IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.889-890 OF 2012

BHOLE & ORS. **APPELLANTS**

VERSUS

THE STATE OF MADHYA PRADESH **RESPONDENT**

WITH

CRIMINAL APPEAL NO.656 OF 2023

O R D E R

1. **The appellants are seven in numbers covering both these appeals. All of them have been convicted under Section 302 read with Sections 149 and 148 of the Indian Penal Code, 1860 (for short, 'IPC') but have been acquitted under Section 307 read with Section 149 of the IPC and Sections 25(1B)(a) and 27 of the Arms Act, 1959 (for short 'Arms Act').**

2. The case of the prosecution is that the appellants along with the other accused numbering about 14, armed with weapons such as guns and wooden logs went to the field of the deceased numbering three, attacked them and committed murder. PW1 is the informant being the injured eye-witness. Placing reliance upon the evidence of PW1 and the other witnesses namely PW2 to PW5, though PW4 has turned hostile on certain

aspects, the Trial Court convicted the appellants. The High Court in turn confirmed the conviction and sentence.

3. The learned counsel appearing for the appellants submitted that much more scrutiny is required under Section 149 of the IPC. There is always a tendency of the prosecution to add more accused persons. It is a case of vicarious and constructive liability and therefore caution is required. The evidence of PW1 to PW5 contains material contradictions. PW1 has even denied Exhibit P1, being the first information report. PW2 has given contradictory statement under Section 161 of the Code of Criminal Procedure, 1973, and so is also the case of PW3. These two witnesses also stated that the deceased did not take food in the morning which is contradictory to the medical evidence. PW4 though turned hostile specifically speaks of all the accused persons. Inasmuch as the charges under the Arms Act have not been proved, as a consequence, the very basis of the prosecution case ought not to have been believed especially when there is a serious doubt with respect to the timing of the occurrence and the person who gave the statement leading to the registration of the first information report. Furthermore, the police officer by the name of B.P. Singh Bhadoria who was duly informed at the point of time, has not been examined despite being a material witness.

4. Though we find certain contradictions in the evidence

of PW1 to PW5, we are not inclined to interfere with the impugned judgment for the reason that PW1 is an injured eye-witness who has suffered multiple injuries through gunshots. Merely because there was a case registered against him, his evidence cannot be eschewed. He has clearly spoken on the presence of all the accused persons. The testimony of PW1 has been corroborated by PW2 to PW5. Even PW4 as stated by the learned counsel for the respondent – State has clearly stated about the presence of all the accused. The evidence of the witnesses will have to be read as a whole which was accordingly done by the Trial Court.

5. Merely because PW1 has made a statement that he did not author the first information report the case of the prosecution cannot be disbelieved especially when there is an admission on his part with respect to the signature made in Exhibit P1. As stated, there is nothing to disbelieve the evidence of PW1 to PW5. Three deaths have taken place and the witnesses have clearly spoken about the presence of the accused. In a case involving 149 of the IPC one cannot expect a witness to speak with graphic detail about the specific overt act that can be attributed to each of the accused.

6. As we find no infirmity with the impugned judgment the appeals are accordingly dismissed.

7. Bail bonds, if any, stand cancelled. The appellants shall be taken into custody to serve the remainder of the sentence.

……..J
[M.M. SUNDRESH]

……..J
[J.B. PARDIWALA]

NEW DELHI
16th August, 2023

ITEM NO.107 COURT NO.14 SECTION II-A

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

CRIMINAL APPEAL NO(S). 889-890/2012

BHOLE & ORS. Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH Respondent(s)

WITH
Crl.A. No. 656/2013 (II-A)
(I.A.Nos. 71292, IA No. 71294/2018 - EXEMPTION FROM FILING O.T.)

Date : 16-08-2023 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) Mr. S. N. Bhatt, Sr. Adv.
Mr. Vikas Upadhyay, Adv.
Mr. Vikrant Singh Bais, Adv.
Mr. Yogesh Tiwari, Adv.
Ms. Neema, Adv.
Mr. R. N. Tiwari, Adv.
Mr. Sarthak Nema, Adv.
Mr. Jaswant Singh Chauhan, Adv.
Mr. Sanjay K. Agrawal, AOR

For Respondent(s) Mr. Harmeet Singh Ruprah, D.A.G.
Mr. Sunny Choudhary, AOR
Ms. Samridhi S. Jain, Adv.
Mr. Sumit Arora, Adv.

Mr. Pashupathi Nath Razdan, AOR
Mr. Mirza Kayesh Begg, Adv.
Ms. Maitreyee Jagat Joshi, Adv.
Mr. Astik Gupta, Adv.
Mr. Rohan Mazumdar, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA) (RAM SUBHAG SINGH)
COURT MASTER (SH) COURT MASTER (NSH)

[Signed order is placed on the file]