

SUPREME COURT OF INDIA

Inder Singh

Vs.

State of Rajasthan

Crl.A.Nos.493-495 of 2009

(M.Y.Eqbal and Shiva Kirti Singh JJ.)

06.01.2015

JUDGMENT

SHIVA KIRTI SINGH, J.

1. All these eight appeals arise out of one criminal case bearing FIR No.188/01 dated 10.09.2001 of P.S. Sunail, Distt. Jhalwada (Rajasthan) lodged by informant Amar Singh (P.W.15) against 29 named co-villagers. All the 29 accused persons were chargesheeted by the police. After trial, five accused were acquitted and the rest 24 were convicted for various offences. Five appeals preferred by 22 convicts were disposed of by a common judgment of the High Court dated 29.05.2008 which is impugned in 7 criminal appeals - 6 of them lodged in 2009 and Criminal Appeal No.1892 of 2011 by convict Kalu Lal lodged in 2011. Two of the convicts, namely, Ram Singh and Kesar Singh (accused nos.24 and 4 respectively) approached the High Court belatedly through jail appeals which were disposed of by judgment dated 10.03.2011 which is impugned in Criminal Appeal No.1194 of 2011. Since all the matters arise out of one criminal case, they have been heard together and are being disposed of by this common judgment. Before noticing the prosecution case and the main defence of the appellants, it is noted that out of 29 accused who were put on trial, accused nos.12, 15, 16, 22 and 23 (as per number in the trial court judgment) were acquitted by the trial court. The High Court acquitted accused no.17 whereas accused no.19 died during the pendency of his appeal before the High Court. The records show that accused no.8, appellant Maan Singh has died during the pendency of his appeal before this Court. Thus presently there are 21 appellants who have been convicted of offences under Sections 302/149, 307/149, 147 and 148 of the IPC. Accused nos.1, 2 and 3 have also been convicted for offences under Section 27 of the Arms Act, 1959. All have been

awarded life imprisonment along with other sentences which are to run concurrently.

2. Before advertng to the prosecution case, it is also useful to note that the occurrence is alleged to have taken place on 10th September 2001 at 06:45 p.m. in Village Dhodi, at a distance of 18 kms. from the concerned police station. The statement of informant Ram Singh (P.W.15) who was seriously injured, was recorded on the same date at 09:30 p.m. in presence of his uncle Chen Singh (P.W.17), by SHO at Camp Dhodi and formal FIR was recorded on same date at 10:30 p.m. The FIR was duly communicated to and seen by the Addl. Chief Metropolitan Magistrate on 11.09.2001. There were 29 accused persons named in the FIR, all residents of Village Dhodi. The four deceased who died on account of assault in the same occurrence as well as the injured informant and material eye witnesses, i.e., P.Ws.12, 14, 15, 17, 19 and 24 also belong to the same village. The genealogy prepared by the defence and shown to us, discloses that at least accused no.8-Maan Singh and his two sons accused nos.5 and 29 belong to the same larger family as that of the four deceased and the injured informant Amar Singh. Accused no.8-Maan Singh happens to be brother of deceased no.2-Bapu Singh and deceased no.4-Manohar Singh whereas deceased no.1-Inder Singh and deceased no.3-Nagu Singh are sons of deceased Manohar Singh. Informant Amar Singh is son of deceased Bapu Singh. The accused persons named in the FIR and chargesheeted by name never challenged their identification either before the police or before the Magistrate. Nor there was any cross- examination of the witnesses on the point of identification when the witnesses in their depositions have referred to the accused persons and the appellants by their name as well as village relationship. According to the Parcha Bayan of Amar Singh (P.W.15) he was at his house at around 06:45 p.m. of 10.09.2001 and at that time he heard cries of his cousin Inder Singh (deceased no.1) from the side of a field known as 'Patwari ka Khet'. He came out of the house and saw his uncle Maan Singh (accused no.8) and 28 other named accused running behind Inder Singh. They were armed with sword, gun, country-made pistol, lathi and gandasi. They all together killed Inder Singh (deceased no.1). Then they ran towards informant (P.W.15) and caused a sword blow at the wrist of his right hand. On his cries, his father Bapu Singh (deceased no.2) came running to rescue the informant. His uncle Maan Singh fired with his gun due to which Bapu Singh fell down and died in the khaal in presence of everybody. His uncle Manohar Singh (deceased no.4) and his son Nagu Singh (deceased no.3) also came running to save them but the accused persons assaulted them also leading to their death. Many persons of the village were watching the incident. The accused persons had registered cases of theft of water motor against deceased Inder Singh and he had been recently released from the jail custody. The accused had declared

that since police did not do anything, now they would see Inder Singh. There was an existing dispute over land between the informant side and accused Maan Singh and for these reasons Maan Singh and his associates, armed with weapons had caused death of four persons and had also caused injuries to the informant with an intention to kill him. Informant claimed that he, his uncle Chen Singh (P.W.17), his mother (P.W.16) and his wife could save themselves by hiding in the house.

3. During trial, 24 witnesses were examined on behalf of the prosecution and several documents were marked as Exhibits P-1 to P-149. Defence also examined four witnesses and exhibited 21 documents marked as Exhibits D-1 to D-21. As noted earlier, after trial the learned Special Judge, SC/ST, Jhalawar, Rajasthan, vide judgment dated 13.02.2004 passed in Sessions Trial No.123 of 2002 (13/2002), convicted 24 out of 29 accused for various offences including offence under Section 302/149 of the IPC for which all were awarded rigorous imprisonment for life. The trial court acquitted the appellants of charge under Section 120B of the IPC. The appeals preferred by the appellants before the Rajasthan High Court at Jaipur Bench were dismissed leading to confirmation of their conviction and sentence. On behalf of the appellants, Mr. Basant, learned senior advocate first raised an issue of fact relating to identification of all appellants because none of the material witnesses, i.e., P.Ws 12, 14, 15, 17, 19 and 24 have laid any specific claim in their examination-in-chief that they can identify the accused persons/appellants. The submission advanced is that due to such lacuna, the appellants' presence and participation in the occurrence is not established and hence they deserve acquittal. We find no merit in this contention in the light of salient facts noted earlier which disclose that all the accused persons/appellants are named in the FIR. They are co-villagers and well known to the witnesses and challenge to their identification by name etc. was never raised by the accused persons at any stage of either the investigation or the trial. The presence of the appellants and their identification flows out of the fact that they were named in the earliest version of the occurrence disclosed in the FIR and have been subsequently named by several of the witnesses in course of the trial with clear allegation that they were present and participated in the occurrence in one way or the other as an accused. In such factual background, the issue relating to identification raised on behalf of the appellants is found to be without any substance.

4. On behalf of the appellants, several other issues of facts were also raised with a view to criticize the prosecution case and persuade us to hold that the prosecution has failed to prove the charges against the appellants beyond reasonable doubts. The general criticisms are that the six eye witnesses relied upon are interested and

three of them, i.e., P.Ws 12, 14 and 24 are minors whose names were not disclosed in the FIR that they had also witnessed the occurrence. It was also submitted that the occurrence took place in open field and was allegedly witnessed by large number of villagers but no independent witness, unrelated to the family of the deceased persons has been examined and, therefore, prosecution case deserves to be rejected. It was also pointed out that the investigating officer could not recover pellets from the place of occurrence and ballistic report was not made available to corroborate use of fire arms by some of the accused persons. Our attention was also drawn to injuries sustained by some of the accused persons and it was contended by learned senior counsel for the appellants that in absence of any explanation for the injuries on the side of the accused persons, the prosecution case deserves to be rejected. In support of this proposition, reliance was placed upon judgments of this Court in the case of *Siri Kishan & Ors. v. State of Haryana* (2009) 12 SCC 757 and in the case of *Lakshmi Singh & Ors. v. State of Bihar* (1976) 4 SCC 394.

5. Learned senior counsel also raised a serious grievance against the trial court and the High Court judgment on the plea that they had failed to analyse the roles played by individual accused persons which, according to learned counsel, was necessary for fastening the charges under Section 302 and 307 IPC with the aid of Section 149 IPC. The substance of this contention was that unless allegations against individual accused are considered separately it will not be proper to hold that they were actually members of an unlawful assembly. To highlight the ambit and scope of Section 149 IPC and related issues, reliance was placed by learned senior counsel on the following judgments of this Court :

Kuldip Yadav & Ors. v. State of Bihar (2011) 5 SCC 324 *Busi Koteswara Rao & Ors. v. State of Andhra Pradesh* (2012) 12 SCC 711 *Khairuddin & Ors. v. State of West Bengal* (2013) 5 SCC 753 Lastly it was contended on behalf of appellants that considering the fact that all the accused were co-villagers of the witnesses and well known from before, the naming of some of the appellants by only few of the witnesses and not all should have been treated to be a significant factor to grant acquittal on the basis of benefit of doubt. Reliance was placed upon the judgment of this Court in the case of *Masalti etc. v. State of Uttar Pradesh* AIR 1965 SC 202 wherein it has been held that no doubt trustworthy evidence of a single witness may be enough to convict accused persons in appropriate cases but where a criminal court is dealing with evidence pertaining to an offence involving large number of offenders and a large number of victims, it is usual to adopt the test of support by two or three or more witnesses if they give a consistent account

of the incident. The court approved such a test after noticing that it may appear to be mechanical but its use in appropriate cases cannot be treated as irrational or unreasonable. In order to assist this Court to apply such a test in the present case, detailed notes and charts have also been furnished to indicate individual cases of appellants in respect of evidence of eye witnesses appearing against them, their weapon and alleged specific role. On the other hand, learned counsel for the informant and also learned counsel for the State have placed reliance upon judgments of trial court and the High Court and have submitted that the oral as well as documentary evidence has received due consideration by both the courts and in the facts of the case, no interference is required with the concurrent findings of guilt recorded against the appellants. It was highlighted on behalf of prosecution that when large number of accused persons had run after the deceased and indulged in indiscriminate assault resulting into death of four persons in open field and serious injuries to the informant, the witnesses cannot be expected to notice, remember and depose the individual acts committed by different accused persons vis--vis the five victims. It was pointed out on behalf of prosecution that medical evidence and the injuries have been correctly noted by the trial court which show that firearm injuries were found on as many as three deceased, namely, Nagu Singh from whose dead body two pellets were recovered, one from the wrist of the left arm and one from the stomach; deceased Inder Singh from whose back part of the body 12 pellets were recovered and deceased Bapu Singh who was found to have sustained a gun shot injury on the jaw from which 66 pellets were taken out along with a plastic circular cap. Pellets were also taken out from the brain.

6. Learned counsel for the informant and the State also submitted that no doubt innocent bystanders or witnesses cannot be and should not be included in the list of accused as members of unlawful assembly and the court is required to be vigilant and aware of all the facts showing involvement of the accused persons - from their conduct prior to as well as during and after the occurrence. Incriminating conduct will vary from case to case and can be ascertained only in the peculiar facts of each case having regard to, inter alia, nature of conduct, overt act and possession of weapons, if any. For this purpose, according to prosecution, the courts below have analysed the ocular evidence in detail and have also noticed recovery of different weapons from the accused persons. Therefore, as per their submission, the conviction of the appellants requires no interference.

7. On going through the entire evidence of material witnesses, other materials and judgment of the courts below, we find that since the number of accused persons

was quite large and they were bold and strong enough to cause four deaths in the open field in presence of large number of persons, it cannot be difficult to understand and appreciate as to why independent witnesses from the village who might have seen the occurrence, did not prefer to come out to support the prosecution. But that will not take away from the worth of deposition of six eye witnesses when they have given a consistent account of the occurrence which was disclosed in a nutshell soon after the occurrence in the FIR lodged by P.W.15 who was seriously and critically injured in the same occurrence and whose presence cannot be doubted. If, per chance, he would have been the sole witness, even then it may have been possible for the courts below to convict the accused persons on his testimony after testing its veracity in the light of his earlier statement contained in the FIR. In such a factual scenario, we find no reason to doubt the prosecution case if the I.O. failed to recover pellets from the open field which was the place of occurrence or if he could not obtain ballistic report. The eye version account of the occurrence and the medical evidence showing large number of injuries including firearm injuries support each other. On this issue, the discussion and findings of the trial court against the accused persons is found to have sufficient merit.

8. The criticism that some of the accused had sustained injuries for which the prosecution has not offered any explanation has rightly been rejected by the trial court because there is no counter version or even a suggestion disclosing that any of the accused had received injuries in the same occurrence and at the same place. None of the persons allegedly injured on the side of the defence have lodged any case disclosing where and under what circumstances they sustained the injuries. In the facts of the case, in absence of any counter version and any plea of self-defence, it would be hazardous to presume at the instance of the defence that the accused persons sustained the injuries in course of same occurrence and at the same place. Only if these two ingredients were established, the defence would have been entitled to seek an explanation from the prosecution in respect of some injuries on three of the accused persons. Their injuries were neither fatal nor they caused any threat to life and that also reduces the burden upon the prosecution to explain injuries on the accused. In view of above discussion, we are of the view that judgments in the case of Siri Kishan (supra) and Lakshmi Singh (supra) do not help the appellants. In paragraph 12 of the judgment in the case of Lakshmi Singh (supra) the court had found that in the circumstances of that case there could be no doubt that the accused must have received grievous injuries in course of the assault. In the case at hand, the facts are different and hence the prosecution version cannot be disbelieved on account of some injuries allegedly sustained by some of the accused, namely, Maan Singh (accused no.8); Ram Prasad (accused no.28); and Bahadur Singh (accused no.29). The main issue that now requires

consideration is whether the courts below have rightly applied Section 149 of the IPC against the appellants for convicting them for the death of four persons and for murderous assault on the informant. The principle of law governing application of Section 149 IPC has been explained by this Court in many judgments including those cited by learned senior counsel for the appellants. In the case of *Kuldip Yadav (supra)*, the law was stated in paragraph 39 in the following words : "39. It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object, they would be liable for the same under Section 149 IPC."

9. In the case of *Busi Koteswara Rao (supra)* the facts showed involvement of large number of persons and, therefore, while approving the view taken in the case of *Masalti (supra)* this Court cautioned in paragraph 11 of the judgment that the courts should be cautious in cases of arson and murder where the number of accused is large, to rely upon the testimony of the witnesses speaking generally without specific reference to the accused or the specific role played by them.

10. Reliance placed by appellants on the judgment in the case of *Khairuddin (supra)* is misplaced. In that case, as paragraphs 12, 13 and 14 disclose, overt act of assault was found proved against five appellants grouped together and hence their conviction was affirmed whereas against some others included in a different group it was found that there was no evidence showing that they were either present on the spot or participated in the occurrence. In the case at hand, the finding on appraisal of evidence is different.

11. The ingredients of Section 149 IPC require presence of an unlawful assembly which is defined under Section 141 of the IPC as an assembly of five or more persons, if the common object of the persons composing that assembly is any of the five objects fully enunciated in Section 141 of IPC. The third object is - "to commit any mischief or criminal trespass or other offence." The explanation to Section 141 clarifies that an assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly. As per Section 149, even if any one member of an unlawful assembly commits an offence in prosecution of the common object of that assembly, every person who at the time of committing of

that offence was a member of the unlawful assembly is guilty of that offence. Since it was vehemently contended that courts below have not applied their mind as to whether the appellants were members of an unlawful assembly or not, it is our duty to remind ourselves of the law on the subject. It is settled law, as held in the case of *Roy Fernandes v. State of Goa & Ors.* (2012) 3 SCC 221, that to determine the existence of common object, the court is required to see the circumstances in which the incident had taken place, the conduct of members of unlawful assembly as well as the weapon of offence they carried or used on the spot. It is also established law, as held in the case of *Ramchandran & Ors. v. State of Kerala* (2011) 9 SCC 257, that common object may form on spur of the moment. Prior concert by way of meeting of members of unlawful assembly is not necessary. In that view of settled law, the facts of the present case as alleged in the FIR and as proved in the court leave no manner of doubt that the group of persons who chased deceased no.1-Inder Singh and caused his death and thereafter chased, surrounded and caused death of three more persons besides causing grievous injuries to the informant-Amar Singh was an assembly of five or more persons rightfully deserving to be designated as an unlawful assembly because by its action it showed that its common object was to commit offence. The subsequent acts clearly show that the unlawful assembly carried out its common object of committing serious offence of murder of four persons and grievous injuries to the informant. This Court, therefore, finds that the courts below committed no error in applying Section 149 of the IPC and convicting the members of the unlawful assembly for offences under Sections 302 and 307 of the IPC (with the aid of Section 149 IPC). Some argument was advanced on there being lack of any clear motive but that is not at all necessary or material when the offences have been proved by clear and cogent evidence including eye-witnesses. So far as the principle of caution as enunciated in the case of *Masalti* (supra) is concerned, we find ourselves in agreement with the submission advanced by learned senior counsel Mr. Basant that in the peculiar facts of the case, the courts below should have further decided as to how much corroboration was required for accepting the presence and participation of individual accused person. The informant had though claimed presence of 29 persons but subsequently five were acquitted by the trial court and one was acquitted by the High Court. On this issue, on going through the charts disclosing number of witnesses who have deposed against individual appellants to show their presence, participation, weapon and overt act, if any, we find that the test approved in *Masalti's* case (supra) and subsequently followed in several other cases including the case of *Busi Koteswara Rao* (supra) needs to be followed in this case also. In the latter judgment in paragraph 13 the law on the subject has been expounded in very clear terms:

"13. It is clear that when a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, the normal test is that the conviction could be sustained only if it is supported by two or more witnesses who give a consistent account of the incident in question."

12. Since the accused persons and the 6 material eye witnesses in this case are co-villagers, it is expected that at least three witnesses should be in a position to name individual accused persons for sustaining his conviction. Applying that test, it is found that accused no.9-Bhagwan Singh, son of Prabhu Lal; accused no.18-Suresh Kumar, son of Ram Dhakad; accused no.20- Kanhi Ram, son of Prabhu Lal; accused no.27-Prahlad Singh, son of Nathu Lal; and accused no.28-Ram Prasad, son of Bheru Lal deserve to be acquitted by granting benefit of doubt. This benefit of doubt arises in their favour because although they have been named specifically by informant P.W.15 as persons who were members of the unlawful assembly and who participated in assault but such claim of the informant has not been supported by more than one witness. In other words, there is no clear and cogent evidence of three witnesses against the aforesaid accused persons. So far as accused no.28-Ram Prasad is concerned, no doubt his name has been taken by P.W.12 and P.W.24 also but they have not specified as to whether it was Ram Prasad, son of Bheru Lal or another accused by the same name, i.e. accused no.25-Ram Prasad, son of Jeth Ram.

13. The appeals preferred by the aforesaid five appellants, namely, Bhagwan Singh, son of Prabhu Lal (appellant no.3 in Crl. Appeal No.1239 of 2009); Suresh Kumar, son of Ram Dhakad (appellant no.3 in Crl. Appeal No.493 of 2009); Kanhi Ram, son of Prabhu Lal (appellant no.4 in Crl. Appeal No.1239 of 2009); Prahlad Singh, son of Nathu Lal (sole appellant in Crl. Appeal No.1241 of 2009); and Ram Prasad, son of Bheru Lal (appellant no.4 in Crl. Appeal No.493 of 2009) are allowed. They are granted benefit of doubt and acquitted of all the charges. The appeals of remaining 16 appellants are dismissed. If on bail, their bail bonds shall stand cancelled and they shall be taken into custody forthwith to serve out the remaining sentence in accordance with law.