

CASE NO.:
Appeal (crl.) 604-605 of 2004

PETITIONER:
RAMESHWAR PANDEY & ORS.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 18/01/2005

BENCH:
B.P.SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T
B.P.SINGH, J.

The seven appellants before us were tried along with five others by the First Additional Sessions Judge, Bhabua (Kaimur) in Sessions Trial No. 242/5 of 1995/1999 charged of the offences under Sections 302/34, 120B, 364 and 384/34 IPC and Section 27 of the Arms Act. The Trial Court by its Judgment and Order dated 13th August, 1999 found the appellants guilty of the offence under Sections 302/149, 384/149 and Section 27 of the Arms Act. It sentenced them to undergo imprisonment for life under Section 302/149 IPC and further sentenced them to undergo

1 year rigorous imprisonment under Section 27 of the Arms Act. It, however, acquitted four of the accused persons of all the charges levelled against them primarily on the ground that they were not named in the First Information Report. All the convicted persons preferred appeals before the High Court being Criminal Appeal Nos. DB455 and 464 of 1999. The State also preferred Government Appeal No.20/1999 against the acquittal of the remaining accused. The High Court by its impugned judgment and order dismissed the appeals preferred by the appellants as well as the Government Appeal preferred by the State. Seven of the appellants have preferred these appeals by special leave.

The case of the prosecution is that an occurrence took place on 28th August, 1994 at about 9.00 A.M. in village Dawanpur which falls within the jurisdiction of police station Bhagwanpur in the District of Kaimur, Bihar in which five members of the family of the informant were killed. According to the prosecution 18-20 armed people in khaki uniform came to the dalan of the

deceased. Five male members of the family (since deceased) who were sitting in the dalan of the house after taking their breakfast were surrounded by them. PW8, a female member of the family rushed to the door and finding so many persons armed with fire arms closed the door and rushed inside the house. She along with three other female members of the family went to the roof of the house along with the licensed gun of one of the deceased and a bundle of cartridges. From the roof of the house she and the other female members saw that those people who had surrounded the deceased had tied their hands behind their back. They were demanding the gun and the cartridges. The father-in-law of PW8 implored PW8 to give away the gun otherwise all of them will be killed. Heeding to his advise, she threw the gun from the roof along with the cartridges. One of the members of the mob picked up the gun and cartridges whereafter all five male members of the family whose hands had been tied were taken by the mob towards the South. Soon thereafter the female members of the family heard the sound of gun shots

10-15 in number. Later they were informed that all the persons who had been taken away by the mob have been shot dead. These four female members of the family are PW 5, 6, 7 and 8.

The case of the prosecution is that PW10, Sub Inspector of Police at the police station got some information from a passerby that an occurrence had taken place in village Dawanpur. He, therefore, rushed to the village where on his request PW5 opened the door and on his questioning her narrated the incident to him. The report was taken down in writing on the basis of which a formal first information report was drawn up.

PW1, Sanjay - the son of PW8 stated that he had seen the actual incident in which all the five members of his family were shot dead and he had thereafter informed his uncle Dadan Pandey (PW4) about the occurrence. It is not necessary to advert to their evidence because the Courts below have not relied upon their evidence. As

noticed earlier, the Trial Court on the basis of the evidence primarily of the four female members of the family (Pws 5 to 8) convicted the appellants, and the High Court in appeal has affirmed the conviction.

It was sought to be argued before us that the evidence of the female witnesses is unnatural and should not be accepted. It was also submitted that having picked up the gun and the cartridges they did not resort to firing thereafter, and simply went to the roof of the house only to watch what has happening below. It was further submitted that PW8 who was the first person to come to the door from where the dalan was visible rushed back saying that the miscreants had come. It was only later that from the terrace she identified the members of the mob. The submission is that she was not able to identify them initially and only later she claims to have identified them. Learned Counsel also contends that Section 149 will not apply to the facts of this case because the evidence on record and the findings recorded by the Courts below do not establish that the unlawful

assembly had the common object of committing the murder of the deceased. Much was sought to be made of an observation in the judgment of the High Court that the prosecution had left the Court guessing as to whether the miscreants had come to kill the five persons or they had come to commit dacoity or they simply wanted the gun. From this observation it was sought to be urged that even the High Court was not clear as to what was the common object of the said unlawful assembly. He, therefore, submitted that the conviction under Section 302 read with Section 149 IPC is not warranted.

With the assistance of the Counsel for the parties we have gone through the evidence on record. We find no reason to disbelieve PW5 to PW8 who witnessed the first part of the occurrence which took place in the dalan of their house. From their evidence it is established that a mob of about 18-20 persons had come to their dalan armed with fire arms. At least 10 of them

could be identified by name. They surrounded the five male members of the family who were sitting in the dalan. They thereafter tied their hands and demanded their gun. For fear that all of them will be killed, PW8 who had gone to the terrace along with the gun and cartridges threw away the gun and cartridges which was picked by the miscreants. Thereafter the miscreants took the male members of the family along with them and moved in the southward direction. After sometime, the female members of the family heard sound of gun shots. Sometime later they were informed that all the five members of the family had been shot dead in an orchard which was situated about one furlong from their house.

On these facts, we have no doubt that the offence under Section 302/149 is proved. Learned Counsel submitted that circumstantial evidence must conclusively prove the commission of the offence under Section 302/149 IPC and the facts found should not be consistent with any other hypothesis except the guilt of the accused. We may

observe that this is not a case which is based entirely on circumstantial evidence. The first part of the occurrence took place in the dalan of the deceased. Thereafter they were taken away by the mob. It is the prosecution case that later they were shot dead in an orchard nearby. The first part of the occurrence is, therefore, proved by direct evidence. The only question which arises for consideration is whether the second part of the incident namely the killing of the five members of the family can be attributed to the appellants on the basis of the evidence on record.

Once it is held that there was an unlawful assembly which had an illegal common object, inasmuch as all of them came armed with fire arms to the house of the deceased, the only question which remains to be considered is as to what was the common unlawful object of that assembly : whether they intended to cause the death of the deceased or whether they simply intended to

abduct them or commit any other offence. This is what precisely the High Court has observed in paragraph 17 of its Judgment. It may be that one or all of these unlawful acts were the objectives of the unlawful assembly. The mob after coming to the dalan of the deceased forced them to handover their gun by show of force. An offence under Section 384 was, therefore, clearly made out and with the aid of Section 149 IPC all the appellants can be held guilty of that offence. The next question is whether they can also be held vicariously liable for the offence of murder. Once it is held that there was an unlawful assembly and all the appellants came to the dalan of the deceased armed with deadly weapons like fire arms, and after tying the hands of the deceased took them away, and soon thereafter gun shots were heard and the deceased were found to have been shot dead in the orchard nearby, no other inference except the inference of guilt can be drawn from these circumstances. There is no material on record even to suggest indirectly that the offence was

committed by any other person or persons, or that some of the persons who were initially members of the unlawful assembly disassociated themselves and did not participate in the offence of murder. In the absence of any such plea or material on record the application of Section 149 IPC cannot be doubted. Having regard to the facts of the case, particularly the fact that all the members of the mob had come armed with fire arms i.e. deadly weapons with a view to commit the offence under Section 384 IPC, all the members of the assembly must be attributed the knowledge that it was likely that the offence of murder may be committed in prosecution of that object. This is particularly so because all the appellants were carrying fire arms and had acted in a high handed manner in broad day light leaving no doubt about their intentions. It may be that the actual shooting may have been done by one or some of the appellants only, but applying the principle enshrined in Section 149, each one of them must be held vicariously liable for the offence committed even by some of them. Even otherwise the facts lead to the only

conclusion that the unlawful assembly had come determined to commit the offence of murder. They were all armed, came together and abducted the deceased who were soon thereafter murdered using fire arms.

We are, therefore, of the view that the conviction of the appellants is justified. There is no merit in these appeals and the same are, accordingly, dismissed.

JUDIS