above facts beyond any shadow of doubt and, therefore, we uphold the findings, recorded by the trial court, in that behalf.

Out of the 28 witnesses examined by the prosecution at the trial; Shivraj Singh PW/1, Munna PW/2, Prakash PW/3, Kammodha PW/4, Mulla PW/5, Udda PW/6, Mangal PW/7, Sheelrani @ Dhan Bai PW/8, Tijua PW/9 and Ganpat PW/10 were examined as eye-witnesses of the incident of assault on deceased Khoob Singh and injured Mulla, Udda and Mangal. Of these, Mulla PW/5 did not support the prosecution case and was declared hostile.

Udda PW/8 is an injured eye-witness, as he himself had sustained external injuries in the same incident of violence, wherein deceased Khoob Singh was shot dead. He was examined for his injuries, on 25-5-1985 by Dr. S. L. Thareja. Dr. Thareja found 1 contusion and 1 lacerated wound on his person. Though this witness had complained of pain on the right side of his chest, right leg and right thigh, but no visible external injury was found by the Doctor on these parts of his body. In the opinion of Dr. Thareja, Udda PW/6 had sustained these injuries within 24 hours of his examination which took place at about 8.00 AM on 25-5-1985. Thus, the fact that Udda had sustained these injuries stands established beyond doubt. According to Udda PW/6 he sustained these injuries in the same incident in which deceased Khoob Singh was shot dead by accused Anirudh Singh and Devi Singh. These injuries on the persons of Udda PW/6 establishes his presence, as an eye-witness, at the time of the incident of assault on deceased Khoob Singh, beyond any shadow of doubt.

The Apex Court, while considering the evidentiary value to be attached to the evidence of an injured eyewitness, in the case of [Panchaiah and others Vs. State of Karnataka](#), , observed in para 4 :

"4. As mentioned above PW.5 is an injured witness. The Doctor who examined him found as many as six injuries. The first injury was on the back at the level of the 9th and 10th vertebrae measuring 22 x 5 cms. The second injury again was on the left scapula measuring 24 x 5 cms. The third injury was also on at the same place measuring 15x5 cms. The other three injuries were on the right clavicle, shoulder and knee. The Doctor opined that these injuries could be caused by a cycle chain and the other with the clubs. Therefore, the medical evidence corroborates the version of PW5 when he stated that he was beaten by cycle chain and clubs. Therefore he having received injuries during the same transaction cannot be doubted and his presence at the scene of occurrence is established. No doubt in the cross-examination he stated that all the accused had beaten him indiscriminately. It may be exaggeration but specific overt acts are attributed to A-1, A-3 and A-6. The presence of injuries on a witness confirms his presence during the occurrence. That being so, his evidence assumes great importance. Even if there are some exaggerations, the Court has to examine the same and scrutinize the evidence. Having gone through the evidence and the reasonings of the trial court, we are of the view that it erred in discarding the evidence of PW5 in toto. Without being present and without having witnessed the occurrence, PW5 could not have given the same version in the earlier report because of mere motive or out of consultation. The so called exaggeration or discrepancies pointed out in their evidence both by the counsel as well as by the trial court in our view are not material and would not affect the veracity of the witness."

The same view has been reiterated by the Apex Court in the cases of [Awdesh and Others Vs. State of Uttar Pradesh](#), and of [Madru Singh and others Vs. State of Madhya Pradesh](#),

Udda PW/6, in his deposition in the Court, had deposed that in the morning of the fateful day, at about 8.00 AM, when the accused persons were taking away Khoob Singh forcibly in a tractor, his brother Shivraj and wife Sheelrani got the tractor stopped. He further stated that as the tractor came to a halt, Khoob Singh jumped out of the tractor and at this juncture, accused Devi Singh exhorted to shoot at him, whereupon accused Anirudh Singh fired at Khoob Singh, followed by another fire by accused Devi Singh himself, and two fires by accused Shivraj Singh. Accused Hari Singh and Seth @ Sher Singh assaulted him by means of "lath" (wooden stick), as a result of which he sustained injuries on his back and finger. The accused persons then caused injuries to Mangal and Mulla also. Khoob Singh, who had sustained two gun shot wounds; one on his chest and the other on his hand, died an instantaneous death on the spot itself. The witness then claims to have become unconscious on account of the injuries sustained by him. In spite of a searching cross-examination by the defence, the witness stood firm and his evidence could not be shaken. Though we find certain omissions in his case diary statement - Ex. D/5, but all these omissions relate to the minute details of the incident and not to the broad features of the case. Nothing could be elicited by the defence in his cross-examination, which may be suggestive of any motive, or reason for this witness to depose falsely against the accused persons. On a close scrutiny of his evidence, we are satisfied that he is a truthful witness and his evidence is trustworthy. He has specifically deposed about the presence and participation of all the eight persons i.e. Anirudh Singh, Devi Singh, Shivraj Singh, Raghuraj Singh, Hari Singh, Balram Singh, Seth @ Sher Singh and Balram Singh.

Another injured eye-witness Mangal (PW/7) was also found to have sustained 1 contusion by Dr. S. L. Thareja PW/28 on his medical examination, in the morning of 25-5-1985, vide injury report Ex. P/31-A. Thus, the presence of this witness is also established beyond doubt. He too has deposed about the fact that accused Anirudh Singh first fired at Khoob Singh followed by accused Devi Singh and then accused Hari Singh caused injuries to this witness. Though he was subjected to lengthy cross-examination, but nothing substantial could be brought out which may water down his evidence in any manner.

On a re-appreciation of the evidence of these two injured eye-witnesses Udda PW/6 and Mangal PW/7 we are satisfied that the trial court has not committed any illegality in relying upon their evidence in holding that the eight accused persons had formed an unlawful assembly in the morning of 24-5-1985, and two members of this unlawful assembly namely; accused Anirudh Singh and accused Devi Singh, had fired at Khoob Singh leading to his instantaneous death; and, that some members of this assembly had also caused injuries to Mulla, Udda and Mangal.

Apart from the above two injured eye-witnesses, there are other eye-witnesses also, examined at the trial. These witnesses are Shivraj PW/1, Munna PW/2, Prakash PW/3, Kammodha PW/4, Sheelrani @ Dhan Bai PW/8, Tijua PW/9 and Ganpat PW/10. Out of these, the evidence of Shivraj Singh PW/1 and Sheelrani @ Dhan Bai PW/8 stands on a

different footing, as both of them have witnessed the incident right from the beginning i.e.... from the forcible lifting of Khoob Singh into the tractor by the accused persons till he was shot dead by accused Anirudh Singh and Devi Singh. On a close scrutiny of the evidence of these seven eye-witnesses, we find that their evidence, so far as it relates to the broad features of the prosecution case, is in line with that of the two injured eye-witnesses Udda PW/6 and Mangal PW/7. As the trial court has scrutinized the evidence of these eye-witnesses very minutely, we do not deem it necessary to dilate much on their evidence. True, there is some discrepancy in the evidence of Shivraj Singh-PW/1, in regard to the overt act of accused Devi Singh, but the same stands reconciled in his cross-examination.

So, we have the evidence of as many as 9 eye-witnesses, who have deposed about the presence and participation of all the 8 accused persons in the incident of violence which had taken place in the morning of 24-5-1985, and took the toll of the life of Khoob Singh. When so many witnesses are to depose about the incident, some minor discrepancies here and there are bound to come in their evidence; as the perception, memory and expression differ from person to person. The evidence of a witness, which is otherwise reliable, can never be discarded on account of minor discrepancies.

Now, we shall consider the evidence led by accused Devi Singh, in support of his plea of alibi. The trial court has considered this plea and the evidence in that behalf from para 50 to 54 of the judgment. Babulal DW/1, Hamam Singh DW/2, Nathuram DW/3, Kalectar Singh DW/4 and Dr. P. N. Kethoriya DW/7 are the relevant defence witnesses examined at the trial. Accused Devi Singh claims to have remained admitted as an indoor patient, from 16-5-1985 to 30-5-1985 in the hospital at Mungaoli. The documents proved on record in that behalf are bed-head ticket Ex.D/11, prescription slip Ex.D/12, indoor patient register Ex.D/9 and the stock register of the hospital - Ex.D/13. So far as the indoor patient register Ex.D/9 is concerned, the same admittedly is not in the proforma prescribed for the Government Hospital. This is just an ordinary register which is not in the printed and prescribed form. On an examination of the entries, before and after the entry relating to accused Devi Singh, we gather that this is not a properly kept register as we find some entries in it which are not at all relevant to that particular month. Similarly, the column relating to the date of discharge has not been filled in against several patients. In our considered view, no reliance can be placed on such a shaky piece of evidence. For the same reasons, the bed-head ticket Ex.D/12 also does not inspire confidence and cannot be relied upon for accepting the plea of alibi. The ocular evidence of Babulal DW/1, Harnam Singh DW/2, Nathuram DW/3, Kalectar Singh DW/4 and Dr. P. N. Kethoriya DW/7 also falls short of establishing the plea of alibi of accused Devi Singh, the burden of proof whereof is always on the accused. The trial court has given good reasons for not accepting the plea of alibi of accused Devi Singh and we do not find any material to disagree with the findings, recorded by the trial court, in that behalf. We are, therefore, satisfied that the plea of alibi, taken by accused Devi Singh, was rightly rejected by the trial court.

Much was tried to be made of the fact that the names of all the accused persons were not mentioned in the inquest Ex.P/6, requisition memo for post-mortem examination Ex.P/16 and the requisitions for the examinations of the injured persons Ex.P/31, 32 and 33. We do not deem it necessary to dilate much on this aspect of the case in view of the recent dictum of the Apex Court, in the case of *George and Ors. v. State of Kerala and Anr.*, reported in JT 1998 (2) 496, wherein following observations were made in para 31 :

"31. The whole purpose of preparing an inquest report u/s 174(1), Criminal Procedure Code is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating in what manner, or by what weapon or instrument, if any, such wounds appear to have been inflicted. In other words, for the purpose of holding the inquest it is neither necessary nor obligatory on the part of the Investigation Officer to investigate into or ascertain who were the persons responsible for the death. In dealing with Section 174, Criminal Procedure Code in [Pedda Narayana and Others Vs. State of Andhra Pradesh](#), this Court held that the object of the proceedings thereunder is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was the apparent cause. According to this Court, the question regarding the details how deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of such proceedings. With the above observation this Court held that the High Court was right (in that case) that the omissions in the inquest report were not sufficient to put the prosecution out of Court. In [Egbal Baig Vs. State of Andhra Pradesh](#), this Court observed, while dealing with a similar question that the inquest report was not the statement of any person wherein all the names of the persons accused were to be mentioned. On this ground also, the finding of the trial court based on the inquest report cannot be sustained."

On the above re-appreciation of the evidence on record, it emerges out that the relations of the accused persons with deceased Khoob Singh and his brother Shivraj Singh were strained for quite sometime; in the morning of 24-5-1985, when deceased Khoob Singh was brushing his teeth, all the eight accused persons, armed with various weapons including fire-arms, came there in a tractor and forcibly lifted Khoob Singh into the tractor and thereafter proceeded towards the river side; Khoob Singh's brother Shivraj Singh and wife Sheelrani rushed towards the village raising alarm that the accused persons were taking Khoob Singh forcibly in the tractor; in response several villagers also rushed towards the river side and made the accused persons to stop the tractor; as soon as the tractor came to a halt, Khoob Singh jumped out of the tractor; accused Devi Singh exhorted the other accused persons to shoot at Khoob Singh; accused Anirudh Singh took the lead and fired at Khoob Singh, hitting him on the chest; accused Devi Singh followed him by firing another shot, hitting Khoob Singh on the arm; Khoob Singh died an instantaneous death on the spot itself; the accused persons thereafter caused multiple injuries to Mulla, Udda and Mangal; and, thereafter all the accused persons fled away together.

The next question, which crops up for our consideration now, is about the common object of the unlawful assembly i.e. whether it was to commit murder of deceased Khoob Singh, or just was it to assault him and if so, whether accused Anirudh Singh and accused Devi Singh, in their individual capacity, going beyond the common object of the unlawful assembly, shot Khoob Singh dead? It is proved beyond doubt that all the eight accused persons had come together in a tractor to the house of deceased Khoob Singh. It is also established that out of these 8 accused persons, 3 were armed with fire arms, whereas the remaining 5 were armed with farsa, lathi and lohangi. True, at the initial stage of taking Khoob Singh away forcibly, none of the accused persons had caused injuries to anyone, but all of them had gone into action with their respective weapons the moment their tractor was obstructed by the villagers and Khoob Singh, by jumping out of the tractor, tried to run away. After Khoob Singh was shot dead by accused Anirudh Singh and Devi Singh, the other accused persons had also caused injuries to Mulla, Udda and Mangal. All the eight accused persons thereafter fled away together from the place of occurrence. All the above mentioned facts, taken together, establish beyond doubt that the common object of the unlawful assembly was to commit murder of Khoob Singh and to cause injuries to one and all who may come in the way. Therefore, all the eight accused persons, who have been proved to be the members of the said unlawful assembly would be liable with the aid of Section 149 of the Indian Penal Code, for the commission of murder of Khoob Singh and for the causing of injuries to Mulla, Udda and Mangal. Thus, we do not find any scope for interference in this appeal.

For the foregoing reasons, the appeal filed by the appellants against their conviction and sentences fails and is hereby dismissed in toto. Their conviction under Sections 148 324/149 and 302/149 (appellant No. 7, Anirudh Singh u/s 302 simpliciter), of the Indian Penal Code, and sentences of rigorous imprisonment for 1 year, rigorous imprisonment for 1 year and imprisonment for life each, are hereby affirmed.

Appellant Amrudh Singh is reported to be in custody. Appellants 1 to 6, namely Devi Singh, Shivraj Singh, Gajraj Singh, Seth @ Sher Singh, Hari Singh, Balram Singh and appellant No. 8 Raghuraj Singh are on bail. Their bail bonds are cancelled. They be taken into custody for serving out the balance of their sentences.