

CASE NO.:
Appeal (crl.) 1272 of 1999

PETITIONER:
BHAGWAN SINGH & ORS.

Vs.

RESPONDENT:
STATE OF M.P.

DATE OF JUDGMENT: 22/03/2002

BENCH:
R.P. Sethi & K.G. Balakrishnan

JUDGMENT:

SETHI, J.

The appellants, alongwith two others, were charged under Sections 148, 302, 336, 337, 427 read with Section 149 of the Indian Penal Code by the Court of Additional Sessions Judge, Burhanpur and after trial acquitted by the trial court vide its judgment dated 24th June, 1987. The appeal filed by the State against the order of acquittal was allowed by the High Court vide the judgment impugned convicting the appellants for offences under Section 302/149 and sentencing them to life imprisonment besides paying a fine of Rs.5,000/- each in default of which they have been directed to suffer further rigorous imprisonment for one year each. They were also convicted for the commission of offence under Section 148 IPC and sentenced to rigorous imprisonment for one year each.

Not satisfied with the judgment of the High Court, the appellants have preferred this appeal under Section 379 of the Code of Criminal Procedure read with Order XXI Rules 12 to 29 of the Supreme Court Rules, 1966.

According to the prosecution there was a dispute between Amarnath (deceased) and Ram Singh, appellant with respect to four mango trees grown on Khasra No.212 situated at Village Sarai.

Litigation was pending between both the parties and police had registered several cases under Sections 147 and 145 of the Code of Criminal Procedure. According to the FIR recorded on the statement of PW22 Jagdish that he along with his family members was watching TV at his house. Amarnath and Hari Ram were also there. When he was about to start his meals, they heard the cries of "Bachao-Bachao" (save-save) raised by Surender. They saw all the 16 accused persons assaulting Surender with lathis, Dhariya, Khartaliya and Pata. When Hari Ram went to intervene, the accused attacked him. Similarly when Amarnath went forward he was also assaulted. Ram Singh instigated other accused persons to finish Amarnath

h saying that as he was responsible for everything, he should be finished today. Thereafter Ram Singh, Bhagwan Singh, Sardar Singh, Roop Singh and Dhyansingh attacked Amarnath with lethal weapons in their posse ssion. Witness rushed forward to save his father and was also attacked by the aforesaid accused persons. He ran away to the house to save himself. The accused then threw stones on the house which broke roof tiles, doors and also damaged the walls. After registration of the FIR, the investigating officers sent the injured, namely, Surender and Hari Ram to the District Hospital, Khandwa where they died the same night, the information of which was sent to the police by Hospital Authorities. Mukesh was also found injured and sent for treatment to the hospital. In the occurrence three persons, namely, Surender, Hari Ram and Amarnath were murdered and some of the witnesses injured.

The trial court acquitted the accused persons on finding that appellants Bhagwan Singh, Ram Singh, Roop Singh had received injuries and "seeing danger of life and other accused utilised right of private defence and there aggressors died and rest aggressors fled away. Hence the act of the accused fall within the definition of right of private defence u/s 100 IPC and their act is not punishable according to provisions of section 96 IPC". The trial court further held, "I find that prosecution failed to prove case beyond reasonable doubts and accused committed murder of deceased Amarnath, Surender and Hariram and caused injuries to Mukesh witness and damaged house of Jagdish after throwing stones". Holding that the prosecution had failed to prove the offence against accused beyond all reasonable doubts and giving them the benefit of right of self-defence, as contemplated under Section 100 IPC, he acquitted the accused persons.

The High Court rightly found that the trial court had been led astray by the simple fact that the injuries on the person of the accused had not been explained by the prosecution witnesses. After referring to number of judgments of this Court, the High Court concluded:

"In view of what we have discussed about the circumstances of the case, the injuries on the persons of the three deceased, the sequence in which the witnesses reached the spot of crime, minor nature of the injuries on the persons of the accused except one injury on the head of Bhagwan Singh and the background and also the sequence in which the deceased were attacked, rules out any possibility of the accused having attacked the three deceased in exercise of self-defence of any of them. It is clear that the accused persons were the aggressors."

After critically and minutely examining the evidence on record, the High Court found that the presence of eye-witnesses, namely, Kiran (PW7), Mukesh (PW12) and Jagdish (PW22) cannot be doubted. In this regard the court held:

"A striking feature of this case is that one of the accused Sardarsingh lodged a report Ex.D-5 at 11.30 p.m. that 4 persons i.e. Amarnath, Jagdish, Surendra and Hariram were

assaulting Bhagwansingh and Roopsingh. Even here Jagdish witness was shown present and there was no mention of Ramsingh accused. Then in cross examination to these three eye-witnesses the suggestions have been that the deceased and the witnesses along with others assaulted the accused at the house of Ramsingh. The trial court has ignored this trend of cross examination on behalf of the accused in appreciating whether the witnesses were present at the scene of violence. In the facts and circumstances of a given case, the trend of cross-examination by defence or prosecution witness can provide support to the inference if some accused and witnesses were present at the scene of crime. The most striking feature is the fact that such a report was recorded by the police and they at one proceeded to the scene of crime. There is no mention in Ex.D-5 if any serious injury was given to Sardarsingh or Roopsing and whether any weapon has been used or only fists blows were being exchanged. Still the police rushed to the scene of crime at the night. This is rare. This indicates that there was some under current working between the police and the accused persons. The police could not but have recorded the Dehati Nalishi on finding one person died and 2 in the process of dying with fatal injuries. This is followed by lapse of the investigating officer in recorded statement of Mukesh and Kiran after 7 days if Kiran had not witnesses the occurrence there was no need to introduce her as a witness when there were witnesses such as Jagdish and Mukesh whose presence at that spot could hardly be challenged. So, if anything, investigation was unfair towards the complainant party and not against the accused persons."

and concluded:

"So we find the testimony of these witnesses, trustworthy and also confirmatory to each other. Their presence is established at the scene of crime. Their testimony is corroborated by FIR and by medical evidence."

We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the Court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to reappraise the evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. In the instant case the trial court acquitted the respondents by not relying upon the testimony of three eye-

witnesses, namely, Kiran (PW7), Mukesh (PW12) and Jagdish (PW22) on considerations which apparently appeared to be extraneous. Such findings of acquittal apparently are based upon erroneous views or the result of ignoring legal and admissible evidence with the result that the findings arrived at by the trial court are held to be erroneous. The High Court has ascribed valid reasons for believing the statements of those witnesses by pointing out the illegalities committed by the trial court in discarding their testimonies. The High Court has also rightly held that the trial court completely ignored the basic principles of law in criminal jurisprudence which entitles the accused to claim the benefit of right of self-defence. Without there being any legal and admissible evidence but swayed by finding some injuries on the person of the accused, the trial court wrongly held that the respondents were justified in causing the death of three persons in exercise of their right of self-defence. No fault, therefore, can be found in the judgment of the High Court on this ground.

Learned counsel appearing for the appellants further submitted that the prosecution has failed to prove the existence of common object amongst the accused and even if the occurrence is held to have taken place in the manner as alleged by the prosecution each of the accused is responsible for his own acts and cannot be held vicariously liable for the acts done by the other accused persons.

Common object, as contemplated by Section 149 of the Indian Penal Code, does not require prior concert or meeting of minds before the attack. Generally no direct evidence is available regarding the existence of common object which, in each case, has to be ascertained from the attending facts and circumstances. When a concerted attack is made on the victim by a large number of persons armed with deadly weapons, it is often difficult to determine the actual part played by each offender and easy to hold that such persons attacked the victim had the common object for an offence which was known to be likely to be committed in prosecution of such an object. It is true that a mere innocent person, in an assembly of persons or being a by-stander does not make such person a member of an unlawful assembly but where the persons forming the assembly are shown to be having identical interest in pursuance of which some of them come armed, others though not armed would, under the normal circumstances, be deemed to be the members of the unlawful assembly. In this case the accused persons have been proved to be on inimical terms with the complainant-party. The enmity between the parties had been aggravated on account of litigation with respect to the dispute over the mango trees. Accused persons who came on the spot are shown to have come armed with deadly weapons. The facts and circumstances of the case unequivocally prove the existence of the common object of such persons forming the unlawful assembly who had come on the spot and attacked the complainant party in consequence of which three precious lives were lost. The High Court was, therefore, justified in holding that the accused persons, involved in the occurrence, had shared the common object.

When the matter was again listed for re-hearing on 19th March, 2002, Mr. Jain, learned counsel appearing for the appellants submitted that besides appellants Bhagwan Singh (A1), Dhyansingh (A2), Datar Singh (A7), Suraj Singh (A8) and Raghunath Singh (A12), the other accused cannot be co

nvicted or sentenced as they have not been named by the witnesses in their statements recorded at the trial. A faint effort was also made to show that the names of all the accused persons were not mentioned in the FIR which justify the acquittal of accused persons other than A1, A2, A7, A8 and A12. Upon analysis of the record, we do not find any substance in the submission of the learned counsel for the appellants. Names of all the accused persons are mentioned in FIR (Exhibit P-77) which was lodged by Jagdish (PW22). It is mentioned in the FIR that when after hearing the voice of Surender, Jagdish (PW22) came out of the house, he saw Datar Singh, Suraj Singh, Raghunath Kunbi, Sukhdev Kunbi, Sadashiv Kunbi, Vasdev Kunbi, Chheeter Kunbi, Premlal Gurjar, Gajender Singh Nakedar, Ram Singh, Bhagwan Singh, Sardar Singh, Roop Singh, Dhayan Singh armed with lathis, dharia, Khirale, patte. They were assaulting Surender and when Hari Ram went to protect him, they attacked him. Similarly when his father went to save Surender and Hari Ram, he was also attacked and accused Ram Singh told the other persons that the father of PW22 was the main person responsible for all the troubles and should be finished, whereafter accused Ram Singh, Bhagwan Singh, Roop Singh and Dhayan Singh inflicted injuries on the person of the father of the witness. When the witness tried to save the victims, the accused persons ran towards him and to save his life he entered in his house and closed the door from inside. In his statement, recorded in the court on 9.4.1987, Jagdish (PW22) stated that when he came out of his house he saw all the 16 accused persons beating Surender. He has specifically mentioned the names of Bhagwan Singh, Dhayan Singh, Sardar Singh and Roop Singh who were having deadly weapons in their hands. All the accused persons were beating Surender and when Hari Ram went to save him, he was attacked. Similarly, Amarnath, the father of the witness was also attacked and severely injured. Kiran (PW7) in his statement, recorded in the court on 17.2.1987, stated that "then there came the voice of shouting of Surendra that save me save me Bhagwan is killing me. I ran and went towards the noise. I went there and saw that Ram Singh, Bhagwan Singh, Dhayan Singh, Sardar Singh, Umrao Singh, Roop Singh, Datar Singh, Suraj Singh, Sadashiv, Sukhdev, Vasudev, Raghunath and the forest guard Gajra, Premlal, Gajnan all these people were beating up Surender, Hariram and Amarnath. On seeing the accused Chheeter said that he was also there and these were all the accused persons who were beating. These people were beating up with sticks, khirale and pattee (sic). These people were shouting that kill these Punjabis, kill each and every one of them. Bhagwan Singh was saying that kill this old man also and he only does everything. He was calling Amarnath as old person. These three persons fell down because of beating and got soaked in blood".

Mukesh (PW12), in his statement recorded on 19.2.1987, stated that "when I reached near home, I heard a brawl from the side of Jagdish's house. I left the cart to see it. When I saw from near the house of the accused Bhagwan, the accused persons coming from the side of Laxman Patel's house were g

going to the side of Amarnath's house. In front of my eyes, Hariram fell down in front of Laxman Patel's house. The assailant had wooden objects, Khiralas and Pattas, they were hitting with them. Amarnath was seen collapsing near Narmada's house. Then, the accused persons started pelting stones on my side. One stone hit me on my right shoulder. Then I ran home".

In view of cogent, reliable and confidence inspiring testimony of PWs 7, 12 and 22, it cannot be said that the names of all the accused persons were not mentioned in the FIR which entitled some of them to be acquitted. The High Court has rightly found that the names of all the accused persons were mentioned in the FIR and repeated by the witnesses in their depositions made in the trial court. From the questions put in cross-examination, it also transpires that the accused persons never doubted the factum of their names being mentioned by the witnesses in the FIR and in their statements recorded at the trial.

We also do not find any substance in the submission of the learned counsel for the appellants that statement of Kiran (PW7) should not be given any weight because her name is not mentioned in the FIR. There is no requirement of law for mentioning the names of all the witnesses in the FIR, the object of which is only to set the criminal law in motion. Kiran (PW7) herself was injured and being the niece of Hari Ram (deceased), had no reason to involve innocent persons in the commission of the crime. Merely because PWs 7, 12 and 22 happen to be the relations of the deceased, cannot be made a ground to discard their evidence. In the circumstances of the case, the High Court has rightly found the afore said witnesses to be natural witnesses of the occurrence.

There is no merit in this appeal which is accordingly dismissed.

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

.....J.
(K.G. Balakrishnan)

March 22 , 2002