

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 2172 OF 2009**

**LAKSHMAN BHAGAT & ORS. . . . . APPELLANTS**

**VERSUS**

**STATE OF BIHAR . . . . . RESPONDENT**

**O R D E R**

1. This matter can be disposed of by a short order in view of some peculiar facts. Eleven persons in all were brought to trial for an offence punishable under Sections 302/149 of the Indian Penal Code. The Sessions Judge convicted accused No. 3 Hari Bhagat for an offence punishable under Section 302 IPC and the other 10 accused for the said offence with the aid of Section 149 of the IPC. The order of the Sessions Judge was confirmed by the High Court in appeal. Four of the convicted accused that is A1, A2, A4 and A5, Saudagar Bhagat, Ram Uday Bhagat, Sushil Bhagat and Ram Ekbal Bhagat filed Criminal Appeal No. 134 of 2003 in this Court, and amongst various grounds that were raised the one which was found to have merit was that in view of the peculiar facts and circumstances of the case, Section 149 of the IPC was not attracted. This Court in its judgment dated November 5, 2003,

observed as under:

"We have carefully considered the submissions of the learned counsel appearing on either side. In our view, there is absolutely no direct or concrete evidence of any kind either ocular or circumstantial to substantiate or prove either their involvement or of active role played by the appellants in the occurrence which ultimately resulted in the death of Ram Sagar who seems to have arrived late in the stage of occurrence involving PW -5 and the unexpected sudden firing of shot from the pistol which AE seems to have had in his pocket, taking everyone by surprise. To assume even on such proved facts only or to infer any common object to kill Ram Sagar on the materials placed on record so far as the appellants are concerned, would seem to be far fetched and cannot merit acceptance in law. This aspect of the matter appears to have escaped the attention of the courts below, apparently on account of the confined combined consideration of the two events in the context of the charge relating to Section 323 read with Section 149 IPC pertaining to the earlier occurrence involving PW 5 as well as the victim Ram Sagar who was an unexpected visitor on the spot. The conclusions arrived at by the courts below insofar as conviction under Section 302 read with Section 149 IPC is concerned could not at all, in our view, be sustained as based on any relevant, concrete or legally acceptable evidence and the appellants shall consequently stand acquitted of the said charge under Section 302 read with Section 149 IPC.

So far as the occurrence involving PW-5 is concerned, keeping in view, the shouts and calls stated

to have been made by A-3, A-10 and A-11 and the gathering of the others including the appellants attracted by the same, we are of the view that on the material evidence on record, the factual findings recorded as to their presence along with A-3, A-10 and A-11 at any rate, are found justified - and no exception could be taken to their conviction under Section 323 read with Section 149 IPC. The concurrent findings recorded by both the courts below are not shown to suffer any infirmities of the nature, to call for our interference in this appeal. Taking into account the fact that the maximum sentence that could be imposed is one year for the said offence and the appellants seems to have already undergone custodial sentence for more than an year we sentence them for the said offence under Section 323 read with Section 149 IPC to only one year and direct their release since they have already undergone the same."

2. The present appeal has been filed by A6 to A-11 Lakshman Bhagat and others and it has been contended by the learned counsel that in view of the observations made by this Court in Criminal Appeal No. 134 of 2003 the appellants, who were similarly situated, were entitled to get the same benefit. It has also been pointed out that the appeal filed by Ram Sagar Pant A8 has, however, been dismissed as he had not surrendered prior to the filing of the appeal. We see from the record that the part attributed to the present appellants is identical to that of the appellants in Criminal

Appeal No. 134 of 2003.

3. The learned counsel for the State has, however, pointed out that as far as Ram Baran Bhagat and Ram Chandra Bhagat were concerned they had been attributed specific roles in as much as that the former had taken away a ring from the first informant and the latter had snatched a gun from the first informant. Be that as it may, we see no distinction as to the role attributed to the appellants herein other than A-8 insofar as the application of Section 149 is concerned for the offence of murder. They are accordingly acquitted of the charge under Section 302/149 of the IPC on parity with the appellants in Criminal Appeal No. 134 of 2003. We also see that they have been convicted for the offence punishable under Section 379 of the IPC. We clarify that we are not interfering with the conviction under the other Sections but reduce the sentence to that already undergone. With these observations, this appeal is partly allowed.

4. The appellants if in custody shall be released forthwith.

.....J  
[HARJIT SINGH BEDI]

.....J  
[A.K. PATNAIK]

NEW DELHI

FEBRUARY 04, 2010.



PART - I

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O R D E R

We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have disposed of this appeal and reduced the sentence of the appellants to the period already undergone. The appellants shall be set at liberty forthwith if not required in connection with any other case.

The reasoned order to follow.

.....J  
[HARJIT SINGH BEDI]

.....J

[A.K. PATNAIK]

NEW DELHI

FEBRUARY 04, 2010.

