

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.2444 OF 2009

KAUSHLENDRA PRASAD@KAUSHAL MAHTON ... APPELLANT

VERSUS

STATE OF BIHAR ... RESPONDENT

WITH

CRIMINAL APPEAL No.2445 OF 2009

CRIMINAL APPEAL Nos.2446-2447 OF 2009

CRIMINAL APPEAL No.2511 OF 2009

O R D E R

We have heard learned counsel for the parties and have gone through the records with their assistance.

The case of the prosecution is that on 7th March, 1986 at about 10.45 a.m. Budhram Prasad (PW-6) along with the deceased - Vijay Yadav got into a bus. When the bus reached village Muhammadpur at about 11.00 a.m., six persons on two motorcycles came in front of the bus and stopped the bus from moving further. They threatened the driver that he would be killed if he drove the bus ahead. These six persons then arranged to take all the passengers out of the bus except the deceased - Vijay Yadav. Thereupon, they entered the bus and two bullet injuries were inflicted on the deceased - Vijay Yadav which lead to his death.

Around the same time, about six persons came from a nearby medical clinic. These six persons were not identified.

On the basis of the above facts, Budhram Prasad (PW-6) lodged a First Information Report (FIR) with the local police. In that FIR, he named five persons, viz., Shailendra Mahto (A-1), Surendra Prasad (A-3), Kaushlendra Prasad (A-4), Bahadur Mahto (A-5) and Arun Mahto (A-6). Krishna Murari Mehto (A-2) was not named in the FIR.

Consequent to the investigations carried out by the police, a prosecution was launched against six persons including Krishna Murari Mehto. The trial court by its judgment and order dated 22nd February, 1988 found that the accused persons were guilty of having caused the murder of Vijay Yadav and, accordingly, they were sentenced to imprisonment for life for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860.

All the six accused persons preferred appeals in the High Court. By the impugned judgment and order dated 16th September, 2008, their appeals were dismissed. Arun Mahto (A-6), who fired two bullets into the body of the deceased which led to his death, has not preferred any further petition or appeal before this Court.

We are, therefore, concerned with the appeals filed by the remaining accused persons.

As mentioned above, we have heard learned counsel for the parties in considerable detail and we find no merit in any of the appeals except in Criminal Appeal No.2511 of 2009 filed by Krishna Murari Mehto (A-2) to whom we are inclined to give the benefit of doubt since it is not very clear whether he was present at the place of the incident.

As mentioned above, Budhram Prasad (PW-6) did not name Krishna Murari Mehto in the FIR nor did he name him during his oral testimony in the Court. The name of Krishna Murari Mehto was added at the instance of Raghubir Yadav (PW-2) who had named him after a gap of about two days.

Even so, the evidence of PW-2 indicates that Krishna Murari Mehto did not enter the bus and no role has been attributed to him. In fact, even from the evidence of some of the eye-witnesses, nothing substantial has been shown against Krishna Murari Mehto. Under the circumstances, it is possible that Krishna Murari Mehto was present, but it is also equally possible that he may not have been present at the place of the incident but has only been roped in. It is for this reason that we are inclined to give him the benefit of doubt.

Accordingly, Criminal Appeal Nos. 2444 of 2009, 2445 of 2009, 2446-2447 of 2009 are dismissed whereas Criminal Appeal No. 2511 of 2009 filed by Krishna Murari Mehto is

allowed and the conviction of Krishna Murari Mehto is set aside. Krishna Murari Mehto be released from custody unless required in connection with any other case.

.....J.
(MADAN B. LOKUR)

.....J.
(ADARSH KUMAR GOEL)

NEW DELHI
MARCH 12, 2015

ITEM NO.110

COURT NO.8

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s).2444/2009

KAUSHLENDRA PRASAD @ KAUSHAL MAHTON

Appellant(s)

VERSUS

STATE OF BIHAR

Respondent(s)

(With appln.(s) for Ad Interim ex parte provision bail and office report)

WITH

Crl.A. No. 2445/2009

(With Office Report)

Crl.A. No. 2446-2447/2009

(With Office Report)

Crl.A. No. 2511/2009

(With Office Report)

Date : 12/03/2015 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Mr. Nagendra Rai, Sr. Adv.
 Mr. Shantanu Sagar, Adv.
 Mr. S. Singh, Adv.
 Mr. Aakash Kumar, Adv.
 Mr. T. Mahipal, AOR

 Mr. Manu Shanker Mishra, AOR
 Mr. Nishant Kumar, Adv.

 Mr. R. Basant, Sr. Adv.
 Mr. Virender Kumar, Adv.
 Mr. Sunil Kumar Verma, AOR

 Mr. R.K. Dash, Sr. Adv.
 Mr. Akhilesh Kumar Pandey, AOR

For Respondent(s)

Mr. Gopal Singh, AOR
Ms. Purna Singh, Adv.
Ms. Rashmi Srivastava, Adv.

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

We have heard learned counsel for the parties and have gone through the records with their assistance.

Criminal Appeal Nos. 2444 of 2009, 2445 of 2009, 2446-2447 of 2009 are dismissed whereas Criminal Appeal No. 2511 of 2009 filed by Krishna Murari Mehto is allowed and the conviction of Krishna Murari Mehto is set aside. Krishna Murari Mehto be released from custody unless required in connection with any other case.

(SANJAY KUMAR-I)
COURT MASTER

(JASWINDER KAUR)
COURT MASTER

(Signed order is placed on the file)