SUPREME COURT OF INDIA

Nand Kumar

Vs.

State of Chhattisgarh

Crl.A.No.906 of 2012

(Fakkir Mohamed Ibrahim Kalifulla and Abhay Manohar Sapre JJ.)

31.10.2014

JUDGMENT

ABHAY MANOHAR SAPRE, J.

1. These appeals have been directed against the final common judgment dated 11.05.2007 passed by the High Court of Chhatisgarh at Bilaspur in Criminal Appeal Nos. 785, 866, 762, 868, 761, 853, 875, 970, 851, 873 and 842 of 2001, whereby the High Court upheld the conviction and sentence of the appellants herein under Section 302 read with Sections 149 and 148 of the Indian Penal Code, 1860 (in short IPC) which was awarded to them by the Sessions Court whereas the High Court allowed the Criminal Appeals of other accused and acquitted them of the charges by setting aside the judgment of the Sessions Court dated 12.07.2001 in Sessions Trial No. 342 of 1995 to that extent.

2. The concluding part of the impugned judgment of the High Court reads as under:

> In the result, the appeals filed by accused Raj Kumar Singh, Dhananjay, Rohit, Nirmal, Surjan, Santosh Singh, Gopal Das, Chhatram, Balchand and Devilal succeeds. Conviction and sentences imposed upon them under Sections 302 read with Sections 149 and 148 of the IPC are set aside. They are acquitted of the said charges.

a. Balchand, Devilal, Chhatram & Surjan are on bail. Their bail bonds are discharged and they need not surrender to their bail bonds.

b. Santosh Singh, Rohit, Gopal Das, Raj Kumar Singh, Nirmal and Dhananjay are in detention since 18-1-1995. They are directed to be released forthwith, if not required in any other case.

The appeal filed by accused Rameshwar Singh stands abated.
The appeals filed by accused Kumar Singh, Nande Singh, Nand Kumar, Baran, Jaipal, Resham Lal, Guharam, Amritlal and Basant Das are dismissed. Conviction and sentences imposed upon them under Sections 302 read with Sections 149 and 148 of the IPC are maintained. Baran, Jaipal and Resham Lal are on bail. Their bail bonds are discharged and they are directed to surrender before the trial court forthwith to serve out the remaining sentence.

3. The question that arises for consideration in these appeals is whether the High Court was justified in upholding the conviction and sentence of the present appellants.

4. In order to appreciate the issue involved in these appeals, it is necessary to state the prosecution case in brief infra.

5. In a village - Bhaismudi in District Janjgir, there were two groups of villagers. One group consisted of deceased - Jawahar Singh, Bhupendra Singh and others whereas the other group consisted of the appellants herein and other accused. There were disputes between the two groups on account of Panchayat elections in the village and also several other reasons.

6. In the intervening night of 16th & 17th January 1995, the accused persons convened a meeting and hatched up a conspiracy to eliminate Jawahar Singh and others. The accused persons accordingly formed an unlawful assembly with a common object to murder Viki Singh, Jawahar Singh, Bhupendra Singh, Shailendra Singh - both sons of Jawahar Singh, and Kalicharan and in furtherance of this common object, all accused persons with deadly weapons (lathi, sword, ballam, Tabbals, iron roads) first went to the residence of Viki Singh near a place called Nawa Talab, and killed Viki Singh by severely beating him with the weapons which they had carried with them. The accused persons then proceeded towards the agriculture field of Jawahar

Singh where they killed Jawahar Singh and his two sons - Bhupendra Singh and Shailendra Singh by severely beating them with the weapons, which they were carrying with them. Thereafter, the accused party proceeded to a place called - Holha Chowk of Bhaismudi and killed Kalicharan with the aid of same weapons.

7. Madhubala Bai (PW-1) reported this incident by lodging Dehati Nalishi (Ex-P-1) on the spot on 17.01.1995 around 3.00 P.M.

8. At this stage it is proper to reproduce the substance of the contents of Ex-P-1 herein below: -

> .that she is resident of village Bhaismudi, at about 11.30 a.m. she was at her shop, at that time, Karia Sabaria came crying to her shop and said that Viki Singh has been murdered near Nawa Talab by Shiv Sena persons namely, Kumar Singh, Nande Singh, Guharam, Rohit, Jaipal, Resham, Rajkumar Singh, Prahlad Singh, Rameshwar Singh, Dhananjay, Nand Kumar, Santosh & others.
>
> When she reached the spot, she saw that all these persons were carrying lathi, rod, battle axe etc. They were crying and saying ˜let us now go to the field of Jawahar Singh and finish them there™, they started going towards the agricultural field of her father. She and her mother also followed them and requested that once they should save their life, but they did not accede to their request. While going to the agricultural field, she informed Vinay Singh that Babuji has been murdered near Nawa Talab, Nirmal Kashyap, Amrit, Basant and Baran were also along with them. After reaching the agricultural field, these persons attacked her father Jawahar Singh and brothers Bhupender Singh and Shailender Singh with lathi and Tabbal as a result of which her father Jawahar Singh and brother Bhupender Singh succumbed to the injuries sustained by them instantaneously, and brother Shailender Singh succumbed to the injuries after 15-20 minutes. All these persons have committed the murder of her father and brothers.

9. On receipt of the aforesaid report, Brajender Singh (PW-16) - the Head Constable of Police Station Janjgir, registered the FIR (Ex-P-64) for commission of the offence under Sections 302, 147, 148 and 149 IPC. Brajender Singh (PW-16) gave intimation in respect of the death of Shailendra Singh - (Ex-P-65) whereas intimation in respect

of the death of Bhupendra Singh and Jawahar Singh were given by M.L. Shandilya (PW-22), Inspector of police - Exs-P-70 and P-71.

10. After giving necessary notices (Exs. P-2, 51, and 63), the Investigating Officer prepared inquest of Bhupendra Singh (Ex-P-3), Shailendra Singh (Ex-P-52) and Jawahar Singh (Ex-P-64). Dr P.K. Narula (PW-12) conducted post-mortem on the body of Bhupendra Singh (Ex-P-56). In his opinion, the cause of death of Bhupendra Singh was due to shock as a result of hemorrhage on account of extensive homicidal head injury. Dr. U.C. Sharma (PW-13) conducted post-mortem on the body of Jawahar Singh, who vide his report (Ex.P-59) opined that cause of death of Jawahar Singh was due to shock and hemorrhage as a result of extensive head injury and that the death is homicidal in nature. Dr. A.K. Paliwal (PW- 14) conducted post-mortem on the body of Shailendra Singh and vide his report (Ex-P-61) opined that cause of death was due to shock resulting from hemorrhage caused by extensive head injury and that death is homicidal in nature.

11. After completing the investigation and collecting all the evidence, the charge-sheet was filed against 29 accused persons for commission of offences punishable under Sections 147, 148, 149 and 302 of the IPC in the Court of Judicial Magistrate First Class, Janjigir, who in turn committed the case to the Session Judge, Bilaspur, who in turn transferred it to the Additional Sessions Judge. During the trial, one of the accused - Prahlad Singh, died.

12. Prosecution examined as many as 22 witnesses at the trial to prove the case. Statements of accused persons were then recorded under Section 313 of the Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C.), in which all the accused persons denied their involvement in the commission of the offences and also denied the material collected against them in the form of evidence. They stated that they were falsely implicated in the crime and are thus innocent. One of the accused, Ganesh, stated that the deceased and their party members were indulged in selling illicit liquor and since members of their party -Shiv Sena were not allowing them to do such acts which included accused, who were also the members of Shiv Sena, they were falsely involved in this case due to this grudge against them. He also stated that since in Panchayat elections, some candidates of the deceased party had lost the election and hence, they were hostile to the accused persons. Another accused - Gopal Das stated that on the date of incident, he was at Raigarh for medical test. The accused in

defence examined Lalit Kumar (DW-1) and Dinesh Chandra Pathak (DW-2).

13. The trial Court, by judgment dated 12.07.2001, acquitted eight accused and convicted the remaining accused. All the convicted appellants were directed to undergo life imprisonment under Section 302 read with Sections 148 and 149 with a fine of Rs. 2000/- each.

14. The convicted accused persons filed appeals in the High Court. By impugned judgment, the High Court upheld the conviction of nine accused persons by dismissing their appeals and acquitted the remaining accused persons by allowing their appeals. One appeal was held abated due to death of accused.

15. The details regarding conviction/acquittal of accused persons by the High Court are mentioned herein below:

Name and Number of the Accused-Appellant	Acquittal / Conviction
Gopal Das (A 3)	Acquitted
Kumar Singh (A 4)	Conviction Upheld
Rajkumar Singh (A 5)	Acquitted
Baran (A 6)	Conviction Upheld
Amrit (A 7)	Conviction Upheld
Guharam (A 8)	Conviction Upheld
Jaipal (A 9)	Conviction Upheld
Santosh Singh (A 10)	Acquitted
Nande Singh (A 11)	Conviction Upheld

Resham (A 13)	Conviction Upheld
Rameshwar Singh (A 14)	Appeal Abated
Dhananjay (A 15)	Acquitted
Rohit Kumar Karsh (A 16)	Acquitted
Nirmal (A 17)	Acquitted
Basant (A19)	Conviction Upheld
Surjan (A 20)	Acquitted
Chhatram (A 24)	Acquitted
Balchand (A 25)	Acquitted
Devilal (A 27)	Acquitted
Nand Kumar (A 28)	Conviction Upheld

16. Against this judgment of the High Court, the convicted accused persons have preferred these appeals before this Court questioning the correctness of the impugned judgment in so far as their conviction and sentence is concerned.

17. Learned Counsel for the appellants, while assailing the conviction and sentence of the appellants, contended that the High Court was not right in upholding the conviction of the appellants. It was further contended that there was no role played by any of the appellants in the commission of the offence in question and nor was there any overt act played by any of them so as to render them liable to suffer conviction and sentence under Sections 302/147/148/149 of the IPC. Learned Counsel urged that non-examination of Kariya Sabaria, who was important eyewitness even according to the prosecution, has rendered the appellants™ conviction bad in law. Learned counsel

maintained that where group of persons commits any crime, it becomes necessary for the prosecution to prove the role of every person of such group in commission of the offence including what every person actually did such as whether he actually assaulted the deceased, which weapon he used, how much force he used, whether he was aggressor, whether his role was prominent and if so to what extent etc. Learned Counsel submitted that since evidence adduced by the prosecution is lacking on these material issues and hence the appellants must be given the benefit of doubt and they be acquitted of the charges alike those acquitted by the trial court and the High Court and lastly, it was urged that since the conviction is based solely on the testimony of interested witnesses (PW- 1 and 3), who were related to the deceased persons and, therefore, their testimony was not reliable for convicting the appellants for want of any other independent eye- witness.

18. Learned Counsel for the respondent-State, in reply, while supporting the impugned judgment contended that no case is made out to call for any interference in the impugned judgment. Firstly, he submitted that the High Court was right in upholding the appellants™ conviction and sentence; secondly, both the courts below rightly appreciated the evidence adduced by the prosecution, which was sufficient in the ordinary course to sustain the finding of conviction under Section 302 read with Sections 147/148/149 of IPC; thirdly, the appellants™ conviction was based on the testimony of two eye- witnesses, namely, Madhubala Bai (PW-1) and Saraswati Bai, (PW-3), whose presence at the time of occurrence was not disputed; fourthly, keeping in view the law laid down by this Court in several decisions explaining therein the parameters to be applied for convicting any member of unlawful assembly, the prosecution was able to adduce sufficient evidence to sustain the appellants™ conviction; and lastly, looking to the gruesome murders committed by the appellants killing as many as five persons with a pre-determined motive, this Court should uphold the conviction and sentence of all the appellants, who are sailing in the same boat and dismiss these appeals.

19. Coming first to the question as to whether the death of three persons, which is the subject matter of these appeals, namely - Jawahar Singh, Shailendra Singh & Bhupendra Singh is homicidal. We are of the considered opinion that it is homicidal in nature. It is amply established from the medical evidence of three doctors namely, Dr. P.K. Narula (PW-12), Dr. U.C. Sharma (PW-13) and Dr. A.K. Paliwal (PW-14) and their respective post-mortem reports (Exs-P-56, 59 and 61) as also ocular evidence of

two eye-witnesses, Smt. Madhubala Devi (PW-1) & Saraswati Bai (PW-3). We, therefore, uphold the finding of two courts below on this issue.

20. This takes us to the main question as to whether the courts below were justified in holding the appellants guilty for committing murder of three persons named above?

21. Before we peruse the ocular evidence adduced by the prosecution, it is necessary to take note of the law on the question as to under what circumstances, a member of an unlawful assembly can be held to have committed an offence in pursuance of the common object of such assembly of which he is a member.

22. While distinguishing on facts and then explaining the view taken by this Court in Baladin and Ors. Vs. State of Uttar Pradesh, AIR 1956 SC 181, the four Judge-Bench speaking through Justice Gajendragadkar in Masalti etc. etc. Vs. State of U.P., AIR 1965 SC 202, laid down the following principle of law on the aforesaid question:

> 17. .in the case of Baladin v. State of Uttar Pradesh, AIR 1956 SC 181, .., it was observed by Sinha, J., who spoke for the Court that it is well-settled that mere presence in an assembly does not make a person, who is present, a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under Section 142 IPC. The argument is that evidence adduced used by the prosecution in the present case does not assign any specific part to most of the accused persons in relation to any overt act, and so, the High Court was in error in holding that the appellants were members of an unlawful assembly... It appears that in the case of Baladin the members of the family of the appellants and other residents of the village had assembled together; some of them shared the common object of the unlawful assembly, while others were merely passive witnesses. Dealing with such an assembly, this Court observed that the presence of a person in an assembly of that kind would not necessarily show that he was a member of an unlawful assembly. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained long with the other members of the assembly the common object as defined by Section 141 IPC Section 142 provides that however, being aware of facts which render any assembly an

unlawful assembly intentionally joins that assembly, or continue in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common object specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of Baladin assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear 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 the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly. Therefore, we are satisfied that the observations made in the case of Baladin2 must be read in the context of the special facts of that case and cannot be treated as laying down an unqualified proposition or law..

23. Recently, this Court in Om Prakash Vs. State of Haryana, (2014) 5 SCC 753, placed reliance on the aforesaid principle laid down in Masalti (supra) in following words:

15. The aforesaid enunciation of law was considered by a four-Judge Bench in Masalti v. State of U.P.,AIR 1965 SC 202 which distinguished the observations made in Baladin AIR 1956 SC 181 on the foundation that the said decision should be read in the context of the special facts of the case and may not be treated as laying down an unqualified proposition of law. The four-Judge

Bench, after enunciating the principle, stated as follows: (AIR p. 211, para 17) 17. it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal [pic]omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear 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 of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.

24. Keeping the aforesaid principle of law in mind, when we peruse the prosecution evidence, we have no hesitation in upholding the findings of the courts below. We do this for the following reasons.

25. In the first place, names of these accused are mentioned in Dehati Nalish (Ex-P-1). Secondly, their names are also mentioned in the statements of P.W-1 and P.W-3, which were recorded under Section 161 of the Cr.P.C. Likewise these two witnesses (PWs 1 and 3) also categorically stated in their evidence in Court about the overt act played by the accused persons in committing the murders of Jawahar Singh and his two sons, Bhupendra and Shailendra. In other words, a conjoint reading of these two statements clearly establishes the overt acts played by the accused persons while killing these three persons one after another on the same day. Thirdly and most importantly, the ocular evidence of two eye witnesses (PWs 1 and 3) conclusively prove not only the involvement of the accused persons but their actual active role played in killing these three persons. We have undertaken the exercise of appreciating the evidence and especially of two eye witnesses (PWs 1 and 3) and we find that their sworn testimonies deserve to be accepted.

26. It is not in dispute, as it has come in evidence, that Madhubala (PW-1) is the daughter of the deceased- Jawahar Singh, and sister of the deceased Bhupendra and Shailendra, whereas Saraswati Bai (PW-3) is the wife of the deceased Jawahar and mother of Madhubala (PW-1) and the deceased Bhupendra and Shailendra.

27. In the case on hand, the mother and daughter saw from their naked eyes that their father/husband and two sons/brothers were being killed in their presence with the use of Lathis, battle axe, sword and rods by the accused persons mercilessly and both the helpless ladies standing in front of the mob (accused persons) with folded hands praying "please do not kill them and leave them". The accused persons did not listen to their prayer and with a pre-determined motive killed the deceased persons by beating them due to which two of them died on the spot and one succumbed in the hospital after some time.

28. It will be a travesty of justice, if we do not believe the sworn testimonies of these two eye-witnesses, which in our considered opinion, remained consistent throughout on material issues. Indeed, there is no valid reason for this Court to disbelieve them.

29. The submission of learned Counsel for the appellants that since PWs 1 and 3 were in close relation with the deceased persons being wife/mother or daughter/sister and that they should not be believed for want of evidence of any independent witness, deserves to be rejected in the light of the law laid down by this Court in Dalbir Kaur and Ors. Vs. State of Punjab, (1976) 4 SCC 158, and Harbans Kaur and Anr. Vs. State of Haryana, (2005) 9 SCC 195, which lays down the following proposition:

> There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused. In Namdeo?Vs.?State of Maharashtra, (2007) 14 SCC 150, this Court further held:
>
> 38. . it is clear that a close relative cannot be characterised as an interested witness. He is a natural witness. His evidence, however, must be scrutinised carefully.
>
> If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the sole testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate

an innocent one.

30. We follow this well settled principle of law for rejecting the submissions of learned counsel for the appellants.

31. Yet another submission of learned counsel that due to discrepancies in the evidence of PWs 1 and 3 and in their statements recorded under Section 161, should not be relied on and deserves to be rejected in the light of the law laid down by this Court in Munshi Prasad and Ors. vs. State of Bihar, (2002) 1 SCC 351, which reads as under:

> Incidentally, be it noted that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. If the general tenor of the evidence given by the witness and the trial court upon appreciation of evidence forms opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of, and we do not see any justification to pass a contra-note, as well, on perusal of the evidence on record.

32. As mentioned above, we have not been able to notice any major discrepancies in their statements and whatever discrepancies, which were relied on by the learned counsel, were so minor and insignificant that they do not, in any way, dilute their version.

33. In our considered view, when several people participate in commission of an offence with deadly weapons and attack one or more persons with an intention to kill them then the witnesses who are closely related to the victim(s) are not expected to describe the incident in graphic detail and with such precision that which member and in what manner he participated in the commission of offence. Their evidence is required to be appreciated in its totality.

34. In the case on hand, PWs-1 and 3 elaborately narrated the entire incident by taking the names of every accused whom they knew to be the residents of the same area. We, therefore, find no merit in the submission of the learned counsel and accordingly reject

it.

35. We are also not impressed by the arguments of the learned counsel appearing for the appellants when he contended that one eye- witness, Kariya was not examined and hence it has weakened the case of the prosecution.

36. The law does not say that the prosecution must examine all the eye-witnesses cited by the prosecution. When the evidence of two eye- witnesses, PWs 1 and 3 was found worthy of acceptance to prove the case then it was not necessary for the prosecution to examine any more eye-witnesses. It is for the prosecution to decide as to how many and who should be examined as their witnesses for proving their case. Therefore, we find no merit in this submission.

37. In the light of the foregoing discussion, we find no merit in the appeals, which fail and are accordingly dismissed. As a result, the conviction and sentence awarded to the appellants by the courts below are upheld.