

CASE NO.:
Appeal (crl.) 49 of 2005

PETITIONER:
Munna Chanda

RESPONDENT:
State of Assam

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
With
Criminal Appeal Nos. 840/2005, 841/2005, 842/2005 and 251/2005.

S.B. Sinha, J.

The appellants were charged for commission of an offence under Section 302 of the Indian Penal Code for intentionally causing death of one Moti Suklabaidya. 3.10.1995 was the 'NAVMI'. The deceased went to join 'Durga Puja' festival along with Sushendra Chandra-PW3 and Babul Chanda. They met with one Tapan Chanda near Chandranathpur Railway Station. The latter informed them that Tunu Chanda and Montu Chanda had assaulted him in front of a jewellery shop belonging to Makhan Chanda-PW2. Gauaranga s/o Makhan Chanda-PW2 in the meantime came and informed his father that the said Tunu Chanda and Montu Chanda had quarrelled and broke a glass pane of his showroom. Makhan Lal-PW 2 immediately came to the Bazar. He found his younger brother Sushendra-PW3, Babul Chanda and deceased Moti Suklabaidya in front of his shop. Having asked the reason of quarrel and consequent breaking of the glass of the show room, he was informed that the dispute has been settled by Ambika Sahu-PW6. Thereafter the deceased Moti, Sushendra-PW3, Babul and Makhan Lal-PW2 entered into a tea stall belonging to Siba Prasad Shome-PW7 to have tea. Bhuttu @ Raju Singh, who is admittedly the younger brother of one Ganesh was employed in the said shop as a servant. The aforementioned persons were taking tea in a cabin of the tea stall. In the meantime, some ladies walked therein and asked for separate seats whereupon Bhuttu asked the abovementioned four boys to vacate the cabin which led to an altercation. However, on the intervention of the owner of the tea stall the boys left the shop and went to the 'watch repairing' shop belonging to Nirmal Chanda-PW4. The appellant Bhuttu came there and wanted to know as to why he made complaint to his employer about the earlier incident. He had also asked him to come out of the shop. On the intervention of the owner of the said 'watch repairing' shop the matter subsided. Bhuttu, however, came again and scolded Moti, whereupon Nirmal Chanda-PW 4 again intervened. According to the prosecution case, accused Bhuttu came again with Ratan Das, Billu and Kartik and some other persons. They asked Moti (deceased) and others to come out of the shop whereupon Nirmal-PW4 intervened and impressed upon Moti and others to seek their apology. When Moti (deceased) in a bid to apologize touched the feet of accused Bhuttu, Ratan Das asked him to catch hold of him and they started assaulting him. Tapan Chanda was also assaulted by them. He took shelter in a nearby shop. Moti (deceased), however, freed himself from the grip of the appellants and ran towards the Railway Station. He was chased by the appellants and others. The prosecution witnesses and others in the meantime, bolted themselves inside the shop. They came out about half an hour thereafter and found the market area deserted. Thereafter, they went to the house of Moti (deceased) and inquired from his brother-PW1 as to

whether he had returned. On being informed that he had not, they went to the house of Ambika Prasad-PW6 who advised them to search for him. On the next morning on receiving an information that a dead body was lying near a canal, they went to the spot and found the same to be that of Moti (deceased). The brother of the deceased -PW1 lodged a first information report wherein he named Bhuttu (describing him as a younger brother of Ganesh), Ratan Das Gupta s/o unknown, Billo Deb s/o unknown, Kartik Deb s/o unknown and 20/25 others.

The appellants were put on trial. The prosecution in support of its case examined 11 witnesses. There was no direct evidence. There was no eye witness to the occurrence. The materials which were brought on record to prove circumstantial evidence in the case by the prosecution were : (1) That some of the appellants were chasing the deceased with others; (2) So called 'Sulahanama' was prepared which had been signed inter alia by PW-2, PW-3 and others representing that they would not file any complaint against the appellants.

PW-1 is the informant. He was not a witness to any part of the occurrence. PW-2 is Makhanlal Chanda, the glass of whose shop was broken. He was a witness to the entire occurrence. Apart from supporting the statements made in the first information report, he stated that appellant Ratanlal Chanda took his signature on a written paper which contained an assurance on their behalf that no case would be filed in relation to the incident. He further alleged that the appellant Ujjal had escorted them from the market. In his cross-examination, however, it was pointed out that he had stated before the police that when the appellant Bhuttu came, six persons accompanied him whose names he did not know. In his cross-examination he further stated that it was a dark night so he could not see who had assembled in front of the shop. PW-11 the Investigating Officer, however, accepted that the witnesses had stated before him that while appellant Bhuttu had come, other six persons had accompanied him whose names he did not know. PW-2 had further stated before him that from inside the shop he had felt that some people were chasing the deceased. He further stated that he saw the accused persons chasing the deceased towards Chandranathpur Railway Station.

PW-3 apart from being a witness upto the point of chasing of the deceased by the appellants and others, is one of them who had gone to the house of Moti (deceased) and upon being told that he had not come back, went to the residence of Ambika Sahu on the next morning.

PW-4 is Nirmal Chanda. He witnessed a part of occurrence. In his cross-examination, however, he stated that the persons who came with Bhuttu were not seen in the dock. He was not declared hostile.

PW 5 \026 Uttam Chanda is a witness to the inquest report. PW-6 is Ambika Parsad Sahu. He accepted that at about 11.00 p.m. all the accused persons had come to his house and handed over a Sulahanama paper which had been seized from him by the police. He could not say as to how Moti (deceased) was done to death. He also could not say about the quarrel between the accused and deceased. PW-7 Siba Prasad Shome was the owner of the tea stall, wherein, the first quarrel between Bhuttu on the one hand and Moti and others, on the other, took place. In his cross-examination he stated that the quarrel between Bhuttu and other boys was settled amicably and all the boys left in a happy mood. PW-8 is Somnath. He was the owner of a hotel at Chandranathpur Bazar. He allegedly heard cries of a quarrel. He stated that later on the matter was settled amicably. He was declared hostile. PW-9 is Dr. K.K. Chakraborty. He conducted post mortem examination of the deceased. He found the following anti mortem injuries on the dead body of Moti (deceased):

"1. Lacerated injury right ear 2 x = cm. x whole thickness blood drop are ardent to tissue.

2. Cut injury left lobule of ear 1 x = x < cm. blood drops are adherent to the tissue.

3. Cut injury left side of scrotum 2 x 1 x cm x left testis

4. Lacerated injury lower lip left side 1x1 x = x < cm.

Contusion under the scalp in left will temporal partial are present. A skull was healthy. Subdural hemorrhage on left side on left side of brain present."

According to him injury Nos. 1 and 2 could be caused by material Ex. 1 which was seized by the police from near the place where the dead body was found. It was a root of a tree. PW-10 \026 Swapan Chakraborty is an Asstt. Station Master. He was the Station Master of Railway Station. He merely stated that in the night a boy came to him and wanted a torch light which was given and the same was returned to him after 15-20 minutes. PW-11 \026 Fazlur Rahman is the Investigating Officer.

In the First Information Report or in the evidence, appellants Munna and Ujjal were not named. They were not identified in the dock. No recovery was made from them. They were not named by any of the prosecution witnesses as having taken any part in the commission of the offence. As against Ujjal the only evidence was that he had obtained the signature of one of the prosecution witness.

The learned Sessions Judge as also the High Court recorded the judgment of conviction and sentence relying on or on the basis of the depositions of PW-2 and PW-3. It was accepted that there was no direct evidence in regard to the role played by any of the appellants in causing the death of Moti (deceased). As noticed hereinbefore, the finding of guilt of the appellants was arrived at only on the basis of two circumstantial evidence that (1) they had chased the deceased; (2) they had prepared and forced the prosecution witnesses to sign a sulhanama wherein a statement was made that they would not file any complaint against the accused. Homicidal death of Moti is undisputed. There is no evidence as to who had assaulted him. Role played by the accused either conjointly or individually in causing death of the deceased is not known. Some offence was committed, but who did so is not known. Whether in the aforementioned situation, all the accused would be convicted with the aid of Section 149 of the Indian Penal Code is the question.

The concept of common object, it is well known, is different from common intention. It is true that so far as common object is concerned no prior concert is required. Common object can be formed at the spur of the moment. Course of conduct adopted by the members of the assembly, however, is a relevant factor. At what point of time the common object of the unlawful assembly was formed would depend upon the facts & circumstances of each case.

Section 149 IPC creates a specific and distinct offence. There are two essential ingredients thereof :

- (i) Commission of an offence by any member of an unlawful assembly, and
- (i) Such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed.

It is, thus, essential to prove that the person sought to be charged with an offence with the aid of Section 149 was a member of the unlawful assembly at the time the offence was committed.

The appellants herein were not armed with weapons. They except Bhuttu were not parties to all the three stages of the dispute. At the third stage of the quarrel, they wanted to teach the deceased and others a lesson. For picking up quarrel with Bhuttu, they might have become agitated and asked for apologies from Moti. Admittedly, it was so done at the instance of Nirmal, Moti was assaulted by Bhuttu at the instance of Rattan. However, it cannot be said that they had common object of intentional killing of the deceased. Moti, however, while being assaulted could free himself from the grip of the appellants and fled from the scene. The deceased, was being chased not only by the appellants herein but by many others. He was found dead next morning. There is, however, nothing to show as to what role the appellants either conjointly or separately played. It is also not known as to whether if one or all of the appellants were present, when the last blow was given. Who are those, who had assaulted the deceased is also not known. At whose hands he received injuries is again a mystery. Neither Section 34 nor Section 149 of the Indian Penal Code is, therefore, attracted. [See Dharam Pal and Others v. State of Haryana \026 (1978) 4 SCC 440 and Shambhu Kuer v. State of Bihar \026 AIR 1982 SC 1228].

We are, however, not oblivious that in Bishna @ Bhiswadeb Mahato & Ors. v. State of West Bengal [2005 (9) SCALE 204], it was stated :

"For the purpose of attracting Section 149 and/or 34 IPC, a specific overt act on the part of the accused is not necessary. He may wait and watch inaction on the part of an accused may some time go a long way to hold that he shared a common object with others."

Furthermore, it is evident that no evidence has been brought on records to establish that the appellants Munna and Ujjal had committed any offence. As noticed hereinbefore, they were not named in the FIR. They were not identified in the dock. No witness has taken their names as the persons who committed any overt act. No recovery has been made from them. There is also no evidence that they had chased the deceased. As it had not been established that the appellants were members of an unlawful assembly, in our opinion, they could not have been convicted for commission of an offence under Section 302/149 I.P.C.

For the aforementioned reasons, the appellants cannot be held guilty for commission of an offence under Section 302/149 of the IPC. They are entitled to benefit of doubt.

The appeals are allowed. The judgment of conviction and sentence passed against the appellants are set aside. They are directed to set at liberty unless wanted in connection with any other case. There shall be no order as to costs.