

CASE NO.:
Appeal (crl.) 897 of 2000

PETITIONER:
RAMESHWAR DAYAL & ORS.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ANR.

DATE OF JUDGMENT: 29/01/2002

BENCH:
N. Santosh Hegde & Doraiswamy Raju

JUDGMENT:

RAJU, J.

This appeal has been filed against the judgment dated 15.3.2000 of a Division Bench of the Madhya Pradesh High Court Gwalior Bench in Criminal Appeal No. 250 of 1984, affirming the decision of the Sessions Court, convicting the appellants under Sections 148, 302 read with Section 149, IPC, and imposing a sentence of life imprisonment. Since, the 9th accused by name Man Singh did not surrender before filing the appeal, the Special Leave Petition, insofar as it related to him, came to be dismissed and leave was granted only in respect of the other remaining accused.

The offence with which the accused were charged related to an occurrence at about 8.30 p.m. on 18.8.83 involving the murder of one Ramprasad, a resident of village Basodi, who was residing along with his brothers Sitaram (PW-4), Ghanshyam Singh (PW-9) and cousin Shiv Kumar (PW-8). The case of the prosecution that the accused formed themselves into an unlawful assembly at 5.30 p.m. on the day of occurrence with the common object of murdering Ghanshyam Singh and his brother Ramprasad and in furtherance of the common object of the said unlawful assembly, they committed rioting armed with deadly weapons and murdered Ramprasad, found favour of acceptance of the learned Trial Judge. Old enmity between the deceased and the accused persons over the construction of an outlet for the used water in front of the house of Sitaram was said to be the origin and cause for the enmity and resultant murder. On a careful analysis and consideration of the materials on record, the prosecution was held by the Trial Judge to have proved beyond reasonable doubt that accused persons Rameshwar, Man Singh, Prem @ Prem Narayan, Omprakash, Ballabh, Hukum Singh, Shiv Singh, Kunwar Pal and Uttam Singh have committed the offence under Sections 148, 149, 302, IPC, and two years rigorous imprisonment came to be imposed for the offence under Section 148, IPC, and life imprisonment for offences under Section 302 read with Section 149 IPC, both the sentences to run concurrently.

The accused, who suffered conviction, jointly filed an appeal before the High Court in Criminal Appeal No. 250 of 1984 and during the pendency of the same, one by name Omprakash died and appeal in respect of him abated. The Division Bench of the High Court also re-appreciated the materials and after an elaborate consideration of

the same and the conclusions of the learned Trial Judge, confirmed the findings and the sentence imposed. Thereupon, this appeal came to be filed.

Shri Dr. T.N. Singh, learned senior counsel, appeared for the appellants and Ms Rachna Srivastava and Shri S.K. Agnihotri, learned counsel, for the respondents. The learned counsel on either side invited our attention to the materials on record and relevant portions of the judgments of the courts below to substantiate their respective stand. Apart from contending that the prosecution has not sufficiently established any common object or the fact that the accused persons constituted an unlawful assembly, it was strenuously contended by the learned senior counsel for the appellants that in the teeth of the medical evidence by Dr. Tripathi (PW-1) that he found only two incised wounds on the middle finger and right hand palm and six lacerated wounds including the three fatal head injuries, no just or reasonable conclusion could be drawn that the eight accused persons armed with Farsas, Luhangis and one with Lathi had any common intention or object of killing the deceased. It was also contended that the nature of injuries found did not match with the weapons as well as the number of assailants and merely because any one or more in the group could have given a dastardly or deadly blow on his own in the course of commotion, no common object of killing or committing any murder could be attributed to all those present and consequently the conviction of all the accused persons cannot be justified either in law or on facts proved. Reliance has also been placed on the decisions reported in Tanaji Govind Misal, etc.etc. vs State of Maharashtra [1997(8) SCC 340] and in Rachamreddi Chenna Reddy and Others vs State of Andhra Pradesh [AIR 1999 SC 994].

We have carefully considered the submissions on either side, but unable to persuade ourselves to sustain the claim projected on behalf of the appellants. The findings recorded concurrently by the courts below are supported by overwhelming materials on record and are not shown to be vitiated for any acceptable reason, to call for our interference. As for the plea based on the relevance and applicability of Section 149 of the IPC to convict all the accused under Section 302, we are of the view that the evidence on record justify the course adopted by the courts below. The decision in Tanaji Govind Misal's case (supra) dealt with a case relating to an incident arising out of a sudden unpremeditated free fight between two groups, which was considered not sufficient to conclude about the formation of any unlawful assembly or a premeditated and planned assault, so as to attract Section 149, IPC. The decision in Rachamreddi Chenna Reddy's case (supra) goes against the stand taken for the appellants rather than helping them in any manner. The provisions of Section 149, IPC, will be attracted whenever any offence is found committed by any member of an unlawful assembly in prosecution of the common object of that assembly or when the members of that assembly knew to be likely to be committed in prosecution of that object, so that every person, who at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Previous enmity coupled with the joining in a group constituting an unlawful assembly going to the scene of occurrence armed with lethal weapons and participating in the attack by mercilessly beating the deceased after surrounding him, will sufficiently establish that the common object was nothing but to kill the deceased.

The facts of the case on hand sufficiently establish not only previous enmity, but also a premeditated and concerted move to wreck vengeance and the deadly nature of weapons carried by the group of accused, who formed by themselves into an unlawful assembly coupled with the evidence on record that on seeing the

deceased Ramprasad, Sitaram (PW-4) and Rajendra Singh (PW-5) the accused Man Singh exhorted co-accused shouting "Maro Salo Ko" and all the accused thereupon bounced upon and assaulted the complainant party prove the common object, beyond reasonable doubt. When Rajendra Singh (PW-5) came forward to save the victim from the blows inflicted by Man Singh, Om Prakash appears to have assaulted him by Farsa on the head and all the accused jointly seem to have assaulted the victim. The medical evidence disclosed altogether eleven wounds on the body of the victim of which injuries 1 to 3 were considered to be dangerous to life. Sitaram (PW-4) and Rajendra Singh (PW-5) examined by the Doctor also were found to have sustained seven and one injuries, respectively on their body. The conduct of the appellants both before and during the course of occurrence in this case sufficiently demonstrated that the accused shared the common object and engaged themselves in furtherance of the same. Consequently, no exception whatsoever could be taken to the findings recorded by the courts below convicting the appellants under Section 302 r/w Section 149, IPC. So far as the sentence is concerned also, we do not consider it to be excessive or unwarranted on the facts of the case.

The appeal, therefore, fails and shall stand dismissed.

J.
(N. Santosh Hegde)

J.
(Doraiswamy Raju)

January 29, 2002.