

Judgment reserved on 07.01.2022

Judgment delivered on 30.05.2022

Case :- CRIMINAL APPEAL No.1155 of 1992

Appellant :- Munna Singh and ors

Respondent :- State

Counsel for Appellant :- Manvendra Singh

Counsel for Respondent :- A.G.A.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Rajendra Kumar-IV,J.

1. Heard Sri Manvendra Singh, learned counsel for appellants and Shri G.P. Singh, learned A.G.A. for State.

2. The present Criminal Appeal has been preferred assailing the correctness of the judgment and order dated 30.6.1992 passed by IIIrd Additional Sessions Judge, Fatehpur in Sessions Trial No.490/1989 (State vs. Munna Singh and ors), arising out of Case Crime No.889 of 1989 under Sections 147, 148, 323 and 302 IPC, Police Station Kishunpur, District Fatehpur, whereby appellant no.1, Munna Singh has been convicted and sentenced under Section 148 IPC to undergo imprisonment of one year's rigorous imprisonment and under Section 302 IPC to undergo life imprisonment. Accused persons/appellant nos.2 to 5 Ram Prasad, Ram Raj, Guljar and Mannu have also been convicted and sentenced under Section 147 IPC to undergo R.I. for six months each and they have further been convicted under Section 302 read with Section 149 IPC for life imprisonment. The appellant nos.2 to 5 have further been convicted and sentenced under Section 323 IPC read with Section 149 IPC to undergo six months R.I. each.

3. The prosecution case, in brief, is that the accused persons put an obstruction (bandha) on pathway, wherefrom, rainy water flew towards south in front of their house. On the date of occurrence i.e. 27.6.1989 at about 7 p.m., brother of informant Niranjn Singh, apprehending danger to his house, went to accused persons to complain on the said obstruction. It is alleged that accused Munna

Singh armed with a tamancha (country made pistol) and other accused persons namely Ram Prasad, Ram Raj Singh, Mannu Singh & Guljar Singh armed with lathis (sticks) met Niranjan Singh over the road, where the obstruction was created. The appellant no.1 Munna Singh fired at Niranjan Singh and also challenged his associates to assault him. Consequently, Niranjan Singh sustained serious injuries and fell down on the ground. Other accused assaulted him with lathis. After hearing altercation and noise of the firearm, Smt. Deo Ratiya (mother of informant), Smt. Premvati (wife of Niranjan Singh), Ram Niranjan (informant), Sanware Singh and several other persons of the village, reached on the spot. Smt. Deo Ratia and Smt. Premvati lied down over the fallen Niranjan Singh to save him from further assault but the accused had also assaulted them by the lathies. No medical aid could be given to Niranjan Singh and he died on the spot. Ram Niranjan Singh came to the police station on 28.6.1989 at 08.05 a.m. and lodged written report, whereupon a Case under Sections 147, 148, 149, 323, and 302 IPC was registered against the accused. The body of the deceased was sent for post-mortem examination conducted by Dr. Rakesh Kumar Mishra (PW-3) on 30.6.1989 and he noticed following injuries:-

- “1. Firearm wound of entry on left iliac fossa, 4 cm above interior, superior, ilica spine, size 1.5 cm x 1.5 cm going towards right side downward. No blackening & tattooing was seen.
2. Firearm wound of exit 1 cm right gronic fold laterally, size 6 cm x 6 cm. Margins extroverted, skin and muscles badly lacerated.
3. Lacerated wound on skull 2 cm above left eye brow, size 2 cm x 1 cm transverse.
4. Lacerated wound on left elbow joint posteriorly size 2 cm x 1 cm.”

4. Contents of the first information report were taken in concerned chick F.I.R. (Ext.Ka-3) as Case Crime No.58 of 1989 under Sections 147, 148, 323 and 302 IPC at Police Station Kishunpur, District Fatehpur. After completing investigation, the investigation officer submitted chargesheet against the accused under Sections 147, 148, 149, 302 and 323 IPC. The Chief Judicial

Magistrate, Fatehpur took cognizance and thereafter committed the case to the Court of Sessions Judge, registered as Sessions Trial No.490 of 1989. Finally, charges were framed by the Sessions Judge on 08.2.1990. The charges were read over and explained to the accused, who abjured charges and opted for trial.

5. In order to establish the guilt of the accused, the prosecution has examined five witnesses. P.W.1 Smt. Premvati is an injured witness; P.W.2 Ram Niranjana Singh is complainant, P.W.3 Dr. Rakesh Kumar Misra conducted post-mortem of the deceased; P.W.4 Sri Deen Dayal Singh is a formal witness and recorded the F.I.R. and GD Entry vide exhibits Ka-3 and Ka-4. P.W.5 Dr. S.N. Tripathi medically examined Smt. Deo Ratia. Statement of the accused were also recorded under Section 313 Cr.P.C. in which they have denied the charges levelled against them and pleaded their innocence and false implication in the case.

6. The Court below, after considering the various circumstances relied upon by the prosecution, proceeded to consider each of the submissions urged on behalf of the accused in the light of oral, documentary and circumstantial evidence on record as well as the law applicable to determine the innocence/guilt of accused. The court below dealt with each of the above noted submissions urged on behalf of accused-appellants to dislodge the prosecution case and vice-versa in proof of his innocence. Upon evaluation of said submissions in the light of propositions required to be addressed to in a case relating to evidence, none of the submissions urged on behalf of accused-appellants were found cogent enough by court below to dislodge the prosecution case or to believe another hypothesis much-less a reasonable hypothesis than the one pleaded by the prosecution against appellants. The court-below by means of impugned judgment and order dated 30.6.1992 had convicted the accused appellant no.1 under Section 148 IPC and sentenced him to undergo imprisonment of one year's R.I. He has been further convicted under Section 302 IPC and sentenced him to undergo

imprisonment for life. Accused-appellant nos.2 to 5 have also been convicted under Section 147 IPC and sentenced to undergo R.I for six months' each. They have been further convicted under Section 302 read with Section 149 IPC and sentenced to life imprisonment. The appellant nos.2 to 5 have been further convicted under Section 323 IPC read with Section 149 IPC and they have been sentenced to undergo six months R.I. each. Thus, feeling aggrieved by aforesaid judgment and order, accused-appellants had approached this Court by means of present appeal.

7. Initially, the matter was taken up on 07.07.1992 and this Court had proceeded to admit the appeal and enlarge the appellant nos.2 to 5 on bail. Thereafter, the case was taken up on 07.8.1992 and on the said date, the appellant no.1 was also released on bail. Again it was listed on 11.7.2017 and on the said date, no one had appeared on behalf of the appellants and consequently, a coordinate Bench of this Court had issued bailable warrants to the appellants returnable within six weeks. In pursuance of the aforesaid order, the Chief Judicial Magistrate, Fatehpur submitted a report on 09.8.2019 stating therein that the bailable warrants had been executed against the appellant no.2, Ram Prasad and the appellant no.4, Munnu Singh, who have been released on bail on furnishing bail bond and undertaking that they would appear before the Court. So far as the appellant no.1 (Munna Singh), the appellant no.3 (Ram Raj Singh) and the appellant no.5 (Guljar Singh) are concerned, they have all died and consequently, the Division Bench has dismissed the appeal, insofar as it relates to the appellant nos.1, 3 and 5, on 06.9.2019 as abated. At present, the present criminal appeal survives only against appellant no.2, Ram Prasad and the appellant no.4, Munnu Singh.

8. Shri Manvendra Singh, learned counsel for the appellants attempted to dislodge the findings recorded by the court-below. Referring to the postmortem report of deceased, learned counsel for appellants contended that the doctor, who conducted autopsy on the

body of deceased, opined that deceased died on account of ante-mortem injuries sustained by him. On the aforesaid premise, it was thus urged that from the perusal of ante-mortem injuries sustained by deceased, the deceased died due to firearm injury. The other injuries, which were assigned to the appellant nos.2 and 5, were simple in nature and not fatal. As such, as per prosecution, the injuries, which were inflicted upon the deceased, are neither grievous nor fatal. Consequently, present case is not a case of murder punishable under Section 302 IPC. Therefore, conviction and sentence of present appellant nos.2 and 4 under Section 302 I.P.C. is manifestly illegal. Even for the sake of argument, if the injuries sustained to the deceased and role assigned to the appellant nos.2 and 4 are accepted then even in such eventuality the present appellant nos.2 and 4 ought to have been convicted under Section 323 IPC.

9. Learned counsel for the appellants submitted that a very improbable story has been put-forth by the prosecution. The appellants were implicated in the present matter due to village enmity in between the deceased and the family of the accused. The deceased was murdered outside the village by some unknown persons. As per prosecution case, the main role was assigned to the appellant no.1, Munna Singh, who had allegedly fired the shot at the deceased. The deceased sustained two lacerated wounds, which were simple in nature. These two wounds were assigned to four accused/appellant nos.2 to 5. There is no specific allegation from the side of prosecution as to which accused is responsible for these two lacerated wounds. Moreover, as per report of the Chief Judicial Magistrate dated 09.8.2019, the appellant nos.1, 3 and 5, Munna Singh, Ram Raj Singh and Guljar Singh have already died and consequently, the appeal on their behalf has been dismissed on 06.9.2019 as abated. Smt. Premvati (PW-1) and Ram Niranjn Singh (PW-2) are relatives of the deceased and thus, only interested witnesses have been examined. No other independent witness has

been examined. Even though, it is claimed that occurrence was on the pathway and after hearing quarrel, Smt. Deo Ratiya and Smt. Premvati reached on the spot and they lied down over Niranjana Singh to save him. The first information report had been lodged in the morning after considerable long time and thus, the false implication of the appellants cannot be ruled out.

10. Learned counsel for the appellants placed reliance on the third proviso to Section 141 of IPC, which provides that an assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is to commit any mischief or criminal trespass, or other offence. As such, it was submitted that Section 149 IPC would not be attracted in the matter. In support of his submission, he has also placed his reliance on examination-in-chief and cross-examination of PW-1 and PW-2. It was submitted that at no point of time all the accused persons joined as unlawful assembly with premeditated mind for committing the murder of the deceased. He submitted that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. As per prosecution version/statements of PW-1 and PW-2, when Niranjana Singh (deceased) had approached Munna Singh, at the said stage all other accused were not present but after altercation and noise, the rest of the accused persons joined. Even after hearing the altercation and noise the alleged eye-witness had also joined to Niranjana Singh (deceased). In such situation the inference cannot be drawn that there was in fact an unlawful assembly in prosecution of the common object of that assembly. The entire prosecution was silent on the said point and even the trial court had also erred in law to appreciate that there was, in fact, no unlawful assembly at the initial stage.

11. On the other hand, Shri G.P. Singh, learned A.G.A. supported the judgment impugned and submitted that the appellants are named in the first information report. The informant was an eye-witness of the occurrence. He stated in his statement that the accused persons obstructed the road wherefrom rainy water flew towards the south. On 27.6.1989 at about 7 p.m. once the deceased went to the accused persons to complain regarding the said Bandha then the appellant no.1 Munna Singh fired shot at the deceased, who sustained serious injuries and died on the spot. On hearing sound of the gunfire, his mother and Bhabhi rushed at the place of occurrence and lied down over the deceased but the accused persons had also assaulted them. The informant (PW-2) reached on the spot and witnessed the incident. It is fully proved from the evidence of PW1 and PW2 that the deceased had been shot dead by the accused Munna Singh/appellant no.1, who fired shot with the tamancha at the deceased and other accused persons also beaten him. The prosecution witnesses are reliable and the guilt of the appellants was brought home successfully by confidence inspiring evidences. The defence had failed to point out any acceptable reason for their false implication and, therefore, impugned conviction and sentence does not require any alteration or scoring out. Accused had failed to elicit any favourable evidences from prosecution witnesses. The recorded conviction of the appellants is based upon cogent and reliable evidence and the sentence of imprisonment for life awarded to the accused-appellants is supported by relevant considerations. Lastly, it was submitted that there is no evidence available on record as to why eye witness would falsely implicate the accused. The conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same. The appeals lack merit and is liable to be dismissed.

12. We have heard rival submissions and scrutinized the documentary evidence and also evaluated the oral evidence on

record to determine the guilt/innocence of appellant nos.2 and 4. Upon thread bare evaluation of the testimony of prosecution witness, we find that the court-below has held that the prosecution witnesses of fact are credible and reliable and hence, their testimonies are worthy of credit. The testimonies of the prosecution witnesses of fact are substantially similar and remained consistent throughout. However, we further find that in view of injuries sustained by the deceased, it cannot be said that there was a premeditated mind to commit the murder of deceased. As per ante mortem injuries the deceased had not sustained any grievous or fatal injury on account of role assigned to the appellant nos.2 and 4. The role of firearm injury was assigned to the appellant no.1, Munna Singh (since deceased). There is no injury on head or on any vital part of the body. There is nothing on record to show that there was any mens-rea on the part of accused-appellant nos.2 and 4 to commit the murder of the deceased nor there is any such circumstances to establish the existence of a calculated mens-rea in the mind of appellant nos.2 and 4 to take revenge of any act committed by the deceased prior to the occurrence. In such circumstance, the question, which arises for determination in this appeal, is whether the case in hand is one relating to culpable homicide amounting to murder under Section 302 IPC or under Section 323, which provides punishment for voluntarily causing hurt with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

13. The appellants have been convicted for having committed the murder of Niranjana Singh at about 7 p.m on 27.6.1989. The FIR of the incident was lodged by Ram Niranjana Singh (PW-2) on 28th June, 1989 at 8.05 a.m. at P.S. Kishunpur, District Fatehpur. All the accused persons are named in the FIR and their respective roles have been clearly defined. The role of causing fatal firearm injury to the deceased has been attributed to accused Munna

Singh/appellant no.1 and the other appellant nos.2 to 5 have been assigned the role of beating by lathies.

14. Smt. Premvati (PW-1) (wife of the deceased/one of the injured eye-witnesses) vide her on oath statement-in-chief has supported the version of FIR and stated that all the the five accused persons belong to her family and Ramraj's father Bhura Singh and her father-in-law Sarju Singh are real brothers. Her husband Niranjan Singh was murdered on 27.6.1989 at about 7 p.m., and at that time, she was with him. Guljar had put the soil in front of his house and blocked the flow of the rainy water. Due to blocking of flow of the water, the water started accumulating there, which created a danger to her house. Her husband asked Guljar to remove the blockage so that the water might drain off but Guljar started abusing her husband and refused to remove the blockage. On this hue and cry, her mother-in-law and brother-in-law came there. Ram Prasad, Mannu, Ramraj, and Munna also came there. Among these, Munna was armed with tamancha and rest all the four were armed with lathies. All these five accused persons started abusing her husband and meanwhile, Munna fired gunshot on her husband, which caused injuries to her husband and he fell down on ground. The other accused persons, who were armed with lathies, started beating them, which caused injuries to her husband and mother-in-law. The accused persons fled eastward after beating them. Her brother-in-law & Sanwarey Singh started taking her husband to hospital and when they reached near Chandrabhan's Mahua tree outside the village, her husband died. She further stated that first of all, Guljar Singh only fired the shot her husband and when her husband fell down, the accused persons beat him with lathies. Munna Singh was standing at a distance of three-four hands length from where Guljar Singh fired the shot.

15. Ram Niranjan Singh (PW-2) (complainant and eyewitness to the incident) vide his examination-in-chief has reiterated the version of FIR and stated that the rainy water of his house used to

flow through the road in front of the house of the deceased since long time. The blockage was made three days before the occurrence. Apprehending danger to the house, the deceased went to the house of Guljar Singh and asked him to remove the obstruction. The complainant was present at his door and his mother and Bhabhi Prema were also present there. Guljar Singh refused to remove the obstruction and started abusing the deceased. At the time of the conversation, the other accused persons namely Ram Raj, Mannu, Ram Prasad and Munna Singh also came there. Munna was armed with tamancha and rest were armed with lathies. Guljar was already armed with lathi. The accused Munna Singh opened fire at the deceased, which hit him on lower abdomen and he fell down on ground. His mother and Bhabhi rushed and lied down over the deceased but all the four accused persons assaulted him with lathies. His brother was alive, hence he managed to take him to the hospital on a cart but as soon as they reached beneath Chandraman Singh's Mahua tree, his brother Niranjan Singh died. The dead body remained beneath the tree itself for the whole night and it was not brought home. On 28.6.1989 at 08.05 a.m, PW-2 came to the police station and moved the written complaint.

16. Dr. Rakesh Kumar Mishra (PW-3) in his statement-in-chief stated that he conducted post-mortem examination on dead body of the deceased on 30.6.1989, wherein he found ante-mortem injuries. He stated that deceased died about three days before conducting post-mortem due to trauma and hemorrhage. He found several lacerated wounds of size 1 cm x 1 cm and 3 cm x 3 cm in large and small intestines. The left kidney was lacerated at the bottom and bladder was burst. He admitted the possibility of death of deceased on 27.6.1989 at 7 p.m. due to ante-mortem injuries. He admitted that injury nos.3 and 4 were probably caused by blunt object. During the cross-examination PW-3 stated that there may be difference of 4-6 hours both sides in the duration of death of deceased. The deceased died due to the said injuries. Injury nos.3

and 4 were possibly caused by falling on a hard substance.

17. Sub Inspector Deen Dayal Singh (PW-4) in his statement-in-chief had proved the chick report/FIR, which was marked as Ext.Ka-3 and the extract of G.D. prepared by Head Moharrir Rupendra Kumar Dubey marked as Ext. Ka-4. PW-4 stated that the case was handed over to him for investigation. On 28.6.1989 he recorded the statement of the informant Ram Nirajan Singh and Head Moharrir at the police station. Thereafter, he reached the spot, examined the dead body of deceased and prepared inquest report in his handwriting and signature. He prepared documents for conducting post mortem examination and sent to Medical Officer, Incharge Government Hospital. On 05.7.1989 the statements of accused were recorded. He also recorded the statement of witness Saware Singh on 12.7.1989. After investigation, he submitted the charge sheet in the matter. In the cross-examination, the witness stated that he found the dead body under the Mahua tree. The complainant did not show him blood stained quilt, sheet, cot etc. He did not find blood stains where the dead body was lying. He did not find blood and pellets at the scene of occurrence. In FIR the distance of scene of occurrence from the police station is written as 16 Km, while in the inquest report the distance is mentioned as 18 Km. He went on the spot by bicycle. The spot from where accused fired has not been shown in the map and the same was missed out by mistake. He had prepared injury letter of Devrati and Prempati and seen their injuries. He sent them to hospital from the scene of occurrence. He had mentioned their injuries in the case diary. Two injuries were caused to Devrati; one below the left eye and another on left cheek. Contusion appeared on the body of Prempati.

18. Dr. S.N. Tripathi (PW-5) has stated in his statement-in-chief that he had medically examined Smt. Devaratia on 28.6.1989 at 6.30 p.m. In his opinion, both the injuries were ordinary and caused by some blunt weapon i.e. lathi. As per report, following injuries were found on her person:-

- “1. Contusion 5 cm x 2 cm. All around the left orbit junction is red on medial side. Contusion is bluish red.
2. Contused swelling 5 cm x 2 cm. On left mandibular region 4 cm. Below lower lip of the left ear.

19. Dr. S.N. Tripathi (PW-5) had also medically examined the injuries of Prempati on same day i.e. 28.6.1989 at 06.45 p.m. In his opinion all the injuries were ordinary and caused by blunt weapon i.e. lathies. The injuries of both the injured were caused a day before and were possibly caused on 27.6.1989 at 7 p.m. He prepared the report of injuries in his handwriting and signatures at the time of examination. These were marked as Ex. Ka-14 and Ex.15 respectively. As per report, following injuries were found on her:-

- “1. Contusion 12 cm x 3 cm. On right leg lateral surface at middle colour blueish red.
2. Contusion 8 cm x 4 cm. On right leg lateral surface 3 cm. Below the right knee joint.
3. Contusion 11 cm x 3 on left side of back 3 cm. Below the lower end of scapula.
4. Contusion 6 cm x 3 cm. On left shoulder anterior lateral surface colour same as injury number 1.”

20. No other testimony was adduced by the prosecution, therefore, the evidence of the prosecution was closed and the statement of accused was recorded under Section 313 Cr.P.C., wherein they claimed themselves to be innocent and submitted that they have been falsely implicated in the present case on account of enmity. After hearing both the sides on the merit of the case and after considering the evidence and facts on record, the trial court recorded the finding of conviction, as aforesaid, and sentenced them accordingly.

21. From the evidence on record it is clear that the accused Munna Singh and Ram Prasad are the sons of the accused Guljar Singh, whereas accused Ram Raj Singh and Mannu Singh are brothers of the accused Guljar Singh and sons of one Bhoora Singh. Bhoora Singh and Sarju Singh were real brothers. The informant Ram Niranjana Singh and the deceased Niranjana Singh are sons of

Sarju. The house of the informant and the deceased lies towards north of the house of the accused. In front of their houses, there is a public road which runs north-south. The accused persons put the obstruction on the road, where-from the rainy water flew towards south. On 27.6.1989 at about 7 p.m., the deceased went to the accused persons for complaining about the aforesaid obstruction. At the said place, the accused persons met the deceased over the road, where the obstruction was put. The appellant no.1, Munna Singh fired the shot by the tamancha at the deceased, who sustained serious injuries and became unconscious for some times and thereafter died on the spot. After hearing the sound of the fire, Smt. Deo Ratiya, Smt. Premvati, Ram Niranjana, Sanware Singh and several other persons of the village reached there. Smt. Deo Ratiya and Smt. Premvati lied down over Niranjana Singh to save him from further assault but the accused persons also assaulted them by the lathies. The complainant has lodged the first information report against the accused persons on 28.6.1989 at 08.05 a.m. at P.S. Kishunpur, District Fatehpur. All the accused have been named in the FIR and their respective roles have been assigned. The role of causing fatal firearm injury to the deceased has been attributed to accused Munna Singh/appellant no.1 and the other appellants nos.2 to 5 have been assigned the role of beating the deceased by lathies. Finally, the trial court convicted and sentenced the appellants for having committed the murder of Niranjana Singh on 27.6.1989 to undergo imprisonment for life.

22. Incident was witnessed by Smt. Premvati (PW-1/injured witness) and Ram Niranjana Singh (PW-2), who have deposed that accused/appellant no.1 Munna Singh fired gunshot on the deceased, which caused injuries to him and he fell down on ground. Rest of the accused persons, who were armed with lathies, started beating to PW-1, Niranjana Singh (deceased) and Smt. Deo Ratiya (mother of the informant) which caused injuries to the deceased and Smt. Deo Ratiya. The main role has been assigned to the appellant no.1,

Munna Singh, who had allegedly fired gunshot on the deceased. The other accused/appellant nos.2 to 5 also assaulted him by the lathies. The deceased also sustained two lacerated wounds and these two wounds were assigned to four accused (appellant nos.2 to 5). There is no specific allegation from the side of prosecution as to which accused is responsible for these two lacerated wounds. As per post-mortem report of the deceased, the cause of death was due to shock and hemorrhage as a result of ante-mortem injuries. There is no evidence of any previous enmity between the accused persons and the deceased.

23. It is alleged that the appellant no.1 fired the gunshot on the deceased which resulted in his death. The beating by the appellants no.2 to 5 had also caused injuries to the deceased. The doctor, who conducted post-mortem examination, had also opined that the cause of death of deceased was due to shock and hemorrhage as a result of ante-mortem injuries. As per report of the Chief Judicial Magistrate, Fatehpur dated 09.8.2019, the appellant no.1, Munna Singh, appellant no.3 Ram Raj Singh and the appellant no.5 Guljar Singh have already died and consequently, the present appeal, insofar as it relates to the appellant nos.1, 3 and 5, has already been dismissed on 06.9.2019 as abated. At present, the present criminal appeal survives only against appellant no.2, Ram Prasad and the appellant no.4, Munnu Singh.

24. As per the evidence on record, the incident took place on 27.6.1989 on account of putting of blockage on the road by Guljar Singh and other accused persons. Record also shows that Niranjana Singh (deceased) reached there and asked Guljar Singh to remove the obstruction. Then the appellant no.1 Munna Singh also reached there and fired from tamancha on the deceased, who sustained serious injuries. The appellant nos.2 and 4 also assaulted Niranjana Singh (deceased) by lathies and they did not use any other kind of weapon while assaulting the deceased. In such a situation, by no stretch of imagination, it can be inferred that the accused persons

had any intention of causing death of deceased or had any intention of causing such bodily injury which was likely to cause his death in the ordinary course of nature or had any knowledge that the injuries caused by them would result in death.

25. Perhaps an equally important question would be whether the appellant and his companions at all constituted an unlawful assembly and if they did, whether murder of the deceased Niranjan Singh by appellant no.1, Munna Singh, who was one of the members of the unlawful assembly would, in the facts and circumstances of the case, attract the provisions of Section 149 IPC so as to make the appellant nos.2 and 4 also responsible for the act.

26. Coming to the facts of the present case, the first and foremost of the notable circumstances is that as per prosecution case the appellant nos.2 and 4 were armed with lathi (stick) and according to the prosecution witnesses, they had also assaulted the deceased. In these circumstances, the question is whether the sudden action of one of the members (namely appellant no.1 Munna Singh) of the unlawful assembly constitutes an act in prosecution of the common object of the unlawful assembly, namely, preventing of bandha (obstruction) in question and whether the members of the unlawful assembly knew that such an offence was likely to be committed by any member of the assembly? Our answer is in the negative.

27. Hon'ble Apex Court has in a long line of decisions examined the scope of Section 149 of the Indian Penal Code, wherein the appellant could not, in the facts and circumstances of the case at hand, be convicted under Section 302 read with Section 149 IPC. In **Chikkarange Gowda v. State of Mysore**¹ the Apex Court was dealing with a case where the common object of the unlawful assembly simply was to chastise the deceased. The deceased was, however, killed by a fatal injury caused by certain member of the unlawful assembly. The court below convicted the other member of the unlawful assembly under Section 302 read with Section 149

1. AIR 1956 SC 731

IPC. Reversing the conviction the Apex Court held:-

"9. It is quite clear to us that on the finding of the High Court with regard to the common object of the unlawful assembly, the conviction of the appellants for an offence under Section 302 read with Section 149 Indian Penal Code cannot be sustained. The first essential element of Section 149 is the commission of an offence by any member of an unlawful assembly; the second essential part is that the offence must be committed in prosecution of the common object of the unlawful assembly, or must be such as the members of that assembly knew to be likely to be committed in prosecution of the common object.

In the case before us, the learned Judges of the High Court held that the common object of the unlawful assembly was merely to administer a chastisement to Putte Gowda. The learned Judges of the High Court did not hold that though the common object was to chastise Putte Gowda, the members of the unlawful assembly knew that Putte Gowda was likely to be killed in prosecution of that common object. That being the position, the conviction under Section 302 read with Section 149 Indian Penal Code was not justified in law."

28. In **Gajanand & Ors. Vs. State of Uttar Pradesh**², the Apex Court approved the following passage from the decision of the Patna High Court in **Ram Charan Rai Vs. Emperor**³:

"Under Section 149 the liability of the other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge may reasonably be collected from the nature of the assembly, arms or behavior, at or before the scene of action. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed during the occurrence does not arise".

(emphasis supplied)

29. Thereafter, in Gajanand case (supra) the Apex Court reiterated the legal position as under:

"The question is whether such knowledge can be attributed to the appellants who were themselves not armed with sharp edged weapons. The evidence on this point is completely lacking. The appellants had only lathis which may possibly account for Injuries 2 and 3 on Sukkhu's left arm and left hand but they cannot be held liable for murder by invoking the aid of Section 149 IPC. According to the evidence only two persons were armed with deadly weapons. Both of them were acquitted and Sosa, who is alleged to have had a spear, is absconding. We are not prepared therefore to ascribe any knowledge of the existence of deadly weapons to the appellants, much less that they would be used in order to cause death."

30. In **Mizaji and Anr. Vs. State of U.P.**⁴ the Supreme Court was

2. AIR 1954 SC 695

3. AIR 1946 Patna 242

4. AIR 1959 SC 572

dealing with a case where five persons armed with lethal weapons had gone with the common object of getting forcible possession of the land which was in the cultivating possession of the deceased. Facing resistance from the person in possession, one of the members of the assembly at the exhortation of the other fired and killed the deceased. The Apex Court held that the conduct of the members of the unlawful assembly was such as showed that they were determined to take forcible possession at any cost. Section 149 of IPC was, therefore, attracted and the conviction of the members of the assembly for murder legally justified. The Apex Court analysed Section 149 in the following words:

"6. This section has been the subject matter of interpretation in the various High Court of India, but every case has to be decided on its own facts. The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under section 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of section 149. Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to be committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all."

31. In **Shambhu Nath Singh and Ors. Vs. State of Bihar**⁵, the Apex Court held that members of an unlawful assembly may have a community of object upto a certain point beyond which they may differ in their objects and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his

5. AIR 1960 SC 725

command but also according to the extent to which he shares the community of object. As a consequence, the effect of Section 149 of the Indian Penal Code may be different on different members of the same unlawful assembly. Decisions of the Apex Court in **Gangadhar - Behera and Others Vs. State of Orissa**⁶ and **Bishna Alias Bhiswadeb Mahato and Others Vs. State of West Bengal**⁷ similarly explain and reiterate the legal position on the subject.

32. In the examination-in-chief of Smt. Premvati (PW-1) she herself had accepted that due to blocking of flow of water, the water started accumulating there, which created danger to her house. Her husband asked Guljar to remove the blockage so that the water might drain off but Guljar started abusing her husband and refused to remove the blockage. On this hue and cry, her mother-in-law and brother-in-law came there. It is also categorically stated that subsequent to hue and cry, Ram Prasad, Mannu, Ramraj, and Munna also came there. Munna was armed with tamancha and rest all the four were armed with lathies. All accused persons started abusing her husband and meanwhile, Munna fired gunshot on her husband. But in her cross-examination she had also assigned the role of firing to Guljar and stated that firstly, he opened the fire and when her husband fell down, Munna Singh opened the fire. In cross-examination she has changed the entire prosecution case, FIR and medical evidence. Even in her own examination-in-chief she only assigned the role of firing to Munna Singh, as such her testimony is also doubtful. In such situation, it cannot be presumed that when Niranjana Singh (deceased) approached Guljar for removal of obstruction on the road, prior to it there was an unlawful assembly with premeditated mind with common object that whenever Niranjana Singh (deceased) approaches, they will assault and kill him. In such situation, it cannot be accepted that there was any unlawful assembly. The similar view is also reiterated by Ram

6. 2002 (8) SCC 381

7. 2005 (12) SCC 657

Niranjan Singh (PW-2/complainant and eye witness of the incident) vide his examination-in-chief. He has also reiterated the version of the FIR with categorical term that apprehending danger to the house, Niranjan Singh (deceased) went to the house of Guljar Singh and asked him to remove the obstruction. Nowhere in the examination-in-chief either PW-1 and PW-2 had accepted that when Niranjan Singh went to the house of Guljar Singh for removal of the obstruction then all the accused persons were already present with premeditated mind to commit crime. In fact there was altercation between Ram Niranjan (deceased) and Guljar Singh and Guljar Singh abused to the deceased and there was scuffle between them. At the time of conversation/altercation all the other accused persons also joined him.

33. So far as ante mortem injury nos.3 and 4 of the deceased are concerned, they were probably by blunt object. Even during the cross-examination Dr. Rakesh Kumar Mishra (PW-3) had also stated that both the injuries were possibly caused by falling on a hard substance. As per prosecution case the present appellant nos.2 and 4 have been assigned the role of assaulting the deceased by lathies and as such, it cannot be accepted that these injuries were caused only due to assault by the present appellant nos.2 and 4. We may also like to add that Sub Inspector Deen Dayal Singh (PW-4) in his statement-in-chief had proved the chick report/FIR (Ext. Ka-3) and the extract of G.D. prepared by the Head Moharrir Rupendra Kumar Dubey (Ext. Ka-4). He had also recorded the statement of informant Ram Niranjan Singh and Head Moharrir at the Police Station and after investigation he submitted the chargesheet. In the cross-examination the witness stated that he found the dead body under the Mahua tree and the complainant did not show him blood stained quilt, sheet, cot etc. Even he did not find blood stains where the dead body was lying. He also accepted that he did not find blood and pellets at the scene of occurrence. Even the spot from where accused fired has not been shown in the map. An excuse was

given that the same had happened out of mistake. It also transpires from the record that he prepared injury letter of Devratia and Prempati and sent them to the hospital. The injuries were also mentioned in the case diary and two injuries were caused to Devrati, one below the left eye and another on left cheek and contusion appeared on the body of Prempati. Dr. S.N. Tripathi (PW-5) had also stated in his statement-in-chief that he medically examined Smt. Devratia and opined that both the injuries were ordinary and caused by some blunt weapon. He had also examined Smt. Prempati.

34. We have also examined the examination-in-chief of PW-1 and PW-2 and their cross-examinations and nowhere it can be accepted that there was an unlawful assembly as per Section 141 IPC. As per prosecution case, Munna Singh was armed with tamancha and rest of the accused namely Ram Raj, Mannu, Ram Prasad were armed with lathies. Munna Singh opened fire at the deceased. The first essential element of Section 149 is the commission of an offence by any member of an unlawful assembly; the second essential part is that the offence must be committed in prosecution of the common object of the unlawful assembly, or must be such as the members of that assembly knew to be likely to be committed in prosecution of the common object. Under Section 149 IPC, the liability of the other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other members knew that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge may reasonably be collected from the nature of the assembly, arms or behavior, at or before the scene of action. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed during the occurrence does not arise. In such situation it may also be essential to examine whether such knowledge can be attributed to the appellants, who are themselves not armed with lethal weapon/sharpened weapon.

The evidence on this part is completely lacking/missing. The present appellants had only lathies which may possibly account for injury nos.3 and 4.

35. In the case at hand, there is, in our opinion, no evidence to show that the appellants knew that in prosecution of the common object of preventing the deceased from removal of the bandha (obstruction) on the passage the members of the assembly or any one of them was likely to commit the murder of the deceased. There is indeed no evidence to even show that the appellants knew that Munna Singh (appellant no.1) was carrying a gun with him, which he could use. The conduct of the members of the assembly especially the appellants also does not suggest that they intended to go beyond preventing the fence (bandha).

36. Coming to the case at hand we need to keep in mind that the incident in question had taken place as early as in the year 1989. The appellants have faced a prolonged trial and suffered the trauma of uncertainty arising out of their conviction by the Trial Court. Besides the appellants have had no criminal antecedents or involvement in any case, before or after the incident in question. We have, therefore, no hesitation in holding that the Court below fell in error in convicting the present appellant nos.2 and 4 for murder under Section 302 read with Section 147 and 149 of the IPC. However, looking to the evidence on record suggestive of hurling of filthy abuses coupled with threat of life followed by assault to the deceased and PW-1 by the present accused-appellants by lathies, conviction and sentence imposed on the present accused/appellants no.2 and 4 under Section 323 IPC requires no interference as to that extent no illegality or infirmity is seen in the judgment impugned.

37. In the result, we allow this appeal in part, set aside the conviction and sentence awarded to the present appellant nos.2 and 4 under Sections 302 read with Sections 147 and 149 IPC and

acquit the appellant nos.2 and 4 of that charge. The conviction and sentence imposed on the present accused/appellants under Section 323 IPC is hereby maintained and the period of sentence already undergone by them deserves to be treated as sufficient sentence.

Order Date :-30.05.2022

RKP