

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No 1350 of 2021
(Arising out of SLP(Crl) No 2245 of 2020)

Jogi & Ors Appellant(s)

Versus

The State of Madhya Pradesh Respondent(s)

ORDER

- 1 Leave granted.
- 2 The appeal arises from a judgment of a Division Bench of the High Court of Madhya Pradesh dated 5 December 2018 in Criminal Appeal No 854 of 2008. The judgment of the High Court indicates that the appeal was filed by forty five persons against the judgment of the Additional Sessions Judge, Multai, District Betul dated 18 March 2008 in Sessions Trial No 5 of 2005. The Special Leave Petition before this Court under Article 136 of the Constitution was instituted by thirty five petitioners, namely, Accused Nos 1,3, 5 to 8, 10, 12 to 14, 16 to 22, 24 to 25, 27, 29 to 30, 32 to 44.

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Sanjay Kumar
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Reason: [S]

On 5 April 2019, the Chamber Judge rejected the application for exemption from surrendering, but granted a period of four weeks to surrender and produce proof. On 29 July 2019, an extension of two weeks was granted to those of the

petitioners who had not surrendered and filed proof of surrender, failing which the petition was to be dismissed, without referring the matter to the Court. On 14 October 2019, the Chamber Judge noted that Accused Nos 19, 24, 38 and 44 have not surrendered nor had they filed proof of surrender. The interlocutory application qua the above accused was dismissed. However, time was granted to Accused No 21 to surrender and produce proof of surrender within two weeks. Accused No 21 having failed to comply with the order, the Special Leave Petition was dismissed by a further order dated 3 February 2020 of the Chamber Judge.

- 4 Notice has been issued on 19 May 2020 on the Special Leave Petition and liberty was granted to serve the Standing Counsel for the State of Madhya Pradesh.
- 5 In pursuance of the order issuing notice, the State of Madhya Pradesh has entered appearance.
- 6 Mr S K Gangele appears on behalf of the appellants while Ms Madhurima Tatia appears on behalf of the respondent - State.
- 7 The genesis of the appeal arises from an incident which took place on 27 April 2004. The case of the prosecution is that between 6 and 7 pm, a Ganesh Visarjan procession was crossing in front of the house of one Hangry Lohar. His daughter proceeded to the Police Station Amla to register a complaint against accused Jagdish, Ramdas, Ganga, Jagga, Hirdelal, Jogi and Laxman on the ground that nuisance was allegedly caused. After the immersion had taken place, it is alleged that the appellants barged into the house of Hangry Lohar and Sitaram, Bharosa and Rama set it on fire. As a consequence, three persons, who were in the house of Hangry Lohar, were burnt alive. Thereafter, the accused are alleged to have burnt the house of Taapi Bai, the daughter of Hangry Lohar, resulting in injuries to three persons, namely, Radhika Bai, Sandeep and Taapi Bai. The Marg report (Exhibit P-47) was prepared, on the

basis of which, an FIR (Exhibit P-46) was registered. The police, after investigation, submitted a final report under Section 173 of the Code of Criminal Procedure 1973 against forty six persons, out of which one was tried by the Juvenile Court. The trial of another accused was delinked, as a consequence of which, forty four accused were put to trial. The trial court convicted all the forty four accused. The High Court convicted thirty five appellants under the provisions of Sections 148, 149, 323/149, 436/149 (five counts) and 302/149 (three counts) of the Indian Penal Code 1860. The High Court acquitted seven accused. As regards the appellants who were convicted by the High Court, the observation of the High Court bearing on their culpability is extracted below:

“...So far as the other appellants are concerned, from perusal of the record, it is apparent that the statement of eye-witnesses being unshakable and of sterling quality, has rightly been relied upon by the trial Court to record a finding of guilt against these appellants.”

8 Apart from the above observation, the High Court held that the evidence of the eye-witnesses could not be discarded only on the ground that they were interested witnesses, particularly, when there was no inconsistency between the ocular and medical evidence, and that the place of occurrence and the presence of accused is not doubtful. As regards, the seven accused to whom benefit of doubt was granted, the High Court held that they had not been named by the eye-witnesses.

9 The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973¹. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence,

1 “CrPC”

which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in **Majjal v State of Haryana**², where the Court held:

“6. In this case what strikes us is the cryptic nature of the High Court’s observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court’s observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court’s cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 of the IPC where the accused is sentenced to life imprisonment unsatisfactory.

7. It was necessary for the High Court to consider whether the trial court’s assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court’s concurrence with the trial court’s view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.”

- 10 Since there has been no independent application of mind by the High Court to the facts insofar as they pertain to the appellants, we are of the view that an order of remand would be necessary. However, we clarify that the order of

remand would be confined to only those of the appellants in respect of which the present appeal survives. Consequent upon the earlier orders dated 14 October 2019 and 3 February 2020, the appeal has been dismissed as against Accused Nos 19, 24, 38 and 44 and Accused No 21, respectively.

- 11 The impugned judgment and order of the High Court insofar as it pertains to the appellants, save and except for Accused Nos 19, 21, 24, 38 and 44, shall stand set aside and the appeal is remitted back to the High Court. Criminal Appeal No 854 of 2008 is accordingly restored to the file of the High Court in respect of Accused Nos 1,3, 5 to 8, 10, 12 to 14, 16 to 18, 20, 22, 25, 27, 29 to 30, 32 to 37, 39 to 43.
- 12 We also clarify that the present order shall not affect the order of the High Court as regards seven appellants who have been acquitted by the judgment dated 5 December 2018 since that does not form the subject matter of the present proceedings.
- 13 The appeal shall accordingly stand disposed of in the above terms.
- 14 Since the appeal pertains to 2008, we request the High Court to make an endeavour to dispose of the appeal on remand, within a period of three months from the date on which a certified copy of the present order is remitted by the Registrar (Judicial) of this Court to the Registrar (Judicial) of the High Court.
- 15 We also grant liberty to the appellants to move an application for suspension of sentence before the High Court under Section 389(1) of the CrPC if they are so advised. However, no observation is made by this Court on the merits of such an application.

16 Pending application, if any, stands disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[A S Bopanna]

New Delhi;
November 08, 2021
-S-

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).2245/2020

(Arising out of impugned final judgment and order dated 05-12-2018 in CRA No. 854/2008 passed by the High Court of M.P. Principal Seat at Jabalpur)

JOGI & ORS.

Petitioner(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

Date : 08-11-2021 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Mr. S.K. Gangele, Adv.
Ms. Priya Sharma, Adv.
Mr. Prathvi Raj Chauhan, Adv.
Ms. Ritu Gangele, Adv.
Mr. Rudra kumar Dey, Adv.
Mr. Arup Banerjee, AOR

Mr. Anil Kumar Gautam, AOR

For Respondent(s) Ms. Madhurima Tatia, Adv.
Mr. Shreyash Bhardwaj, Adv.
Mr. Nishant Verma, Adv
Mr. Gopal Jha, AOR

UPON hearing the counsel the Court made the following
O R D E R

- 1 Leave granted.
- 2 The appeal is disposed of in terms of the signed order.
- 3 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)

AR-CUM-PS

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)

COURT MASTER