

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS. 1382-1384 OF 2014

**Bal Mukund Sharma @ Balmukund Chaudhry
Etc., Etc.**

.....Appellants

Versus

The State of Bihar

.....Respondent

J U D G M E N T

MOHAN M. SHANTANAGAUDAR, J.

The common judgment dated 23.05.2013 passed by the High Court of Judicature at Patna in Criminal Appeal Nos. 221/1990, 225/1990 and 239/1990 confirming the judgment of conviction dated 11.06.1990 and sentence dated 12.06.1990 passed by the 7th Additional Sessions Judge, Bhagalpur is questioned in these appeals.

2. The case of the prosecution in brief is that while the informant, Meghu Pandit, PW2 was carrying soil that he had dug from a Gairmajarua land lying to the north of his house for the purpose of manufacturing earthen pots along with his wife, the

fifteen accused accosted them in a group; hence, PW2 and his wife ran away towards their house out of fear, but were chased even to their house. The accused Brahamdeo Chaudhry also fired three gunshots in the air, and threatened to kill any villager who came forward. The informant, PW2 and his wife hid in their house and closed the doors, whereafter the aforesaid members of the unlawful assembly unsuccessfully tried to enter PW2's house by breaking the doors and also set part of it on fire. It is further alleged that all the accused caught hold of PW2's nephew, Ambika Pandit, who was working in his own field nearby, and dragged him away to another field, where the accused Brahamdeo Chaudhry shot Ambika Pandit with a gun, who died on the spot. According to the informant, he had seen the occurrence after coming out of his house. After the deceased was shot, the villagers raised a hue and cry and rushed to his field, upon which the accused Brahamdeo Chaudhry and Kapildeo Chaudhry opened fire, on account of which Shanti Devi, Subhash Sao, Wakil Yadav and Kokai Sao also suffered injuries.

3. The Courts below convicted the accused Brahamdeo and Kapildeo Chaudhry for the offences under Sections 302 and 302/149 of the Indian Penal Code (in short "IPC") respectively,

and further under Sections 436/149, 148 and 307/34, IPC, and Section 27 of the Arms Act. The rest of the accused were convicted under Sections 302/149, 436/149 and 148, IPC. Additionally, the accused Anil Chaudhry, Bhavesh Chaudhry, Babulal Chaudhry and Mahendra Rai were convicted under Section 323/34, IPC.

4. PWs 1 to 7 and 9 are the eye-witnesses to the incident in question, out of which PWs 3, 4, 5 and 6 are the injured eye-witnesses. Among them, PWs 3 and 6 sustained only simple injuries, whereas PWs 4 and 5 sustained both simple and grievous injuries. Though PW2, the informant was chased by the unlawful assembly, leading him to hide along with his wife in his home, no injury was sustained by him or his wife.

5. Shri Arvind Verma, learned senior Advocate taking us through the material on record, contended that the Trial Court and the High Court were not justified in convicting all the fifteen accused for the offences punishable under Section 302, IPC with the help of Section 149, IPC. The argument of the learned senior counsel for the accused was that at the most the Trial Court and the High Court could have convicted the accused Brahamdeo

Chaudhry who shot the deceased to death, under Section 302, IPC and five of the accused, namely Mahendra Rai, Babulal Chaudhry, Bhavesh Chaudhry, Kapildeo Chaudhry and Anil Chaudhry, for other offences that they committed, inasmuch as common object for the offence of murder was not proved against them. It was further argued that the remaining nine accused should not have been convicted for any of the charges levelled against them. This was because there was no credible evidence in this respect, no specific overt act whatsoever had been attributed to them, and it was highly likely that they had been implicated only by virtue of being close relatives of the accused Brahamdeo Chaudhry.

On the other hand, Shri Devashish Bharukha, learned counsel appearing for the State argued in support of the judgments of the Trial Court and the High Court.

6. We have carefully considered the evidence of PWs 1 to 7 and 9, who were the eye-witnesses to the incident. Rather than quote them in their entirety, we find it necessary to discuss only those aspects of their respective depositions that pertain to the roles attributed to the various accused.

PW1, a cousin of the deceased, deposed to seeing the informant PW2 and his wife get accosted by a mob of 20-25 persons. On being threatened, these two persons ran away and hid within their house. The accused unsuccessfully tried to force their way in, and the accused Mahendra and Babulal set fire to the *baithak-khana* of PW2's house. The accused then dragged away the deceased from his field to that of the accused Brahamdeo Chaudhry, who shot the deceased, causing his death. Several villagers thereafter assembled in the field of the deceased, seeing which the accused Brahamdeo and Kapildeo opened fire on the villagers, injuring PW3 Shanti Devi, PW5 Subhash Sao, and PW6 Wakil Yadav. PW1 also deposed that PW4 Kokai Sao was shot at when he ran to the spot, thinking that his son Subhash had been killed, and was assaulted by the accused by *lathi*, *bhala*, sword and gun.

PW2, the informant, also corroborated the above version. In particular, he affirmed that the accused Brahamdeo had shot the deceased, causing his death, and that when the accused Brahamdeo and Kapildeo opened fire on the villagers, PWs 3, 5 and 6 got injured. He also deposed that subsequently, PW4 Kokai Shah was assaulted by gun, bat, sword, *bhala* and *lathi*.

PW7, Jugli Devi, the informant's wife, also deposed to seeing the accused Brahamdeo Chaudhry shoot the deceased, causing his death.

PWs 3 to 6 are the injured eye-witnesses.

PW3, Shanti Devi, the cousin sister-in-law of the deceased also deposed in a similar manner as the above eye-witnesses. She too deposed that the deceased was killed by the accused Brahamdeo with a gunshot, and corroborated the aspect of firing upon the villagers, in which PW5, PW6 and PW3 herself got injured.

PW4 is Kokai Sao, the father of PW5 Subhash Sao. He deposed that he had reached the spot of the incident while the accused were dealing with the body of the deceased, and had accosted them thinking that the body was of his son. At this point, the accused Brahamdeo fired upon PW4 but missed. He also deposed that the accused Anil and Bhavesh attacked PW4 with *bhalas*, the accused Babulal attacked him with a sword, and the accused Mahendra Rai assaulted him with a *lathi*.

PW5, Subhash Sao, PW4's son, deposed that he saw the deceased being shot by the accused Brahamdeo with a gun and

by the accused Kapildeo with a pistol, and that he got injured along with PW6 and PW3 in the subsequent firing upon the villagers. He also deposed to seeing the accused Brahamdeo fire at his father, and the other members of the mob assault his father with *lathis*, *bhalas*, and swords. However, in his cross-examination he stated that he did not remember who in particular had attacked his father, and with what weapon, though he did affirm that his father had received a bullet injury.

PW6, Wakil Yadav, too lived in the same locality as the deceased. He testified to seeing the accused Brahamdeo and Kapildeo fire at the deceased, and deposed that he, along with PWs 3 and 5, was wounded in the subsequent firing by these two accused.

It may also be noted that out of the six eye-witnesses, only PW1 and PW3 actually witnessed PW2's *baithak-khana* being set on fire, out of which only PW1 specifically deposed that it was the accused Mahendra and Babulal who started the fire.

In addition, PW1 deposed to the presence of the accused Brahamdeo with a gun, the accused Kapildeo with a pistol, the accused Babulal and Ashok Rai with swords, the accused Sanjay,

Pankaj, Sunil, Kishore, Mahendra Rai, Sadanand and Mani with *lathis*, and the accused Anil, Balmukund, Manoj, and Bhavesh with *bhalas*. PWs 2, 4 and 9 supported the testimony of PW1 as to which accused were present at the time of the incident, and bore which weapon. PW4, however, did not name the accused Sunil and Mani, and PW9 did not name the accused Balmukund or attribute specific weapons to the accused Sunil and Sanjay. PW3 identified only the accused Brahamdeo and Kapildeo as being present at the spot of the incident, and could not speak as to the presence of any other accused in particular. PWs 5 and 7 generally spoke of the presence of several of the accused, without attributing any specific weapon to any of them, apart from attributing a gun and pistol as being carried by the accused Brahamdeo and Kapildeo respectively. PW6, too, named several accused, and generally stated that all the accused except for Brahamdeo and Kapildeo were equipped with *bhalas*, *lathis* and swords. It may be noted that PW10, the village watchman, deposed to seeing a mob of 30-35 persons, out of whom he identified the accused Brahamdeo as being present with a gun, Kapildeo with a pistol, and the accused Babulal, Pankaj, Sanjay, Mahendra and Anil Chaudhry only.

Clearly, apart from PW4, who did not witness the incident of firing upon the deceased or the villagers, the eye-witnesses have consistently deposed that the accused Brahamdeo shot the deceased, and he along with the accused Kapildeo fired upon the villagers, injuring PWs 3 to 6. PWs 4 and 5 additionally stated that the accused Kapildeo too shot the deceased. PW4 testified to being attacked by the accused Mahendra Rai with a *lathi*, by the accused Babulal with a sword, and by the accused Bhavesh and Anil with *bhalas*, and was fired upon but missed by the accused Brahamdeo. PWs 2 and 5 also generally deposed that PW4 was assaulted with various weapons, without naming any accused in particular. PW5 supported PW4's version of being shot at by Brahamdeo. Notably, the Trial Court excluded PW4's gunshot injury as a mere embellishment.

7. Having regard to the material on record, including the ocular testimony of the witnesses and the evidence of the doctors, we are of the considered opinion that the Courts below were not justified in convicting any of the accused other than the accused Brahamdeo for the offence under Section 302, IPC, by taking the help of Section 149, IPC. We also find that nine of the accused, namely, Balmukund Chaudhry, Ashok Rai, Kishore Rai, Sunil

Chaudhry, Mani Chaudhry, Pankaj Chaudhry, Sanjay Chaudhry, Manoj Chaudhry and Sadanand Chaudhry (hereinafter referred to as “the nine accused”) could not have been convicted for any of the offences with which they were charged, inasmuch as the evidence of the witnesses and other material on record, in our considered opinion, was not very reliable, and was insufficient to bring home guilt against them. This is in spite of the fact that such accused were stated to have been present on or near the scene of occurrence. Even in respect of the remaining accused (except for Brahamdeo), the Courts below should not have convicted them for the offence under Section 302, IPC with the help of Section 149, IPC, though they are liable to be convicted for various different offences in which they had actually participated during the incident in question.

8. The evidence of the eye-witnesses pertaining to the nine accused has been adduced to prove that they were part of the mob that killed the deceased, attacked the villagers and set a portion of PW2’s house on fire. However, we find that there is nothing on record to show that these accused had actually taken part in the occurrence or that they had any common object of committing murder and rioting along with the other accused.

The evidence with respect to their presence, participation and complicity in the incident in its entirety and, therefore, even in sharing a common object for the commission of any of the acts that occurred during the incident, is vague, scanty, inconsistent and unbelievable, and necessitates giving them the benefit of doubt. Thus, these nine accused are liable to be acquitted of all charges levelled against them.

We are, therefore, of the view that there exists cogent evidence only as to the role of the accused Brahamdeo Chaudhry, Kapildeo Chaudhry, Mahendra Rai, Babulal Chaudhry, Bhavesh Chaudhry and Anil Chaudhry (hereinafter referred to as “the six accused”) in the incident. All of these six accused participated in the rioting on the scene of the incident, in which the accused Brahamdeo Chaudhry and Kapildeo Chaudhry were the only persons having guns at the time, of whom the accused Brahamdeo suddenly shot at the deceased and the accused Brahamdeo and Kapildeo shot the injured. We agree with the finding of the Courts that it was the accused Brahamdeo who gave the fatal shot to the deceased. Though there was some evidence (i.e. the deposition of PWs 5 and 6) to the effect that the accused Kapildeo shot the deceased as well, the same was not

believed by the Courts. We, too, find this evidence insufficient to conclude that the accused Kapildeo shot the deceased.

We may now address the aspect of the constructive liability of the accused Kapildeo Chaudhry, Mahendra Rai, Babulal Chaudhry, Bhavesh Chaudhry and Anil Chaudhry for the murder of the deceased. It is well-settled that to determine whether an accused, being a member of an unlawful assembly, is liable for a given offence, it needs to be seen whether such act was committed in prosecution of the common object of the assembly, and alternatively whether the members of the assembly knew that the offence was likely to be committed in prosecution of such common object. This, in turn, has to be determined from the facts and circumstances of each case. (See ***Dharam Pal v. State of Uttar Pradesh***, (1975) 2 SCC 596; ***Roy Fernandes v. State of Goa***, (2012) 2 SCC (Cri) 111). In the instant case, it is evident that the six accused initially accosted the informant, chased him to his house, and on failing to get a hold on him, set fire to a portion of his house and caught hold of his nephew, the deceased, who was done to death by the accused Brahamdeo. It is thus evident that the murder of the deceased was itself not the

common object of the unlawful assembly. Moreover, we find that the act of the accused Brahamdeo of shooting the deceased was sudden, and knowledge of the likelihood of the same could not be attributed to the rest of the accused. Though the other accused had followed the accused Brahamdeo, in our considered opinion, the evidence on record and circumstances of this case could not, conclusively and beyond reasonable doubt, show common object being shared by the other accused, in the commission of the offence of murder by the accused Brahamdeo. It is no doubt true that the evidence on record may create grave suspicion in the mind of the Court about the complicity of the other accused also, with the help of Section 149, IPC, however, such grave suspicion cannot take the place of proof. It is for the prosecution to prove its case beyond reasonable doubt. Even if the evidence on record creates suspicion in the mind of the Court, though grave, the same would not be sufficient to conclude that the other accused are liable to be convicted for the offence under Section 302 along with the accused Brahamdeo, with the help of Section 149, IPC.

In such circumstances, we are of the opinion that the accused Kapildeo Chaudhry, Mahendra Rai, Babulal Chaudhry, Bhavesh Chaudhry and Anil Chaudhry cannot be said to have

shared any common object for the murder of the deceased, and cannot be made liable for the same. Notably, the Courts have rightly held only the accused Brahamdeo and Kapildeo liable for the attempt to murder the injured eye-witnesses by firing upon them. However, for the aforestated reasons, only the accused Brahamdeo can be held liable for the murder of the deceased. At the most, it can be said that the role of the accused Mahendra Rai, Babulal Chaudhry, Bhavesh Chaudhry and Anil Chaudhry has been proved only insofar as the assault on PW4 is concerned, through cogent and reliable evidence attributing specific and overt acts to them.

We do not find any reason to disagree with the reasons assigned and conclusions arrived at by the Courts in convicting the six accused for the offence under Section 436/149, IPC, and other offences for which they have been held guilty, except to the extent stated supra.

9. It is worth noticing that the accused Kapildeo Chaudhry died during the pendency of the appeals.

10. Having regard to the totality of the facts and circumstances, the judgments of the Trial Court and the High Court are to be modified as under:

- a. The conviction and sentence awarded to Brahamdeo Chaudhry (Accused No. 9) under Section 302, IPC by the Trial Court and the High Court is confirmed. His conviction and sentence for other offences as ordered by the Trial Court and the High Court is confirmed.
- b. Since the accused Kapildeo Chaudhry has already expired, the appeal filed by him abates.
- c. Mahendra Rai (Accused No. 13), Babulal Chaudhry (Accused No. 12), Bhavesh Chaudhry (Accused No. 11) and Anil Chaudhry (Accused No. 14) are acquitted of the charges under Sections 302 read with Section 149, IPC. Their conviction for other offences as ordered by the Trial Court and the High Court is confirmed. However, the sentence as against them in respect of the offences for which they stand convicted is modified to the period already undergone by them in jail in this case. If they are on bail, their bail bonds stand discharged.

d. The other accused, namely Bal Mukund Sharma @ Balmukund Chaudhry (Accused No. 8), Ashok Rai (Accused No.7), Kishore Rai (Accused No. 6), Sunil Chaudhry (Accused No. 4), Mani Chaudhry (Accused No.1), Pankaj Chaudhry (Accused No. 2), Sanjay Chaudhry (Accused No. 3), Manoj Chaudhry (Accused No. 15) and Sadanand Chaudhry (Accused No. 5) are acquitted of the charges levelled against them. If they are on bail, their bail bonds stand discharged.

11. The appeals are allowed in part.

.....J.
(N.V. Ramana)

.....J.
(Mohan M. Shantanagoudar)

.....J.
(S. Abdul Nazeer)

New Delhi;
April 16, 2019.