

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL Nos. 1819-1821 OF 2011**

DABLU ETC.**... APPELLANT(S)****VERSUS****STATE OF MADHYA PRADESH****... RESPONDENT(S)****WITH**

CRIMINAL APPEAL No. 1176 OF 2012

VINOD @ AJAY**... APPELLANT(S)****VERSUS****STATE OF MADHYA PRADESH****... RESPONDENT(S)**

J U D G M E N T

PANKAJ MITHAL, J.

- 1.** These appeals have been preferred by four accused/convicts sentenced to life imprisonment in a case concerning the murder of one Balkishan.
- 2.** Criminal Appeals Nos. 1819-1821 of 2011 have been preferred by accused Dablu (A-1), accused Kamlesh (A-2) and accused

Pratap @ Pratap Narayan (A-5), whereas Criminal Appeal No. 1176 of 2012 has been preferred by accused Vinod @Ajay (A-4).

3. Out of the six accused persons, one Govind Singh (A-3) had died earlier and the main accused Vikram remains absconding.
4. All the aforesaid appellants were convicted and sentenced to one year rigorous imprisonment and for life along with fine of Rs.500/- each under Sections 148 and 302/149 of the Indian Penal Code¹ respectively. They were acquitted of the charges under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The aforesaid conviction and sentence have been upheld by the High Court vide impugned judgment and order dated 09.11.2010 whereby the appeals preferred by the appellants were dismissed.
5. The incident is of 03.06.2000. On the said date, at about 8:15 am, the deceased Balkishan who was the Chairman of Watershed Committee was sitting at the Tihuli bus stand waiting to travel to attend the Watershed Committee meeting. At that time, all the six accused persons alighted from a bus

¹ Hereinafter referred to as "the IPC"

armed with firearms. Vikram was alleged to be in possession of a *mouser*; Govind Singh (now deceased) with a double barrel 12-bore gun; Vinod @ Ajay with a single barrel 12-bore gun; and the other three with country made pistols (*kattas*). It is alleged that Vikram fired the first shot from behind a standing tractor-trolley, which hit the deceased on his left hand. On being hit, the deceased ran towards the village to save his life. He was chased by all the accused persons who kept on firing continuously. The deceased entered the house of one Rattan Lal (PW-6). The accused persons followed him inside the house, dragged him to the courtyard, and shot him at the temple at point-blank range. The deceased died instantly. The accused persons then ran away towards the jungle.

6. The First Information Report (Exh. P-3) was lodged on the same day i.e. 03.06.2000 at 9:30 am at Police Station Uteela by Budha Ram (PW-2), brother of the deceased against all the aforesaid six accused persons.
7. The crime so committed was investigated and two chargesheets (main and supplementary) were filed against the five accused

persons except the main accused Vikram, who was absconding. Accordingly, two separate cases, Special Case No. 12 of 2001 and Special Case No. 1 of 2002 came to be registered, which were later merged for trial and the lead case happened to be Special Case No. 12 of 2001.

- 8.** We have heard Shri S. Mahendran, learned counsel for the appellants in Criminal Appeal Nos. 1819-1821 of 2011 and Shri Prafulla Kumar Behera, learned counsel for the appellant in Criminal Appeal No. 1176 of 2012. Shri Shreeyash U. Lalit, learned counsel had appeared for the State of Madhya Pradesh and argued the matter in defence.
- 9.** Learned counsel for the appellants argued that the alleged offence is said to have been committed in two parts. The first part relates to the incident of firing at the bus stand where the first shot was allegedly fired at the deceased and the second part relates to the incident of firing at the house of Rattan Lal (PW-6), where the deceased was chased and fired upon. It is contended that there is no reliable eye-witness to the second incident. The only independent witness, Rattan Lal (PW-6), did

not see the accused appellants firing at the deceased and stated that he had not seen the accused persons, except the main accused Vikram, inside his house or feeling from there and had only heard the firearm shots. It is further argued that the prosecution witnesses are closely related to the deceased and are interested witnesses. Their testimonies contain material contradictions and improvements, hence their evidence cannot be said to be trustworthy. The presence of the witnesses at the spot is also doubtful. It is also submitted that no recovery of weapons or incriminating material was made from the present appellants and the medical and forensic evidence does not conclusively support the prosecution case. Learned counsel further contended that the prosecution has failed to establish the participation of the appellants with any specific overt act so as to attract the application of Section 149 IPC. It is also argued that there are serious procedural lapses in the investigation including non-compliance with the mandatory requirements under Sections 157 and 174 CrPC and the possibility of the FIR being ante-timed cannot be ruled out. In these circumstances,

it is submitted that the conviction of the appellants is unsustainable in law.

- 10.** Shri Shreeyash U. Lalit, learned counsel for the State submitted that there was a long drawn political rivalry between the main accused Vikram and the deceased. Therefore, there was a clear motive on part of the accused persons who accompanied the main accused to kill the deceased. All the accused persons were part of the unlawful assembly as they had alighted from the same bus with firearms, which indicated that they had come with a common motive and as such were all vicariously liable for the offence of killing the deceased. Further, the incident of firing at the bus stand which hit the elbow of the deceased is clearly proved and it is established that all the accused chased the deceased, who entered the house of one Rattan Lal (PW-6), where he was dragged and shot. The recovery of cartridges from the courtyard of the house of Rattan Lal (PW-6) and the medical report showing the number of entry and exit wounds on the deceased amply prove that all the accused were involved in firing. Accordingly, the courts below have not committed any

illegality in convicting and sentencing them despite the fact that there may be some discrepancy in the ocular evidence of the witnesses and some unnatural behaviour on their part.

- 11.** The ocular evidence of Budharam (PW-2), the brother of the deceased, who lodged the first information report proves that there was a long-standing political enmity between the families of the main accused Vikram and the deceased Balkishan. The wives of both of them had contested the *panchayat* election from two different political parties in the year 1994, wherein the wife of the deceased defeated the wife of the main accused Vikram. The said ocular evidence stands supported by the other witnesses PW-5 and PW-7, one being the brother of the deceased and the other his nephew. In view of the above evidence, and nothing contrary to it, it is evident that the main accused Vikram had a long-standing rivalry with the deceased and, thus, had the motive to kill him.
- 12.** It is also a fact established from the consistent evidence of the witnesses that on the fateful day, the main accused Vikram and the other accused persons arrived at the Tihuli bus stand in a

bus. They were seen alighting from the bus with firearms. Vikram had a *mouzer*, Govind Singh (A-3), since deceased had a double-barrel 12-bore gun, Vinod (A-4) with a single-barrel 12-bore gun, and the remaining three had country-made pistols. The very fact that all of them came together armed with firearms clearly proves that they were part of the unlawful assembly and had a common motive. Therefore, the provisions of Section 149 IPC are clearly attracted, and even if any one of them had not committed an overt act, they are vicariously liable for the death of the deceased Balkishan. It may also be noted that the evidence on record proves that after the first shot was fired at the deceased at the bus stand by the main accused Vikram, all of them chased the deceased to the house of Rattan Lal (PW-6) where a number of shots were fired which were heard by the independent witness Rattan Lal (PW-6). This in itself proves that all of them were involved in the incident.

- 13.** It is settled in law that in view of Section 149 IPC, every member of the unlawful assembly is vicariously liable for acts done by anyone of them to achieve a common object. Therefore, two

things are essential to attract Section 149 IPC. The first is “unlawful assembly” and the second is “common object”. The presence of the accused persons as part of the unlawful assembly is sufficient for conviction even if no overt act is imputed to each one of them individually. In the case at hand, all the accused persons had alighted from the bus together armed with firearms, thus, they were part of the unlawful assembly and had arrived at the bus stand with a common object. The movement of the accused persons in the above manner is sufficient enough to draw an inference that they had a common object. Therefore, the presence of the accused persons in the unlawful assembly to achieve a common object makes all of them vicariously liable for the acts of the unlawful assembly.

- 14.** The oral evidence of most of the witnesses, i.e., Naval Kishore (PW-3)-son of the deceased, Mahesh (PW-5)-nephew of the deceased, Pritam (PW-7)-nephew of the deceased and Kashi Ram (PW-9)-the brother of the deceased, is virtually the same. They all have stated that they have witnessed the accused

persons alighting from the bus and that all of them after the first shot was fired at the bus stand, chased the deceased up to the house of Rattan Lal (PW-6) where a number of shots were fired, killing the deceased.

- 15.** The fact that they admitted having seen the incident at the bus stand, and yet took no steps either to save the deceased or to take him to the hospital once he was injured or dead may be very unnatural behaviour on their part, but nothing much hinges upon that in the light of the other evidence on record which goes on to prove the commission of the offence by the accused persons.
- 16.** There is no dispute to the fact that the main accused Vikram is still absconding, meaning thereby that he is trying to escape for the simple reason that in his subconscious mind he accepts himself to be guilty of the commission of the offence along with his accomplices. There is also no dispute that the other accused were accomplices of him and were part of the unlawful assembly who had arrived at the bus stand fully armed, thus, having a common intention.

- 17.** The post-mortem report and the statement of Dr. V. K. Diwan (PW-1) who conducted the post-mortem, clinchingly prove that the deceased suffered multiple gunshot wounds with an entry wound near the right eye, on the chest and on the lower back. There were three exit wounds also. About 40 pellets (*charras*) were recovered from the body of the deceased. The doctor was of the clear opinion that all the injuries were caused by firearms and were sufficient to cause death. Simply for the reason that the doctor could not confirm if the injuries received by the deceased were from one weapon or multiple weapons does not make any difference so as to discard his evidence in entirety.
- 18.** Besides the above, the recovery of the empty cartridges from the courtyard of Rattan Lal (PW-6) as well as the ballistic reports (Exh. P-11 and P-13) prove that they were fired from a 12-bore gun, though not from the gun which was seized from one of the accused Govind Singh (A-3). In a way, the evidence proves that the main accused Vikram fired at the deceased at the bus stand, which hit his elbow, and that the deceased suffered multiple gunshot wounds, which were opined to have been fired from a

12-bore gun. Thus, the involvement of not only the main accused Vikram but also the other accused who were carrying firearms, is duly established.

- 19.** The mere fact that the independent witness PW-6 did not see any of the accused persons firing upon the deceased or fleeing away from his house except Vikram, does not make any difference, nor does it belie the prosecution story that all the accused had chased the deceased from the bus stand to his house and that multiple shots were fired resulting in the death of the deceased. This in itself is sufficient to rope in all the accused by applying Section 149 IPC.
- 20.** The argument of non-compliance with Section 157 CrPC in itself is not fatal to the prosecution or sufficient to hold that the accused persons are not guilty of the commission of the alleged offence. The High Court has properly dealt with the above aspect and has rightly ignored the same as admittedly the above alleged procedural lapse, if any, was not proved by summoning the record of the court of the magistrate.

- 21.** In view of the aforesaid facts and circumstances, we are of the opinion that the judgments and orders passed by the two courts below, do not suffer from any illegality which may require to be disturbed by us in appeal. Accordingly, the appeals are dismissed confirming the conviction and the sentence imposed upon the appellants. The appeals are accordingly dismissed.
- 22.** The appellants are on bail. They are directed to surrender forthwith to undergo the remaining part of the sentence.
- 23.** Pending application(s), if any, stands disposed of.

.....**J.**
[Pankaj Mithal]

.....**J.**
[S.V.N. Bhatti]

New Delhi;
March 11, 2026.