

CASE NO.:
Appeal (crl.) 1161 of 1999

PETITIONER:
CHANDRA BIHARI GAUTAM & ORS.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 15/04/2002

BENCH:
R..P. Sethi & Doraiswamy Raju

JUDGMENT:

(With CrI.A.No.380/2000& CrI.A.No.525/2000)

J U D G M E N T

SETHI, J.

Contending that the prosecution had failed to prove the presence of all the appellants and the existence of common object within the meaning of Section 149 of the Indian Penal Code, the learned counsel for the appellants has argued that except appellant Manoj Kumar no other accused could be convicted or sentenced for the death of the deceased persons. It is submitted that even if the appellants are proved to be present on spot when the occurrence took place, they cannot be held guilty for the commission of any offence as they were not proved to be sharing any common object but were only by-standers. It has been further argued on behalf of some appellants that the prosecution witnesses being interested were not reliable and the courts below wrongly relied upon their testimony to convict and sentence the appellants.

The facts giving rise to the filing of the present appeals are that on 23rd July, 1994 at about 2.00 a.m. the appellants accompanied by 300-400 persons, armed with deadly weapons like guns, attacked the house of Ganesh Singh in Village Amarpur. Bholi Singh was shot dead and Nawlesh Singh, Shiv Narain Singh, Kedar Singh, Sanjay Singh and Ajay Kumar were burnt alive inside the room where they were hiding. According to the First Information Report, the informant, namely, Ganesh Singh (PW5) along with other members of the family had slept on the upper floor of his house in open. At about 1.30 a.m. in the night there was some drizzling whereupon female members of the family came down to the ground floor of the house and male members moved inside three separate rooms on the southern side of the upper floor of the house. In the western room facing north Nawlesh Singh, Sanjay Singh, Ajay Kumar, Kedar Singh, Shiv Narain Singh and Bholi Singh went to sleep. The informant (PW5) himself occupied the middle room and in the room on the eastern side his nephew Dhanju Kumar (PW1) slept. After about half an hour, the informant heard sounds of firing from northern side of the roof of his house and he got up. He heard one person saying that Nawlesh should come out and surrender as the person speaking claimed to be the officer-in-charge of the police station. He heard Nawlesh saying that if the person seeking surrender was the officer-in-charge of the

police station, he should come to the front door of the house. Ganesh Singh (PW5) further stated that he saw some fire like substance and then raised an alarm that the extremists had arrived in Khakhi dress. The culprits set the room on fire in which Nawlesh was sleeping along with others. The fire was set with the help of petrol bombs. The occurrence was seen by the informant through a hole in the room where he was sleeping. Out of the mob of 300-400 persons, he identified 19 persons in the light of torch flashed by fire in the room including the appellants. All the aforesaid persons were named in his statement. In the entire process about 300-400 rounds of firing were made terrifying the whole of the locality. The motive behind the commission of the crime was stated to be the enmity of Manoj Kumar with the family of the informant.

After completion of the investigation the prosecution filed the charge-sheet in the trial court against 16 persons including the appellants. To prove its case the prosecution examined 8 witnesses. During the pendency of the trial one of the accused, namely, Mani Singh (A-16) died. Out of the remaining 15 accused persons Ram Binay Singh (A-4), Bageshwari Sharma (A-7) and Divya Kumar Madhu (A-15) were acquitted by the trial court. A-2, namely, Hirdaya Singh @ Dharendra Singh and Manoj Kumar Gautam (A-11) were convicted under Section 302 of the Indian Penal Code and sentenced to death by the trial court. The other accused were convicted for the commission of offences under Section 302 read with Section 149 IPC and sentenced to life imprisonment. The accused were also convicted for the commission of offences under Sections 148, 436 and 120B of the Indian Penal Code and Section 27 of the Arms Act but no separate sentences were awarded to them. Not satisfied with their conviction and sentences, the accused persons filed Criminal Appeal Nos.464 of 1997, 517 of 1997, 528 of 1997 and 24 of 1998. All the appeals, along with Death Reference No.6 of 1997 were disposed of by the common judgment impugned in these appeals. The conviction of the appellants was upheld but the sentence awarded to Hirdaya Singh @ Dharendra Singh (A-2) and Manoj Kumar Gauta (A-11) was commuted from death sentence to imprisonment for life. Not satisfied even with the judgment of the High Court, the present appeals have been filed by the convicted accused persons.

During the pendency of the Criminal Appeal No.1161 of 1999, one of the appellants, namely, Nawal Kishore Gautam (A-3) has died. So far as the appeal regarding Nawal Kishore Gautam is concerned, the same has thus abated.

We are not inclined to re-examine the whole of the prosecution case for finding out as to whether occurrence had taken place in which six people were killed by the appellants in the manner alleged by the prosecution. We find no reason to disbelieve any of the eye-witnesses, namely, Dhananjay Kumar (PW1), Neelam Devi (PW2), Narendra Singh (PW3), Balwanti Div (PW4) and Ganesh Singh (PW5). The trial court as well as the High Court have, after critical examination of their statements, rightly concluded that they were the truthful witnesses and that all the appellants in these appeals were present at the time of occurrence. Merely because the witnesses happened to be the relations of the deceased is not a ground to reject their testimony. Under the circumstances of the case, the aforesaid witnesses appear to be natural witnesses who were supposed to be at the house of Ganesh Singh (PW5) when the occurrence took place. The mere possibility of the occurrence having taken place in the manner suggested by the defence counsel is no ground for interference in the appeals filed by special leave under Article 136 of the Constitution. Time and again it has been held by this Court that no interference would be made with the concurrent finding of fact based on pure appreciation of evidence even if this court was to take a different view on the evidence. The court will normally not enter into reappraisal or the review of evidence unless the trial court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are perverse. This Court

cannot enter into the credibility of the evidence with a view to substitute its opinion for that of the High Court. This Court may interfere where on proved facts wrong inferences of law are shown to have been drawn. It needs to be emphasised that this Court is not a regular court of appeal to which every judgment of the High Court in criminal case may be brought up for scrutinising its correctness. It is only in rare or exceptional case where there is some manifest illegality or grave or serious irregularity that the court would interfere with such findings of fact. In this regard reference may be made to the judgments of this Court reported in Duli Chand vs. Delhi Administration [1975 (4) SCC 469], Ramaniklal Gokaldas & Ors. v. The State of Gujarat [1976(1) SCC 6], Mst. Dalbir kaur & Ors. vs. State of Punjab [1976 (4) SCC 158] and Ramanbhai Naranbhai Patel & Ors. vs. State of Gujarat [2000 (1) SCC 358], etc.

It has been argued alternatively that even if the occurrence is held to have taken place in the manner alleged by the prosecution and the accused persons were seen on spot, they cannot be convicted and sentenced as the prosecution allegedly failed to establish the existence of a common object amongst the accused persons. Section 149 is an exception to the criminal law whereunder a person can be convicted and sentenced for his vicarious liability only on proof of his being a member of the unlawful assembly, sharing the common object, notwithstanding as to whether he had actually participated in the commission of the crime or not. Common object does not require prior concert and a common meeting of minds before the attack. An unlawful object can develop after the accused assembled. The existence of the common object of the unlawful assembly has to be ascertained in the facts and circumstances of each case. It is true that the mere presence of the accused is not sufficient to hold them guilty for the sharing of common object as the prosecution has to further establish that they were not mere by-standers but in fact were sharing the common object. When a concerted attack is made by a large number of persons, it is often difficult to determine the actual part played by each of the accused but on that account for an offence committed by a member of the unlawful assembly in the prosecution of the common object or for an offence which was known to be likely to be committed in prosecution of the common object, persons proved to be members cannot escape the consequences arising from the doing of that act which amounts to an offence. There may not be a common object in a sudden fight but in a planned attack on the victim, the presence of the common object amongst the persons forming the unlawful assembly can be inferred.

It is submitted by the learned counsel for the appellants that as the prosecution had failed to allege and prove a specified object, their clients cannot be held to be guilty for the commission of the offence with the aid of Section 149 of the Indian Penal Code. Such a submission cannot be accepted in view of the settled position of law. Every member of the unlawful assembly is guilty of the offence committed in prosecution of the common object. Unlawful assembly has been defined under Section 141 of the Indian Penal Code to mean:

"141. Unlawful assembly - An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is -

First - To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second. - To resist the execution of any law, or any legal process; or

Third. To commit any mischief or criminal trespass, or other

offence; or;

Fourth- By means of criminal force or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifty- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation - An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."

Section 149 has two parts. First part deals with the commission of an offence by a member of unlawful assembly in prosecution of the common object of that assembly and the second part deals with the liability of the members of the unlawful assembly who knew that an offence was likely to be committed in prosecution of the object for which they had assembled. Even if the common object of the unlawful assembly is stated to be apprehending Nawlesh Singh only, the fact that the accused persons had attacked the house of the complainant at the dead of the night and were armed with deadly weapons including the guns, and used petrol bombs proves beyond doubt that they knew that in prosecution of the alleged initial common object murders were likely to be committed. The knowledge of the consequential action in furtherance of the initial common object is sufficient to attract the applicability of Section 149 for holding the members of the unlawful assembly guilty for the commission of the offence by any member of such assembly. In this case the appellants, along with others, have been proved to have formed unlawful assembly, the common object of which was to commit murder and arson and in prosecution of the said common object they raided the house of the informant armed with guns and committed offence. The courts below have, therefore, rightly held that the accused persons formed an unlawful assembly, the common object of which was to commit murder of the informant and his family members and in prosecution of the said common object six persons were killed. The appellants were also proved to have hired the services of some extremists for the purposes of eliminating the family of the complainant.

The reliance of the learned defence counsel on the judgment of this Court in Mukteshwar Rai & Ors. vs. State of Bihar [AIR 1992 SC 483] is misplaced inasmuch as in that case the existence of the common object was negated in view of the fact that the prosecution had failed to prove that the accused were armed at the time of commission of the offence of murder and were proved to be the members of the unlawful assembly, the object of which was to commit the offence of mischief only punishable under Section 436 of the Indian Penal Code. In the instant case, as noticed earlier, there is consistent and reliable evidence of the prosecution establishing that all the accused had attacked the house of the informant at the dead of night when they were armed with deadly weapons like guns and rifles. Similarly, the facts of the case in Umrao Singh & Ors. vs. State of U.P. [JT 2000 (9) SC 588] are distinguishable. In that case this Court on facts found that the members of the unlawful assembly shared the common object but the offence committed in pursuance of the said object was found to be punishable under Section 304 (Part I) of the Indian Penal Code. In the case of Fatte & Ors. vs. State of U.P. [AIR 1979 SC 1504], relied upon by the learned counsel for the appellant, it was held that the mere fact that no overt act was attributable to the members of the unlawful assembly, was not sufficient to disprove the charge under Section 149 of the Indian Penal Code. However, the question regarding the applicability of the aforesaid

section depends upon facts of each case. In the instant case the prosecution has established the existence of the common object of the unlawful assembly for attracting the applicability of Section 149 of the Indian Penal Code and the mere fact that no overt act has been attributed to each of the accused persons is not sufficient to hold that charge under Section 149 of the Indian Penal Code has not proved against them.

We have, therefore, no doubt in our mind that the appellants have rightly been convicted for the commission of various offences by the trial court, as confirmed by the appellate court and sentenced accordingly. There is no merit in these appeals which are accordingly dismissed.

.....J.
(R.P. Sethi)

.....J.
(Doraiswamy Raju)

April 15, 2002