

SUPREME COURT OF INDIA

Nagesar

Vs.

State of Chhatisgarh

Crl.A.No.1096 of 2014

(T.S.Thakur and C.Nagappan JJ.)

05.05.2014

JUDGMENT

C. NAGAPPAN, J.

1. Leave granted in both the special leave petitions.
2. Both the appeals have been preferred against the common judgment dated 31.1.2012 of the Division Bench of the High Court of Chhatisgarh, Bilaspur, in Criminal Appeal No.12 of 2007 and Criminal Appeal No.331 of -
3. 2007. The appellants herein Nagesar and Khetro accused Nos. 6 and 7 respectively, in Sessions Trial No.232 of 2005 on the file of 10th Additional Sessions Judge (FTC) Durg, were tried along with five other accused and all of them were convicted for the offence under Sections 147, 148 and 302 IPC and each of them was sentenced to undergo rigorous imprisonment for one year and pay a fine of Rs.1000/- and in default to undergo rigorous imprisonment for two months for offence under Section 147 IPC; one year rigorous imprisonment and to pay a fine of Rs.2000/- each and in default to undergo rigorous imprisonment for three months for the offence under Section 148 IPC and life imprisonment and to pay a fine of Rs.3000/- in default to undergo six months imprisonment for the offence under Section 302 IPC and the sentences were directed to run concurrently.

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5. Aggrieved by the conviction and the sentences accused Nos. 1 to 7 preferred five criminal appeals and the High Court by the impugned common judgment dated 31.1.2012 partly allowed the appeals by setting aside the conviction and sentence imposed upon them and acquitted them for the offence under Section 148 IPC and also altered conviction under Section 302 IPC to Section 304 Part II of IPC and sentenced each of them to undergo rigorous imprisonment for a period of 6 years and imposed a fine of Rs. 3000/- on each of them and in default to undergo rigorous imprisonment for six months and maintained the conviction and sentence imposed on them for the offence under Section 147 IPC. Challenging the same accused Nos.6 and 7 have preferred the present appeals.

6. Background facts of the case in a nutshell are as follows: On 13.6.2004 in the evening Korma Rao was sitting along with PW1 Pramod and Pradeep near -

7. Priyadarshini Market Chowk, Khursipar, Bhilai. Accused Nos. 1 to 7 were consuming Ganja and liquor in the above said place and this was objected to by Korma Rao and in the altercation Korma Rao slapped accused No.4 Rajendra Prasad Shukla @ Tukna. Korma Rao left the place with PW1 Pramod & Pradeep by scooter. Again at 11.45 PM he came back to the same place where juvenile accused Pitambar @ Panto threw chilli powder on the eyes of Korma Rao and assaulted him on the head with sword. When Korma Rao fell down juvenile Pitambar took out a stone and dropped it over his head and the other accused assaulted him. Accused No.1 Bhimsen @ Bhim attacked Korma Rao with stick. When PW8 Gopi Rao intervened he was attacked on the head with sword by accused No.1 Bhimsen @ Bhim. PW9 Ram Lalit Yadav also witnessed the occurrence. PW 8 Gopi Rao informed PW5 Bhaskar Rao, who is the brother of Korma Rao about the occurrence and they took injured Korma Rao to BSP -

8. Hospital, Bhilai. Korma Rao was examined by PW4 S.K. Bhoi and Ex.B4 wounds Certificate was issued by him. He also examined PW 8 Gopi Rao and found a lacerated wound over the back of his head and issued Exh.P5 Injury Certificate. Korma Rao died at 3.00 P.M.. PW5 Bhaskar Rao lodged complaint

and the death of Korma Rao was intimated by the Doctor vide Exh. P32 and FIR Exh.P21 came to be recorded. The Investigating Officer conducted inquest over the body vide Exh.P8 Inquest Report. He seized blood stained earth, blood stained stone and broken bricks by Exh. P13 and sent the body for post-mortem.

5. PW13 Dr. Padmakar Mishra conducted the autopsy on the body of Korma Rao and found the following injuries:

- i) Incised wound of 4 c.m. x 1 c.m. x 1 c.m. over back of head with fracture of bone.
- ii) -
- iii) Two incised wounds of 2 c.m. x ½ c.m. x 1 c.m. and 2 c.m. x ½ c.m. over back of head.
- iv) Incised wound of 7.5 c.m. over left temporo parietal region.
- v) Incised wound of 9 c.m. length over right parietal region.
- vi) Incised wound of 4 c.m. length just below right eye.
- vii) Incised wound over upper part of nose.
- viii) Fracture of right and left mandible bone.
- ix) Incised wound over ring finger of 2 c.m. in length with fracture of metacarpal bone.
- x) Incised wound of 2 c.m. x ½ c.m. over wrist.
- xi) Incised wound of 20 c.m. x ½ c.m. over back.
- xii) Haematoma of fronto parietal bone of 20 c.m. length.

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He expressed opinion that death has occurred due to shock on account of ante-mortem injuries and issued Exh.P20 post-mortem certificate.

6. Pursuant to Ex.P.10 disclosure statement of accused No.4 Rajender Prasad wooden plank was recovered under Ex.P22. Pursuant to the disclosure statement of accused No.3 Pradeep stone was recovered under Exh.P.11. On Exh.P.12 disclosure statement of PW1 Bhimsen stick was recovered under Exh.P.16. On the disclosure statement of juvenile accused Pitambar sword and clothes Exh.P.23 were recovered under Exh.P.14 and Exh.P15. Blood stained clothes of other accused were also seized. The seized articles were sent for clinical examination under Exh.P38 and Exh.P40 is the report. On completion of investigation final report was filed. The case against the juvenile accused Pitambar was filed before the Juvenile Justice Board.

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7. In order to prove the guilt of the accused the prosecution examined PWs 1 to 17 and marked the documents. No evidence was adduced by the accused. The trial court found all the accused guilty of charges and sentenced them as narrated above. The appeal preferred by them was partly allowed as indicated above. Challenging the same accused No.6 Nagesar and accused No.7 Khetro have preferred the present appeals.

8. The learned counsel appearing for the appellants submitted that both the appellants were not named in the First Information Report and the eye witness Ram Lalit Yadav in his testimony has not mentioned the names of the appellants as having been present during the occurrence and even the other eye witness has not attributed any overt act to the appellants in the attack made on the deceased and their presence at the occurrence place is itself doubtful and they are entitled to an acquittal. Per contra the learned counsel appearing for the respondent-State contended that the appreciation of evidence by the Courts below was proper and did not, thereby, call for any interference.

9. Korma Rao suffered a homicidal death is sought to be proved by the medical evidence adduced by the prosecution. The autopsy was conducted by PW13 Dr. Padmakar Mishra and as per his testimony, he found 6 incised wounds on the head with fracture of right and left mandible bone and he opined that death has occurred on

account of the shock due to ante-mortem injuries. Exh. P20 is the post-mortem certificate issued by him. Thus it is amply clear that Korma Rao died of injuries sustained during the occurrence.

10. The prosecution case is that accused Nos. 1 to 7 in furtherance of their common object attacked Korma Rao at the time of occurrence and caused his death. PW8 Gopi Rao and PW9 Ram Lalit Yadav were examined as having witnessed the occurrence. According to PW8 Gopi Rao on 13.6.2004 late in the evening accused nos. 1 to 7 were sitting at Priyadarshini Market Chowk and were consuming Ganja and Cigarette and Korma Rao objected the same and in the altercation he slapped accused No.4 Rajender Prasad Shukla and left the place with PW1 Promod and Pradeep by scooter and again at 11.45 P.M. Korma Rao came back to the same place and juvenile Pitambar threw chilli powder in the eyes of Korma Rao and assaulted him on the head with sword and when he fell down juvenile Pitambar dropped a stone over his head and the other accused assaulted him. It is his further testimony that accused No.1 Bhimsen attacked Korma Rao with stick and when he intervened he was attacked on the head with sword by accused No.1 Bhimsen and he rushed to inform PW5 Bhaskar Rao, who is the brother of Korma Rao and they took injured Korma Rao to hospital where he died at 3.00 A.M.. According to PW8 Gopi Rao the appellants Nageswar and Khetro were found in inebriated state having consumed cigarette and Ganja. Though PW8 Korma Rao had mentioned the names of both the appellants in his testimony as having been present at the place of occurrence, he has not attributed any overt act to them in the attack made on the deceased as well as himself.

11. PW9 Ram Lalit Yadav is the other eye-witness and he has testified that he went to the place of occurrence at about 11.15 P.M. in the night and the accused persons were sitting there and PW8 Gopi Rao also joined him and when Korma Rao came there, accused persons Khetro, Bhim, Pitambar and others attacked Korma Rao with sword and danda and Korma Rao sustained injuries on the head and other parts of his body and when PW8 Gopi Rao intervened he also sustained sword injury on the head. It is his further testimony that he and PW8 Gopi Rao informed the occurrence to the family members of Korma Rao and they took him to hospital where he succumbed to the injuries. PW9 Ram Lalit Yadav has not mentioned the names of the appellants as having been present during the occurrence. In other words this witness, in his testimony has not stated about the presence of the appellants and did not attribute any role to them in the occurrence.

12. Exh. P21 is the First Information Report lodged by PW5 Bhaskar Rao, the brother of deceased Korma Rao. Of course he has not witnessed the occurrence and the information was conveyed to him by PW8 Gopi Rao who is an eye-witness. The names of the appellants Nagesar and Khetro are not mentioned in the First Information Report and in the facts of the case a doubt is created in the mind as to whether they could be really involved in the offence.

13. It is settled law that mere presence or association with other members alone does not per se be sufficient to hold everyone of them criminally liable for the offences committed by the others unless there was sufficient evidence on record to show that one such also intended to or knew the likelihood of commission of such an offending act. (K.M Ravi and others Vs. State of Karnataka (2009) 16 SCC 337). As already seen in this case there is no legally acceptable material to prove that the appellants acted as members of unlawful assembly to connect them with the murder of the deceased Korma Rao. At any rate in the absence of reliable evidence to prove that the appellants were either present on the spot or that they had committed any overt act that could show that they share the common object of the unlawful assembly it is not possible to support their conviction and benefit of doubt has to be given to them.

14. In the result both the appeals are allowed and the appellants are given benefit of doubt and the conviction and sentences imposed on them are set aside and they are acquitted of all the charges framed against them. They are directed to be released from the custody forthwith unless otherwise required in connection with any other case.