

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1143 OF 2010

GANGA RAM SAH & ORS.APPELLANT(S)

VERSUS

STATE OF BIHARRESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

The case of the prosecution, which has been successfully established before the trial court as well as the High Court, is as follows:

On 27.06.1983, a *fardebayan* was given by the informant Yogendra Narayan Sah alleging that three days ago, the cattle of Ram Chandra Sah, accused No. 5 herein (sole accused in Criminal Appeal No. 285 of 1988 before the High Court) grazed the paddy field of the informant, which incident was brought to the knowledge of the villagers by the informant. It was further alleged that on 27.06.1983, at about 9 am, he showed grazed field to the

Panches in the presence of accused No. 5 Ram Chandra Sah. The Panches advised them not to get involved in an altercation. It was further alleged that while the Panches were busy inspecting the field, accused No. 2 Sita Ram Sah inflicted *lathi* blow on the left leg and thigh of the informant's brother, Bauku Sah. The Panches intervened and assured that the matter will be resolved shortly.

Further case of the prosecution is that the informant and his brother returned to their house, whereas Ram Chandra Sah and Sita Ram Sah rushed to their house. However, no sooner did the informant reach his house and was standing south-west of it, all the accused persons as well as one Sukhdeo Sah (since deceased), father of accused Nos.4 and 5, variously armed arrived there. It was further alleged by the informant that accused No.5 was armed with gun and others were armed with *lathi*. Soon thereafter, Sukhdeo Sah and accused No.1 exhorted other accused to assault, whereupon accused No.5 fired two gunshots hitting informant's brother Ram Udgar Sah just at his *darwaja* (door of the house), thereby causing his death instantaneously on the spot. The informant alleged that his brother Ram Udgar Sah sustained pellet wounds in his chest, neck and mouth. The other

accused assaulted the informant with *lathi* as a result of which the informant sustained injuries on the right side of the head and right hand. The accused persons also assaulted the brother of the informant, Uday Chandra Sah with *lathi*, on account of which he too sustained injuries on his head and fell on the ground. Uday Chandra Sah was then taken to the hospital for treatment. It was further alleged that the accused persons fled away when the informant raised alarm and witnesses Ram Swaroop Yadav, Kapu Yadav, Sadhu Sah (PW-6), Dhodhai Sah (PW-7), Bauku Sah (PW-2) and others reached the place of occurrence. The informant alleged that the accused persons herein committed the offence because the informant had chastised them for damaging his crops. On the basis of the aforesaid *fardebayan*, a formal FIR was drawn for offences under Sections 147, 148, 149, 307, 302, 325, 332 of the Indian Penal Code, 1860 (for short the 'IPC') and Sections 25A/26 of Arms Act, 1959 being Mahishi P.S. Case No. 33 of 1983 on 27.06.1983 at 6 pm. On 28.06.1983, Dr. J. Lal (PW-13) held postmortem on the body of the deceased. It was recorded in the postmortem report that on opening the chest, the upper lobes of both the lungs were found torn with free blood in both sides of the chest cavity. The injury was anti mortem, fatal

and caused by gun shot.

2. After investigation, the police submitted final chargesheet implicating all five persons named in the FIR, as accused. The trial court framed the charges against them under the aforesaid provisions. To prove these charges, the prosecution examined 15 witnesses altogether. Out of the aforesaid 15 witnesses, Uday Chandra Sah (PW-1), Bauku Sah (PW-2), Anar Devi (PW-3), wife of deceased Ram Udgar Sah, Parvati Devi (PW-4), mother of the deceased, Ful Kumari (PW-8) and the informant Yogendra Narayan Sah (PW-10) were eye-witnesses of the occurrence. One of the injured, Sabo Devi (PW-9) did not support the prosecution case and was declared hostile. Sadhu Sah (PW-6) and Dhodhai Sah (PW-7), both village Panches have not supported the occurrence. They denied to have seen the actual commission of occurrence and were declared hostile. Dr. P.K. Jha (PW-11) examined the injured persons, namely, Uday Chandra Sah (PW-1), Bauku Sah (PW-2), Ful Kumari (PW-8), Sabo Devi (PW-9) at Maheshi Hospital on the day of occurrence. Jugeshwar Singh (PW-12) is the Investigating Officer of this case. Dr. J. Lal (PW-13), Civil Assistant Surgeon, Sadar Hospital,

Supaul held postmortem on the dead body of the deceased. J.K. Mishra (PW-14) and Chotelal Yadav (PW-15) are formal witnesses.

3. The defence version of the appellants before the trial court was that they have been falsely implicated in the P.S. Case No.33 of 1983 as they had lodged a complaint case against the prosecution party bearing No.338(C) of 1983 for an occurrence of same date under Sections 147, 148, 149, 323, 324, 352 and 380 of the IPC filed against the prosecution party wherein cognizance has been taken. As a matter of fact, accused Ram Chander Sah took the plea of alibi saying that he was being treated for Jaundice by Dr. J.K. Thakur, at Laheriasarai between 24.06.1983 to 10.07.1983 and therefore on the day of occurrence, he was not present in the village.

4. On defence side also, eight witnesses were examined. These witnesses included one Dr. Gajendra Prasad Thakur (DW-7), a medical practitioner of Laheriasarai. After the trial was over, the learned Additional Sessions Judge after analysing the evidence and material produced before him came to the conclusion that charges against the accused persons had been satisfactorily

proved by the prosecution. Ram Chandra Sah was sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 IPC and rest of the accused persons were also sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302/109 IPC.

5. Against the aforesaid conviction, these accused persons had preferred two criminal appeals which were heard together by the High Court and have resulted in dismissal, since the High Court has affirmed the conviction and sentence recorded by the trial court.
6. Two special leave petitions were filed against the judgment of the High Court. Four accused filed one petition and Ram Chandra Sah filed another special leave petition. On 16.11.2009, while notice was issued in the special leave petition filed by the four accused persons, the petition of Ram Chandra Sah was dismissed in *limine*. In this manner, insofar as conviction of Ram Chandra Sah is concerned, that has attained finality. Leave was granted in the other special leave petition on 13.05.2010 which was converted into the instant appeal i.e. Criminal Appeal No. 1143 of 2010. During the pendency of this appeal, appellant

Nos.2 and 4 i.e. Sita Ram Sah and Jagdish Sah have passed away and, therefore, appeal qua them stood abated. In these circumstances, we heard the appeal of the other two appellants, namely, Ganga Ram Sah and Pitambar Sah.

7. Mr. Nagendra Rai, learned senior counsel appearing for these appellants, submitted that allegation against Ganga Ram Sah was that he had given orders and exhorted others to assault whereupon Ram Chandra Sah shot at Uday Chandra Sah. This was the only role attributed to Ganga Ram Sah but the same was not proved inasmuch as four eye-witnesses, namely, PW-3, PW-4, PW-8 and PW-9 did not make any such assertions in their depositions. Insofar as appellant No. 3 Pitambar Sah is concerned, Mr. Rai has submitted that no role is attributed to him in the FIR and because of previous animosity between the parties, he had been falsely implicated.

8. We are not convinced with the aforesaid arguments. It may be mentioned that the FIR was registered on the basis of *fardbayan* given by the informant Yogendra Narayan Sah immediately after the incident. There is no time lag between the incident and the FIR. In the said FIR, both appellant Nos. 1 and 3 are specifically

named. Insofar as appellant No.1 is concerned, specific allegation is made in the FIR that it was the exhortation of appellant No.1 which led to the said assault. Accused Ram Chandra Sah fired two gun shots hitting Ram Udgar Sah (brother of the informant) which caused instant death. Two other eye-witnesses, namely, PW-1 and PW-2 have also specifically given the statement to this effect, thereby supporting the version of the prosecution. These witnesses were cross-examined at length but their testimony could not be shaken. Presence of Ganga Ram Sah at the scene of occurrence has not been denied. The role attributed to him, therefore, stands proved, as rightly held by the trial court as well as the High Court.

9. It has to be borne in mind that all these persons are convicted under Section 149 of IPC as well. It has also to be borne in mind that appellant Nos. 1 to 4 are closely related. In fact, appellant No. 4 Jagdish Sah (since dead) was father of the other three appellants, namely, Ganga Ram Sah, Sita Ram Sah (since dead) and Pitambar Sah. The reason for causing murder of one person and injuring other persons, all of whom were related and belonged to the rival group, is obvious as stated in the FIR itself.

A dispute had arisen between the two groups three days before the date of incident in question, which incident was brought to the knowledge of the villagers by the informant and Panches had advised both the groups not to involve in any altercation. It is the specific case of the prosecution that while the Panches were busy inspecting the field, Sita Ram Sah inflicted *lathi* blow on the left leg and thigh of Bauku Sah (brother of the informant). The matter could be resolved with the intervention of Panches. However, when informant and his brother returned to their house, convicts Ram Chandra Sah and Sita Ram Sah along with four others came there, armed with weapons. Ram Chandra Sah was holding a gun whereas other accused persons were carrying *lathis*. At that stage, appellant No.1 Ganga Ram Sah exhorted other appellants to charge the members of the other group. It, thus, becomes clear that all these appellants had come with clear motive in mind to bodily harm the members of the informant's family and with common objective. A calculated action was spearheaded. All the accused persons were very well aware of the consequence of this action. The Courts below, therefore, rightly held that ingredients for the offence under Section 149 also stood proved. In that event, both these appellants are also

equally liable for the consequence of causing murder of Ram Udgar Sah and attempt to murder other victims.

10. We may mention here at this stage that Mr. Nagendra Rai, learned senior counsel appearing for the appellants, had made a fervent plea to the effect that offence under Section 149 IPC was not proved inasmuch as there was no clear finding recorded by the courts below regarding the nature of common object and that the object was unlawful. For this purpose, he referred to the judgment of this Court in ***Bhudeo Mandal & Ors. v. State of Bihar***¹ wherein the Court has held that before convicting accused with the aid of Section 149, the Court must give clear findings regarding the nature of common object and that the object was unlawful and that in the absence of such findings, offence under Section 149 IPC cannot be held to be proved. In that case, the Court held that mere fact that the accused persons were armed would not be sufficient to prove the common object. In the instant case, however, as already described above, there is a clear finding about the common object and calculated/concerted action in furtherance of the said object.

¹
(1981) 2 SCC 755

11. Mr. Rai also referred to the judgment in the case of **Thakore Dolji Vanvirji & Ors. v. State of Gujarat**² and specifically read out the following discussion contained therein:

“3. ...Now the question is whether all the accused would constructively be liable for an offence of murder by virtue of Section 149 IPC. So far A-1 is concerned, it is the consistent version of all the eyewitnesses that he dealt a fatal blow on the head with a sword and the medical evidence shows that there was a fracture of skull and the blow must have been very forceful because even the brain was injured. Therefore, he was directly responsible for the death of the deceased and the High Court has rightly convicted him under Section 302 IPC. Now coming to the rest of the accused, all the eyewitnesses have made an omnibus allegation against them. Even A-2, according to the eyewitnesses, gave only one blow and that the remaining accused gave stick blows. All these injuries were not serious and were simple. The injury attributed to A-2 was on the cheek and the doctor did not say that it caused any damage. So it must also be held to be a simple injury. Then we find only a bruise and an abrasion on the right arm and some bruises on the back. These injuries did not result in any internal injuries. There was not even a fracture of rib. Therefore they must also be simple injuries. It is only injury No. 1 which was serious and proved fatal. Therefore the question is whether under these circumstances common object of the unlawful assembly was to cause the death of the deceased and whether every member of the unlawful assembly shared the same? No doubt Section 149 IPC is wide in its sweep but in fixing the membership of the unlawful assembly and in inferring the common object, various circumstances also have to be taken into

² 1993 Supp (2) SCC 534

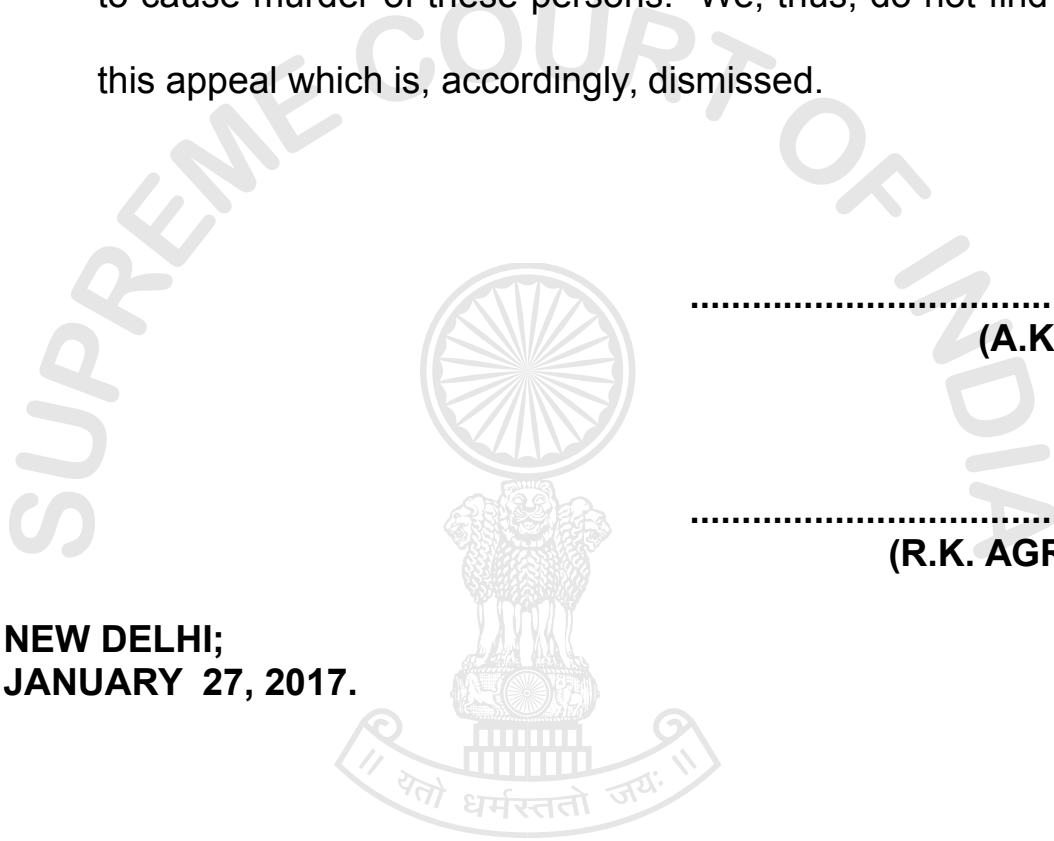
consideration. Having regard to the omnibus allegation, we think it is not safe to convict every one of them for the offence of murder by applying Section 149 IPC. On a careful examination of the entire prosecution case and the surrounding circumstances, we think the common object of the unlawful assembly was only to cause grievous hurt. But A-1 acted in his own individual manner and caused one injury with the sword which proved fatal.”

12. The aforesaid discussion is in the context of evidence that emerged in the said case wherein the Court found, as a fact, that the common object of unlawful assembly was only to cause grievous hurt. Thus, in that case, when common object to commit murder was not established and the Court found that apart from the primary accused (A-1) who had inflicted a fatal blow, there were omnibus allegations of involvement *qua* other accused persons, it was not safe to convict other persons under Section 302 with the aid of Section 149 of IPC. The situation, in the present case, is altogether different. Here the accused persons had gone to the house of the complainant fully armed with gun and *lathis*. This visit was preceded by a scuffle which had taken place just before that. One person was carrying gun whereas others were armed with *lathis*. The moment they reached the house of the complainant, who was there with his family

members, appellant No.1 directed others to attack the victims party. On this exhortation, Ram Chandra Sah pulled his gun and shot twice at Ram Udgar Sah. Other accused persons started assaulting Uday Chandra Sah who sustained wounds on his chest, neck and face. They also assaulted the complainant as well his brother Uday Chandra Sah with *lathis*. Complainant sustained injuries on the right side of the head and right hand whereas Uday Chandra Sah sustained injuries on his head and had to be carried to hospital for treatment. All these acts and events taken together proved beyond doubt that the common object of the unlawful assembly was not only to cause grievous hurt but to kill the members of the opposite camp. The aforesaid judgment, therefore, does not apply to the facts of this case.

13. It is trite law that the common object of the unlawful assembly has to be inferred from the membership, the weapons used and the nature of the injuries as well as other surrounding circumstances. Intention of members of unlawful assembly can be gathered by nature, number and location of injuries inflicted. In the instant case, repeated gun shots fired by Ram Chandra Sah on the person of deceased Ram Udgar Sah, and the injuries caused by

lathis by other accused persons on the complainant and his second brother on their heads, clearly demonstrate the objective to cause murder of these persons. We, thus, do not find merit in this appeal which is, accordingly, dismissed.



.....J.
(A.K. SIKRI)

.....J.
(R.K. AGRAWAL)

**NEW DELHI;
JANUARY 27, 2017.**

JUDGMENT