

DAUWALAL @ GANESH DEVANGAN & ORS.

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v.

STATE OF MADHYA PRADESH

(NOW STATE OF CHHATTISGARH)

(Criminal Appeal Nos. 478-479 of 2019)

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MARCH 15, 2019

[UDAY UMESH LALIT AND DINESH MAHESHWARI, JJ.]

Penal Code, 1860 – s.302 r/w s.149 and s.147, 148, 323, 342, 450 – FIR lodged by Informant-PW-2 that his cousin was fatally assaulted – 17 persons including the appellants were tried for the offences punishable u/s.147, 148, 323, 342 & 450 and u/s.302 r/w.149, IPC – Found guilty by the Trial Court – High Court in appeals by all the accused persons affirmed the view taken by the Trial Court – Special Leave Petition (Crl.) Nos.457-458 of 2016 filed by 9 accused before Supreme Court wherein no ground was found for interference with respect to 5 petitioners – As regards the present appellants (four accused persons), held: In a crime committed by an unlawful assembly, by principle of vicarious liability, every member of the unlawful assembly would be guilty of the offence, even if he himself had not done the actual act – But the facts must indicate with clarity that such person was in fact member of the unlawful assembly – Prosecution did not allege that any of the appellants had stormed inside the house and had dragged PW-2's cousin – Their presence, at best, going by the version of PWs 2 and 4 (deceased's son) was outside the house in the street where 25-30 persons had gathered – Out of such gathering, 17 persons were named to be accused and sent for trial – PW-2 in his FIR had not named any of the appellants whereas in his statement in Court the names of the appellants did occur, however even then he did not attribute any overt act to the appellants – PW-3 (deceased's widow) also did not name any of the appellants – Evidence of PW-4 did indicate some role but that part of the assertion is to be seen in the light of the fact that he and his brother were hidden by PW-3 as soon as the first part of the transaction occurred and some 7 persons stormed inside the house – This is perhaps why PW-3 also could not name any of the appellants – Not established beyond reasonable

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- A *doubt that the appellants were guilty of the offences with which they were tried – Benefit of doubt granted to the appellants – Acquitted of all the charges levelled against them.*

Allowing the appeals, the Court

- HELD: 1.1 In a crime committed by an unlawful assembly**
- B by principle of vicarious liability, every member of the unlawful assembly would be guilty of the offence, even if he himself had not done the actual act. But the facts must indicate with clarity that such person was in fact a member of the unlawful assembly. The prosecution did not allege that any of the appellants had stormed inside the house and had dragged the deceased Parasram. The presence of the appellant, at best, going by the version of PWs 2 and 4 was outside the house in the street where 25-30 persons had gathered. Out of such gathering, 17 persons were named to be accused and sent up for trial. It is crucial to note that PW-2 in his First Information Report had not named any of the appellants whereas in his statement in Court the names of the appellants did occur in his testimony. Even then he did not attribute any overt act to the appellants. PW-3 also did not name any of the appellants. The evidence of PW-4 did indicate some role but that part of the assertion is required to be seen in the light of the fact that he and his brother were hidden by their mother as soon as the first part of the transaction had occurred and some 7 persons had stormed inside the house. This is perhaps why the mother also could not name any of the appellants. [Paras 10, 11][252-H; 253-A-D]
- F 1.2 It is not established beyond reasonable doubt that the appellants were guilty of the offences with which they were tried. Therefore, benefit of doubt granted to the appellants. The appellants are acquitted of all the charges levelled against them. [Para 12][253-E]
- G CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 478-479 of 2019.
- From the Judgment and Order dated 15.06.2015 of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal Nos.410 of 2000 and 698 of 2000.
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Ajit Sharma(AC), Navin Prakash, Meetu Singh, Anshuman
Shrivastava, Abhijeet Shrivastava, B. Ramana Murthy, Advs. for the
Appellants.

Sumeer Sodhi, Aman Nandrajog, Ashish Tiwari, Suryakamal
Mishra, Advs. for the Respondents.

The Judgment of the Court was delivered by B

UDAY UMESH LALIT, J. 1. These appeals, at the instance of four original Accused namely Santosh Kumar, Dauwalal @ Ganesh Devangan, Manohar Verma and Puneetram Verma (Original Accused Nos.6, 12, 13 and 16 respectively) seek to challenge the common judgment and order dated 15.06.2015 passed by the High Court¹ dismissing Criminal Appeal Nos.410 and 698 of 2000 as against the appellants. C

2. First Information Report (Ext.P-60) was lodged with Police Station Bhatapara (Rural), District Raipur pursuant to information received at the Police Station around 12:05 a.m. on 24.02.1997 from Informant Netram (later examined as PW-2). According to the information, the cousin of the Informant named Parasram Yadav, Deputy Sarpanch, Village Jarod, Bhatapara was assaulted fatally on 23.02.1997 at about 9.00 p.m. The relevant information had named certain persons to be responsible for the crime from the assembly of 25-30 persons who had gathered outside the house of the deceased. The information was:- D

“Bhuneshwar Verma, Kamta Prasad Yadav, Mohan Verma, Kaushal verma, Gayaram Verma, Santosh Verma, Bihari Lal Verma, Shanker Lal Verma, Bharat Lal Verma, Virendra alias Tatku Verma, Daulal alias Ganesh Dewagan, Puneet Ram Vermaetc 25-30 people of his village came at the house of my brother Parasram Yadav, Deputy Sarpanch, Village-Panchayat, Jarod, due to enmity and with intention to kill him and being unanimous and being armed with Laathi, Danda, Khotlaetc started giving filthy abuse and by entering into the house of Parasram assaulted him and they dragged Parasram from his house and took him out in the courtyard and beat him with Laathi, Danda and Bhuneshwar Verma hit stone of about 15-20 kg weight on the head of Parasram and caused his death, due to which his brain got scattered out of skull.” F

¹ High Court of Chhattisgarh at Bilaspur G

- A 3. During the course of investigation, names of 17 persons surfaced as suspects. Those 17 persons including the appellants were tried for the offences punishable under Sections 147, 148, 323, 342 and 450 IPC as well as under Section 302 read with 149 IPC in Sessions Case No.359 of 1997.
- B 4. PW-1 Dr. A.D. Purena who had conducted post-mortem on the dead body of the deceased deposed that there were external injuries all over the body. The head was crushed, lacerated with compound multiple fractures on the skull bone, the brain material was absent and the skull bones were fractured in various sizes, multiple in number.
- C 5. The eye witness account was as under:-
- I. PW- 2 - Netram, cousin of the deceased in his examination-in-chief deposed: -
- “I heard sound of Laathi (stick) at the door of my brother Parasram, then I came out and saw that Dayaram, Roshan, Onkar, Vinod, Tatku, Dauwa, Manohar, Mohan, Bhuwan and Punit were there. My brother Parasram is Deputy Sarpanch of Village Jarod. Due to which the accused persons had enmity/quarrel since then. When I saw, at that time the accused persons were loudly shouting saying ‘nikalo saale ko’. The door was open and seven persons namely Bihari, Shanker, Hari, Vinod, Suneshwar, Bharat and Kamta were beating my brother inside the house. I reached on the spot and requested the accused persons not to beat my brother, I requested them with folded hand. Thereafter, Bihari was dragged and pulled out my brother, to which I resisted, then Bihari hit at my head. Thereafter, Kamta came from behind and hit Laathi at my head. On this I shivered and got perplexed. Then my wife Dulari Bai caught me by both hand and took me to my room and locked the door and I saw the incident peeping through the gap of door. All the accused persons dragged out my brother from Parchhi and hit Laathi due to which my brother got unconscious and fell down. Thereafter, Bihari told that he could be alive so hit the stone. Thereafter, Bhaneshwar, Bihari, Shanker, Tetku, Vinod hit stone and went away laughing.”
- II. PW-3 - Urmila, widow of deceased Parasram, deposed:-

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“At that time accused Bihari, Kaushal, Hari, Bharat, Bhuwaneshwar, Tetku, Kamta, Mote etc. came. They were armed with Laathi. Accused persons came to my house and assaulted my husband. At that time my husband was sleeping on Takhat. They got him lifted down and assaulted. When I stopped accused persons from assaulting, then Bihari told me to run away otherwise they could kill me also. Thereafter, they dragged my husband from the house to the Parchhi and assaulted there. Then they dragged him from Parchhi to the courtyard and then Bihari, Bhuwneshwar sworn to hit stone on the head of the deceased Parasram and then they brought stone kept at my house and hit at the head of my husband Paras. Bihari, Hari, Bharat hit the stone on the head, due to which the head of my husband was broken and his death was caused.”

III. PW-4 - Narender, 11 years old son of deceased Parasram stated that he had seen 7 persons who came inside the house and then dragged his father out. After the father was so dragged out, the accused had assaulted his father. He did not name any of the appellants in the first part of the incident but the appellants were named to be part of the assembly which had assaulted his father outside the house.

6. The Second Additional Sessions Judge, Baloda Bazar, District Raipur by his judgment and order dated 29.01.2000 found that the prosecution had established its case completely. All 17 accused persons were found guilty of the offences with which they were charged and the order of sentence was as under:-

“. every accused person is punished for one year rigorous imprisonment under Section 148, five years rigorous imprisonment under Section 450 and fine of Rs.1000/- each, and under Section 342 section 323 is included, therefore, accused persons are punished with life imprisonment under Section 302/149 and fine of Rs.1000/- each. In case of non-deposit of fine, additional simple imprisonment of 6 months is awarded to each of the accused person and in case of payment of Rs.20,000/- may be paid to the wife of deceased out of the fine received from the accused persons as compensation under section 357 Cr.P.C. All sentences shall run concurrently and period of judicial custody be adjusted from the period of sentence.”

- A 7. Criminal Appeal Nos.410 and 698 of 2000 were preferred against the aforesaid conviction and sentence by 10 convicted accused and 7 convicted accused respectively in the High Court. Original Accused No.10, Birendra Kumar was found to be Juvenile on the date of occurrence and his case was accordingly separated. By its judgment and order which is presently under appeal, the High Court affirmed the view taken by the Trial Court and dismissed both the appeals. Thereafter, Special Leave Petition (Crl.) Nos.457-458 of 2016 was preferred by 9 convicted Accused in this Court. On 29.01.2016 this Court found no ground for interference with respect to 5 petitioners namely Kamta Prasad, Shankerlal Verma, Bharatlal Verma, Hariram Verma and Vinod Verma and dismissed their Special Leave Petition. However, as regards the present appellants, notice was issued whereafter both the sides were heard in the matter.

8. Mr. Naveen Prakash, learned Advocate appearing for the appellants submitted:-

- D I. The appellants were not named by PW-2 Netram in his first reporting.
- II. However, in his examination in Court said Netram had named the appellants but did not attribute any specific overt act to them.
- E III. PW-3, Urmila, widow of deceased did not name the appellants in her testimony.
- IV. PW-4 did name the appellants as part of the mob which had gathered outside the house and was responsible for assault on the deceased. However, in his cross examination, he had accepted that while the accused were assaulting his father, his mother had kept him and his brother hidden inside the house.

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- G 9. The learned counsel for the State on the other hand submitted that the material on record clearly pointed towards the involvement of the appellants. He submitted that the appellants were named by both PWs 2 and 4 and as such the appellants were rightly convicted.

- H 10. It is true that in a crime committed by an unlawful assembly by principle of vicarious liability, every member of the unlawful assembly would be guilty of the offence, even if he himself had not done the actual act. But the facts must indicate with clarity that such person was in fact

a member of the unlawful assembly. The prosecution did not allege that any of the appellants had stormed inside the house and had dragged the deceased Parasram. The presence of the appellant, at best, going by the version of PWs 2 and 4 was outside the house in the street where 25-30 persons had gathered. Out of such gathering, 17 persons were named to be accused and sent up for trial.

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11. It is crucial to note that PW-2 Netram in his First Information Report had not named any of the appellants whereas in his statement in Court the names of the appellants did occur in his testimony. Even then he did not attribute any overt act to the appellants. PW-3 - Urmila also did not name any of the appellants. The evidence of PW-4 Narender did indicate some role but that part of the assertion is required to be seen in the light of the fact that he and his brother were hidden by their mother as soon as the first part of the transaction had occurred and some 7 persons had stormed inside the house. This is perhaps why the mother also could not name any of the appellants. In the backdrop of these salient features, the question arises as to the involvement of the appellants in the crime.

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12. Considering all the factual aspects, in our considered view, it is not established beyond reasonable doubt that the appellants were guilty of the offences with which they were tried. We, therefore, grant benefit of doubt to the appellants. The appeals are, therefore, allowed and the appellants are acquitted of all the charges levelled against them. They be set at liberty unless their presence is required in connection with any other offence.

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Kalpana K. Tripathy

Appeals allowed.