

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1306 OF 2009

ANTUAPPELLANT(S)

VERSUS

STATE OF MADHYA PRADESHRESPONDENT(S)

W I T H

CRIMINAL APPEAL NO. 1308 OF 2009
CRIMINAL APPEAL NO. 1442 OF 2010
CRIMINAL APPEAL NO. 1639 OF 2012

O R D E R

No one appears on behalf of the appellants despite repeated calls. In the circumstances, we have heard counsel appearing for the respondent/State and have perused the materials available on record.

2. We are concerned with a case where eighteen (18) persons were tried for offences under Sections 147, 148, 302, 302/149, 307 and 307/149 of the Indian Penal Code, 1860 (for short, 'IPC'). Out of the said eighteen

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persons, eleven accused persons were acquitted by the trial court. Rest of them were found guilty under Sections, 302, 302/149 and 148 of the IPC and they were sentenced by the trial court, vide its order dated February 02, 1999, to undergo rigorous imprisonment for life with fine of `2,000 and further rigorous imprisonment for four years with fine of `1,000 on each count respectively. One of the accused, Soyab Khan @ Babloo was further convicted under Section 324 of IPC and was sentenced to undergo rigorous imprisonment for one year with fine of `200.

3. Five appeals, being Criminal Appeal Nos. 458, 929, 942, 954 and 955 of 1999, were filed against the judgment of the trial court. The High Court allowed Criminal Appeal Nos. 929 and 942 of 1999 by setting aside the conviction and sentence imposed and acquitted them. Rest of the appeals were dismissed, against which these appeals were preferred.

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4. The appellants have maintained the stand that they were falsely implicated in the alleged incident and their participation was not established beyond reasonable doubt. Further, it is also stated that the alleged eye witnesses had improved their version during trial and they are exaggerated too much at the instance of the prosecution so as to rope in all the accused persons. It was also pointed out that the trial court and the High Court have committed an error in convicting the appellants with the aid of Section 149 of the IPC as the allegation of common object of the unlawful assembly to commit murder of the deceased was not established. It is also pointed out that the evidence of the so-called eye witnesses, PWs 1 to 5, is inconsistent and not worthy of consideration. PW-1, who is an injured witness, it is pointed out, is an interested witness and the injury was not caused during the alleged incident and the

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attempt was only to rope in all the accused persons who had no role in the entire episode.

Further, motive for the offence was also not properly established nor any ingredients of Section 149 of IPC were established to hold all the accused guilty under Section 302 read with Section 149 of IPC.

5. The case of the prosecution mainly rests upon the testimonies of five witnesses, PWs 1 to 5, which according to the prosecution have been correctly appreciated by the trial court as well as the High Court to hold the appellants guilty of the offence charged against them. The prosecution has also succeeded in establishing that all the accused persons came to the place of occurrence together and they were carrying deadly weapons and they had only one motive that was to do away with the deceased which they succeeded. It was pointed out that the appellants were rightly convicted under Section 302 read with Section 149 of IPC,

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which calls for no interference.

6. The prosecution version is that the accused persons nurtured a feeling that they did not get due importance in the orchestra of Ganesh Utsav Samiti, Gokulpur. Hence, on March 08, 1996, at about 8.30 p.m., when PW-1 was sitting in his shop situated at Gokulpur main road and was talking to the deceased, the accused persons, armed with deadly weapons, attacked the deceased and PW-1. Gudda, one of the appellants herein, dealt a blow with spear on the left side of the chest of the deceased and when PW-1 tried to save him, Soyab Khan,

another accused, dealt a blow with gupti on his left arm. PW-4, in order to save himself, ran away from the spot and some of the accused chased him as well. PW-4 was, however, saved by PWs 2 and 3. After assaulting the deceased and PW-1, all the accused persons ran away from the spot. PW-5, brother of the deceased, also reached the spot. PW-1 and the deceased were

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taken in an auto rickshaw to the Police Station, Ranjhi and the FIR was lodged. From there, they were taken to the Victoria Hospital, Jabalpur. By the time the deceased reached the hospital, he was declared dead. The dead body was sent to post mortem to the Medical College & Hospital, Jabalpur.

7. Dr. Anoop Jain (PW-10), who conducted the post mortem examination, found the following injuries on the body of the deceased:

- (1) Penetrating wound on the left side of the chest wall, 3 inches lateral to left nipple in 4th intercostal space, oval in shape. One inch diameter, sharp edges, direction is backward medially upto the depth of 6 inches.
- (2) Incised wound on anterior surface of left upper arm, upper 1/3rd 2 x 1 inches through and through to lateral surface, exit wound is 1 x 1 inch cutting the muscles and subcutaneous tissues. Direction is lateral and backward, 2 inches length.
- (3) Incised wound on lateral surface of left upper arm, upper 1/3rd, 1 x = inch skin deep, below injury No.2.
- (4) Incised wound on left forearm, upper 1/3rd anterior surface, oval in shape,

1= x 1 x 1= inch.

- (5) Incised wound on top of left shoulder, 1 x = inch skin deep.

- (6) Incised wound on lateral surface of left knee joint, 1 x = inch skin deep.
- (7) Contusion present over the left thigh, lateral surface 2 x 1 inches transversely.
- (8) Contusion present over the left leg, lateral surface 2 x 2 nches.
- (9) Abrasion and contusion present on right upper arm, lateral surface 1 x = inch, transversely present.

On internal examination, he found penetrating wound on the left 4th intercostal space passing through the left pleura, left anterior part of lung through and through making route of 1 x = inch upto the left pericardial border and making route in to percardium and left ventricle lateral wall upto the cavity of ventricle = x = inch, whole of left pleural cavity as well as pericardial cavity is full of blood.

7. Dr. J.N. Sen (PW-6) examined the injuries of PW-1 and found one incised wound of 1 x = inch on left upper arm on anterior medial side and another incised wound 1= x = inch on the left upper arm, medial side near axilla. The injury report is exhibited as Exhibit P/4.

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8. We have gone through the deposition of PWs. 1 to 5. PW-1 has clearly established the fact that he suffered injuries in the incident. PWs. 2, 3 and 4 are independent witnesses and their evidence has been corroborated by the medical evidence of PWs. 6 and 10. PWs. 1 to 5 clearly indicated that the accused had gone together to the shop of PW-1 where the deceased was present and after inflicting injuries to both, they left the place. The evidence of PWs. 1 to 5 would clearly indicate that the accused persons had formed an unlawful assembly with the common object of committing the murder of the deceased.

9. Section 149 of IPC provides that if an offence is committed by any member of an unlawful assembly, in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing the offence, is

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a member of the same assembly is guilty of that offence. The first clause of Section 149 contemplates the commission of an offence by any member of an unlawful assembly, which can be held to have been committed in prosecution of the common object of the assembly. The second clause takes within its fold the commission of an act, which may not necessarily be the common object of the assembly, still, members of the assembly had knowledge of likelihood of the commission of the offence in prosecution of the common object. The common object may be the commission of one offence while there may be likelihood of the commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly.

10. In support of the above proposition, it is useful to refer to the decision of this Court in *Rajendra Shantaram Todankar v. State of Maharashtra & Ors.*, (2003) 2 SCC 257, wherein

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this Court held that a mere possibility of the commission of the offence would not necessarily enable the Court to draw an inference that the likelihood of commission of such an offence was

within the knowledge of every member of the unlawful assembly. However, inference can be drawn from circumstances such as the background of the incident, motive, nature of the assembly, nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime.

11. In *State of Rajasthan v. Nathu & Ors.*, (2003) 5 SCC 537, this Court held that if death is caused in prosecution of the common object of an unlawful assembly, it is not necessary to record a definite and specific finding as to which particular accused out of the members of the unlawful assembly caused the fatal injury.

Once an unlawful assembly has come into existence, each member of the assembly also

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becomes vicariously liable for the criminal act of the other member of the assembly committed in prosecution of the common object of the assembly.

12. In *Parsuram Pandey & Ors. v. State of Bihar*, (2004) 13 SCC 189, this Court held that to attract Section 149 of IPC, the prosecution must prove that the commission of an offence was by any member of an unlawful assembly and that such offence must have been committed in prosecution of the common object of the assembly or must be such that the members of the assembly knew that it was likely to be committed.

13. We may indicate that so far as this case is concerned, the accused had gone to a market in Gokulpur to the shop of PW-1, together with the other accused, and had caused injuries to the deceased and had also assaulted PW-1, who tried to save the deceased. Later, all the accused persons ran away from the spot together. The prosecution, in our view, succeeded in establishing that all the accused persons came to the spot of the incident together and were carrying deadly weapons and had the common object of doing away with the deceased.

14. The knowledge of the assembly to the fact that grievous hurt or death would be caused to the deceased can safely be attributed to the members of that unlawful assembly. It is apparent from the record that the accused persons came to the shop of PW-1 together and most of them were carrying deadly weapons like spear, sword, knife, gupti, etc. Immediately on reaching the spot, Gudda, one of the accused, pierced the spear on the left side of the chest of the deceased and when PW-1 tried to save him, Soyab Khan, another accused, dealt a blow by gupti on him as well. All the aforesaid acts would clearly indicate the common object of the unlawful assembly and their motive and knowledge that it was to do

away with the deceased that they had assembled. The injury found on the chest of the deceased would clearly establish that it was sufficient to cause death and the injury

found on the body of PW-1 reinforces the inference of the existence of common object of unlawful assembly to do away with the deceased and cause injuries to any other person(s) who tried to intervene.

15. In our view, both the Courts below had correctly appreciated the evidence and rightly convicted the appellants under Section 302 read with Section 149 of IPC, which calls for no interference.

16. The appeals, therefore, lack merit and are accordingly dismissed.

.....J.
(K.S. RADHAKRISHNAN)

.....J.
(VIKRAMAJIT SEN)

NEW DELHI,
APRIL 30, 2014.

ITEM NO.105

COURT NO.6
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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SECTION IIA

CRIMINAL APPEAL NO(s). 1306 OF 2009

ANTU Appellant (s)
STATE OF M.P. VERSUS Respondent(s)

(With appln(s) for suspension of sentence and office report)

WITH Criminal Appeal No. 1308 of 2009
(With office report)
Criminal Appeal No. 1442 of 2010
(With appln. for bail and office report)
Criminal Appeal No. 1639 of 2012
(With appln. for exemption from filing c/c of the impugned order,
exemption from filing O.T. and bail)

Date: 30/04/2014 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Appellant(s)
Mr. Rameshwar Prasad Goyal, Adv. (NP)
Mr. Rajeev Singh, Adv. (NP)

Mr. Shekhar Prit Jha, Adv. (NP)

Mr. Vipin Kumar Jai, Adv. (NP)

For Respondent(s)

Mr. Arjun Garg, Adv.

Mr. Ankit Lal, Adv.

Mr. Mishra Saurabh, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are dismissed.

(N.S.K. Kamesh)
Court Master

(Renuka Sadana)
Court Master

(signed order is placed on the file)