

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.113-114 OF 2011

Thakor Lalsinh Bhavansinh and Another Appellant(s)

Versus

State of Gujarat Respondent(s)

O R D E R

The accused Nos.1 and 8, who have been, *inter alia*, convicted of the offence punishable under Section 302 I.P.C. and sentenced to undergo rigorous imprisonment are in appeal before us.

We have considered the matter. Insofar as the conviction of the accused No.1, Thakor Lalsinh Bhavansinh, is concerned, we find from the evidence on record that there are as many as six eye witnesses i.e. PWs 20, 21, 22, 27, 29 and 31, who have implicated the said accused. His participation in the crime and his sharing of the common object of the unlawful assembly is, therefore, proved beyond the reasonable doubt and the findings in this regard recorded by the learned trial Court and affirmed by the High Court in appeal are unassailable. We will, therefore, have no occasion to interfere with the conviction and sentence imposed on the accused No.1.

Insofar as the accused No.8, Rupsing Agarsing Thakor, is concerned, we find that PW-31, the mother of the deceased Neha and wife of Dr. Judal is the only eye witness who has implicated the accused No.8.

A short recollection of the necessary facts would be appropriate at this stage. The accused persons who belong to Thakor community were inimical to one Mr. G.S. Judal, the Director of Gujarat Agricultural University, Dantiwada Campus, District Banaskantha. On the date of occurrence, a mob of about 20 to 25 persons including the accused No.8 had gone in search of Dr. Judal, armed with dangerous weapons. They were not able to locate Dr. Judal and went to his house where, again, he could not be found. It is at this stage that some of the accused persons entered the house of Dr. Judal and committed the crime and murdered one Girishbhai and one Neha, the brother and the daughter of Dr. Judal. Insofar as the accused No.8 is concerned, the materials on record would go to show that he had not entered the house and he had been outside. This is what PW-31 has stated. If that is so, we will have serious doubt in affirming the finding of the High Court that the accused No.8 had shared a common object of committing the offence of murder. The common object of the unlawful assembly can be legitimately understood to be to commit the murder of Dr. Judal or cause harm to him. Dr. Judal was not traceable. It is at this point of time that some of the members of the unlawful assembly entered the

house of Dr. Judal and committed the crime while some of the other accused stayed outside without resorting to any overt act. The presence of the accused No.8 outside the house and the participation in the actual crime by some other accused persons inside the house, in the aforesaid circumstances, cannot lead us to the conclusion that the accused No.8 shared a common object with the other accused to murder the other members of the family of Dr. Judal; so as to be vicariously liable for the crime with the aid of Section 149 I.P.C.

In view of the above, while dismissing the appeal filed by the accused No.1, we allow the same filed by the accused No.8 and direct his release from prison forthwith unless his custody is required in any other cases.

Consequently, the appeals are partly allowed as indicated above.

.....CJI.
[Ranjan Gogoi]

.....J.
[K.M. Joseph]

.....J.
[Ajay Rastogi]

New Delhi
November 27, 2018.

ITEM NO.109

COURT NO.1

SECTION II-B

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 Nos.113-114/2011

THAKOR LALSINH BHAVANSINH & ANR.

Appellant(s)

VERSUS

STATE OF GUJARAT

Respondent(s)

Date : 27-11-2018 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)

Mr. A. Venayagam Balan, AOR

Mr. Jayanth Muth Raj, AOR (A.C.)

For Respondent(s)

Ms. Jesal Wahi, Adv.

Ms. Hemantika Wahi, AOR

Ms. Parul Luthra, Adv.

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

The appeals are partly allowed in terms of the
signed order.

(Chetan Kumar)
A.R.-cum-P.S.

(Anand Prakash)
Court Master

(Signed order is placed on the file)