

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 1036 OF 2011

AMRIKA BAI

... APPELLANT

VERSUS

THE STATE OF CHHATTISGARH

... RESPONDENT

J U D G M E N T

N.V. RAMANA, J.

1. This appeal is directed against judgment dated 26.04.2010, passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 604 of 1993, whereby the appeal preferred by the appellant was dismissed, and the judgment and order dated 11.06.1993 passed by the Additional Sessions Judge, Bilaspur, convicting the appellant was confirmed. The appellant was convicted under Section 302 read with Section 149; and Section 147 of

the IPC, and sentenced to imprisonment for life and one-year rigorous imprisonment respectively.

2. The case of the prosecution in brief is that on the morning of 12.08.1989, the deceased, Kapil, was taking his cattle for grazing, at which time his cattle jumped on the door of the appellant's house, which led to the appellant abusing the deceased. Thereafter, on his way back, the deceased questioned the appellant as to why she abused him earlier in the morning. At this, the appellant, on the pretext of touching the feet of the deceased, caught hold of him. Then, the other accused, armed with deadly weapons, came to the spot and beat the deceased to death. Pursuant to this an FIR was registered against the accused on 12.08.1989 and charge-sheet was filed.

3. Originally, 14 individuals were made accused in the present case and out of them 10 were convicted by the trial court. During the pendency of their appeal before the High Court, accused no.3 Jhangul died, abating his appeal, and accused nos. 1, 5, 6, 7 and 10 were released on special reprieve granted to them. With respect to the remaining

accused including the present appellant, the appeal was dismissed by the High Court. The present appeal before us concerns only accused no. 13, Amrika Bai, who has sustained conviction as aforementioned.

4. Heard learned counsel for both the parties.

5. Learned counsel for the appellant contended that the impugned judgment convicts the appellant without any credible and clinching evidence, and is thereby illegal. The counsel further submitted that Section 157 Cr.P.C. was not complied with and the counterfoil of the FIR was forwarded to the Magistrate after a delay of 4 days from its registration. He also submitted that the statements of prosecution witnesses are unnatural and contradictory, made with the intention to falsely implicate the appellant.

6. On the other hand, the learned counsel for the respondent-State submitted that the impugned judgment is well reasoned and does not suffer from any infirmity which merits interference.

7. The prosecution has relied on the testimonies of Dharmu (P.W. 7, father of the deceased), Bhagwat Bai (P.W. 8, sister of

the deceased) and Babulal (P.W. 9, brother-in-law of the deceased) to secure the conviction of the appellant. It is to be noted that these prosecution witnesses are close relatives of the deceased and in view of the same, this Court has to scrutinize their testimony with great care and caution.

8. In the facts of the present case, the appellant who was unarmed is implicated in the incident by virtue of the testimonies of the aforementioned witnesses stating her role in allegedly catching hold of the deceased to facilitate his murder. On a close scrutiny of the testimonies of the aforesaid witnesses, the role of the appellant in the incident is extremely doubtful.

9. The testimonies of Dharmu (P.W. 7), Bhagwat Bai (P.W. 8) and Babulal (P.W. 9), on the basis of which the appellant was implicated in the offence, are highly inconsistent with respect to the role of the appellant. While P.W. 8 deposed in line with the prosecution version that the appellant merely held the deceased as he was being assaulted, P.W. 9, went on to depose in his cross-examination that the appellant in fact assaulted the deceased with a *lathi*. Further, P.W. 7, in his

cross-examination, deposed that the appellant brought the *tangia* from inside the house and handed it over to Chandra (accused no. 11, husband of the appellant) while admitting that his earlier statement, wherein he stated that Chandra had brought a *tangia* from inside the house, was incorrect. He further stated that the appellant did not leave the deceased till he fell on the ground as a result of the assault.

10. The abovementioned inconsistencies found in the testimonies of the prosecution witnesses create a doubt regarding the credibility of their testimonies *vis-à-vis* the role of the appellant.

11. Further, this Court fails to fathom a scenario wherein the appellant single handedly caught hold of the deceased facilitating his assault, particularly when P.W.8 has categorically stated in her cross-examination that the deceased was well built, such that he could have taken down two to three persons himself.

12. The above observations cast a serious doubt on the involvement of the appellant in the incident in which the deceased was beaten to death and she suffered unexplained

injuries. Thus, she cannot be termed to be a member of the unlawful assembly, much less one which was alleged to have been constituted with the common object of murdering the deceased. The law is well-settled on the aspect that mere presence in an unlawful assembly cannot render a person liable unless there was a common object, being one of those set out in Section 141 I.P.C. and she was actuated by that common object. [**See: Dani Singh v. State of Bihar, (2004)**

13 SCC 203]

13. Moreover, the fact that the FIR was registered on 12.08.1989 but was forwarded to the Magistrate only on 16.08.1989, after a delay of 4 days, becomes significant in light of the abovementioned inconsistencies in the story of the prosecution with respect to the appellant. It appears that the appellant was roped in as an accused, due to the inimical relationship between the parties which clearly emanates from the record.

14. In conclusion, since the involvement of the appellant as a member of the unlawful assembly has itself been put to doubt, the question of her having common object for

murdering the deceased under Section 302 read with Section 149 and her using force or violence under Section 147 IPC does not arise.

15. Taking into consideration the overall evidence, we feel that it is not safe to convict the appellant in the present case.

16. Thus, in light of the observations hereinabove, the appeal is allowed and the appellant is acquitted of offences under Section 302 read with Section 149 and Section 147 IPC.

.....**J.**
(N.V. RAMANA)

.....**J.**
(MOHAN M. SHANTANAGOUDAR)

.....**J.**
(INDIRA BANERJEE)

NEW DELHI;
MARCH 29, 2019.