

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1915 OF 2008

Raju @ Rajendra & Anr. ... Appellant(s)
Versus
State of Rajasthan ... Respondent(s)

WITH

CRIMINAL APPEAL NO. 1897 OF 2008

J U D G M E N T

RANJAN GOGOI, J.

Being directed against the common judgment dated 16th March, 2007 passed by the High Court of Rajasthan we had heard both the appeals analogously and the same are being disposed of by this common judgment.

2. Criminal Appeal No. 1915 of 2008 has been filed by accused Raju @ Rajendra and accused Pappu @ Ranjeet Singh who have been convicted under Sections 302 and 307 read with Section 34 of the Indian Penal Code and sentenced to undergo, inter alia, RI for life. Criminal Appeal No. 1897 of 2008 has been filed by the State of Rajasthan against the same judgment dated 16th March, 2007 by which the remaining four accused have been acquitted of all the charges brought against them including the charge under Section 302 read with Section 149 IPC.

3. The short case of the prosecution is that on 4th April, 2000 at about 4.30 p.m. PW-13 Mahaveer lodged an FIR (Ex. P-23) in the Dei police station, District Boondi stating that at about 2 - 2.30 p.m. of the same day while he was sitting in the field of one Mukhtyar Singh (deceased) waiting for the thresher, the convicted as well as the acquitted accused (six in all) alongwith another person (who had absconded) came to the spot armed with different kinds of dangerous weapons. In the FIR it was stated that as soon as the

accused persons reached the spot, while accused Pappu @ Ranjeet Singh assaulted Mukhtyar Singh with an axe on his head, accused Raju @ Rajendra assaulted the aforesaid person with a sword. Acquitted accused Bachchan Singh reportedly gave lathi blows to Mukhtyar Singh whereas acquitted accused Balwant Singh, his wife Shanti Bai @ Jaswant Kaur and daughter Gurjeet Kaur had pointed country made pistols at Mukhtyar Singh and had exhorted the other accused to kill/eliminate Mukhtyar Singh. In the FIR it was further mentioned that the first informant (PW-13) tried to intervene but he was also assaulted by accused Pappu on his head with an axe and by the accused Raju with a sword on his right arm. Due to the assault committed by the accused on Mukhtyar Singh the aforesaid person lost consciousness and though he was taken to the hospital he passed away shortly after the incident. In the first information report, it was further mentioned that two other persons, i.e., Bittoo (PW-19) and Jamnalal (PW-1) had witnessed the occurrence.

4. On the basis of the aforesaid FIR lodged by PW-13, police registered a case and investigated the same. On completion of the investigation chargesheet was submitted against 7 persons in all, including the convicted and the acquitted accused. Thereafter, the case was committed for trial to the Court of Sessions at Boondi where charges under different sections of the Indian Penal Code including Section 302 read with Section 149 were framed. As the accused persons denied the charges and wanted to be tried the prosecution examined as many as 21 witnesses and also exhibited a large number of documents. Thereafter at the conclusion of the trial while two of the accused i.e. Raju @ Rajendra and Pappu @ Ranjeet Singh were found guilty of the commission of the offence under Section 302, 307, 325, 324 and 148 IPC the remaining accused (acquitted accused) were found guilty of the charge of commission of the same offences with the aid of Section 149 IPC. For commission of the offence under Section 302 IPC each of the accused had been sentenced to undergo rigorous imprisonment for life. The sentences imposed for commission of the lesser

offences, as noticed above, would not require any specific mention as the same were to run concurrently with the sentence of imprisonment for life.

5. Aggrieved by the aforesaid conviction recorded by the learned Trial Court and the sentences imposed, all the six accused had filed a common appeal before the High Court of Rajasthan challenging the order passed by the learned Trial Court. The High Court by its judgment and order dated 16th March, 2007 altered the conviction of the two convicted accused, i.e., Raju @ Rajendra and Pappu @ Ranjeet Singh to one under Sections 302 and 307 read with Section 34 of the Indian Penal Code while acquitting them of the remaining charges. The remaining four accused were acquitted of all the charges. It is against the aforesaid judgment of the High Court that Criminal Appeal No. 1915 of 2008 has been filed by the two convicted accused, whereas Criminal Appeal No. 1897 of 2008 has been filed by the State against the acquittal of the remaining four accused.

6. We have heard Ms. Aishwarya Bhati, learned Amicus Curiae for the appellants in Criminal Appeal No. 1915/2008, Mr. J.P. Dhanda, learned counsel for the respondents in Criminal Appeal No. 1897/2008 and Mr. Jasbir Singh Malik, Addl. Advocate General for the State of Rajasthan.

7. Ms. Aishwarya Bhati, learned Amicus Curiae had taken us through the evidence on record, particularly, the depositions of the eyewitnesses examined in the case, i.e. PW-1, PW-13 and PW-19. Learned Amicus Curiae had also placed before us the judgments passed by the learned Trial Court and the High Court as well. On the other hand, Mr. Jasbir Singh Malik, learned Addl. Advocate General appearing for the respondent-State of Rajasthan in the appeal filed by the convicted accused had submitted that the evidence of all the three eyewitnesses is clear, cogent and consistent insofar as the involvement of the said accused is concerned. Placing the evidence of PW-16 Dr. Gopal Lal Nagar, who had conducted the postmortem of the deceased and had also attended to the injuries sustained by the injured eyewitness

PW-13, learned counsel had submitted that the medical evidence adduced in the present case fully corroborates the narration of events unfolded by witnesses examined by the prosecution. According to the learned State counsel, no error or infirmity can be found in the judgment of the High Court so as to warrant a reversal of the finding of guilt recorded against the two convicted accused.

8. Insofar as the connected appeal (Crl. Appeal No. 1897/2008) against the acquittal of the four accused is concerned, Mr. Jasbir Singh Malik, learned counsel appearing for the appellant-State had vehemently contended that the evidence and materials brought on record by the prosecution clearly go to show that all the six accused had formed an unlawful assembly the common object of which was to cause the murder of the deceased. According to the learned counsel, such a conclusion reasonably follows from the manner in which the accused persons armed with dangerous weapons had gone to the field of Mukhtyar Singh on the day of the occurrence. In such a situation, according to the

learned counsel, apart from the individual overt acts which are attributable to accused Raju @ Rajendra and Pappu @ Ranjeet Singh, the other accused would be liable under Section 149 IPC for the acts committed in furtherance of the common object of the unlawful assembly, which undoubtedly was to commit the murder of Mukhtyar Singh. It is, therefore, submitted that the acquittal of the aforesaid four accused by the High Court is wholly untenable and needs to be reversed.

9. Opposing the aforesaid contentions advanced by the learned counsel for the appellant State of Rajasthan, Mr. J.P. Dhanda, learned counsel for the acquitted accused had submitted that even if it is to be assumed that an unlawful assembly had been formed by the six accused persons, it cannot be said that the common object of the said assembly was to cause murder of the deceased Mukhtyar Singh, inasmuch as, though, according to the prosecution story, three of the acquitted accused were armed with country made pistols and had, in fact, kept the same pointed at the deceased, yet, none of the firearms were used or fired. In

such circumstances, according to the learned counsel, even if the prosecution story as a whole is to be accepted the four accused in question cannot be made liable for the offence of murder with the aid of Section 149.

10. We have considered the submissions advanced on behalf of the rival parties. We have also given our indepth consideration to the evidence on record, particularly the depositions of the three eyewitnesses, and the medical evidence adduced by PW-16. Insofar as accused Raju @ Rajendra and Pappu @ Ranjeet Singh is concerned, we have not been able to find any inconsistency, much less any material contradiction, in the evidence of PWs 1, 13 and 19. All the aforesaid three eyewitnesses have given a vivid description of the events leading to the death of Mukhtyar Singh clearly demonstrating the role of the accused Raju @ Rajendra and Pappu @ Ranjeet Singh in causing the injuries sustained by the deceased on the head. According to PW-16, Dr. Gopal Lal Nagar, the internal injuries suffered by the deceased as a result of the assault on the head was

ultimately responsible for the death of Mukhtyar Singh. The description of the events by the eyewitnesses would go to show that the attack on the head of the deceased by the two convicted accused were in quick succession. The manner and circumstances in which the injuries were inflicted, as already discussed, is capable of sustaining an inference that both the accused Raju @ Rajendra and Pappu @ Ranjeet Singh had shared the common intention to cause the death of Mukhtyar Singh thereby rendering them liable under Section 302 read with Section 34 IPC, as held by the High Court. A similar conclusion with regard to the liability of the two accused under Section 307 IPC for the assault and injuries caused to PW-13 reasonably follows from a reading of the evidence of the eye witnesses (PWs 1, 13 and 19) and the medical evidence on record (PW 16). We, therefore, do not find any basis whatsoever to disagree with the view taken by the High Court insofar as the two convicted accused are concerned. Consequently, Criminal Appeal No. 1915 of 2008 is dismissed and the conviction as well as the

sentence recorded against the accused Raju @ Rajendra and Pappu @ Ranjeet Singh by the High Court is affirmed.

11. Insofar as the acquittal of the four accused, which is the subject matter of challenge in Criminal Appeal No. 1897 of 2008, is concerned, the first question that has to be determined is whether the aforesaid four accused alongwith the two convicted accused had formed an unlawful assembly within the meaning of Section 141 of the Indian Penal Code so as to render them vicariously liable for the offence(s), if any, committed by the members of the unlawful assembly either in furtherance of the common object of the assembly or if the offence committed was or could have been known to be likely to be committed in pursuance of such common object of the unlawful assembly.

12. From the evidence of PW-2 Avtar Singh (son of deceased) as well as PW-4 Ram Niwas (declared hostile) it transpires that the deceased and the party of the accused had a dispute over land and, in fact, some of the accused

had made attempts to encroach upon land belonging to the deceased. All the three eyewitnesses, namely, PW-1, PW-13 and PW-19, as already noticed, had unequivocally and categorically stated in Court that the six accused persons had come together to the field of deceased Mukhtyar Singh armed with dangerous weapons including fire arms. If this is the manner in which the accused persons had come to the spot it cannot be said that the accused had not formed an unlawful assembly within the meaning of the said expression as appearing in Section 141 of the Indian Penal Code. While membership of an unlawful assembly itself is an offence under Section 143 IPC, use of force by members of the unlawful assembly gives rise to the offence of rioting which is punishable either under Section 147 or Section 148 IPC. Membership of the 4 accused in the unlawful assembly and use of force with dangerous weapons is borne out by the evidence on record. The said facts would make the acquitted accused liable for the offence under Section 148 of the Indian Penal Code. However, their liability under any other provision of the Indian Penal Code would depend on what

can reasonably be understood to be the common object of the assembly in the present case.

13. The availability of fire arms in the hands of three of the acquitted accused, namely, Balwant Singh, his wife Shanti Bai @ Jaswant Kaur and daughter Gurjeet Kaur but absence of any fire therefrom or use thereof is a clear pointer to the fact that the common object of the unlawful assembly was definitely not to cause the murder of the deceased Mukhtyar Singh. Had the same been the object the fire arms available with the accused would have been surely used.

However, from the depositions of PW-13 and PW-19 as well as from the evidence of PW-16 it clearly transpires that PW-13 had suffered several injuries due to the assault committed on him by the members of the unlawful assembly. Having regard to the injuries suffered by PW-13, as evident from the evidence of PW-16, and our finding that the accused persons had formed an unlawful assembly, we are of the view that the four acquitted accused should also be held liable under Section 324 read with Section 149 IPC.

14. Pursuant to the directions issued by this Court at the conclusion of the hearing of the appeals, learned Addl. Advocate General of the State of Rajasthan has filed before this Court details of the custody undergone by the four acquitted accused till date. From the aforesaid material placed before this Court it appears that while acquitted accused Gurjeet Kaur had undergone a total of 5 months 8 days of RI accused Shanti Bai @ Jaswant Kaur had undergone a similar period of custody of 5 months 8 days. On the other hand Balwant Singh had undergone 7 months 29 days of rigorous imprisonment whereas accused Bachchan Singh had undergone custody of 1 year 4 months and 21 days.

JUDGMENT

15. Having regard to the totality of the facts of the case, we are, therefore, of the view that the aforesaid four accused should be held liable for the offences under Sections 148 and 324 IPC read with Section 149 IPC. Insofar as the sentence is concerned, we are of the view that having regard to the period of custody already undergone by the aforesaid four

accused the ends of justice would not require them to suffer any further period of custody and sentence of imprisonment already suffered by the said accused would be adequate. Consequently, insofar as the Criminal Appeal No. 1897 of 2008 is concerned, we partly allow the same and modify the order of the High Court in terms of what has been held above.

16. Both the appeals shall stand disposed of accordingly.

.....J.
[P. SATHASIVAM]

.....J.
[RANJAN GOGOI]

**New Delhi,
January 11, 2013.**