Om Parkash vs State Of Haryana on 16 April, 2014

Equivalent citations: 2014 AIR SCW 2528, 2014 (2) AJR 843, 2014 CRI. L. J. 2567, AIR 2014 SC (CRIMINAL) 1344, AIR 2014 SC (SUPP) 1722, (2014) 3 RECCRIR 25, (2014) 85 ALLCRIC 644, (2014) 2 ALLCRIR 1937, (2014) 58 OCR 645, 2014 ALLMR(CRI) 1931, (2014) 2 MAD LJ(CRI) 499, (2014) 4 MH LJ (CRI) 300, 2014 (5) SCC 753, (2014) 137 ALLINDCAS 95 (SC), (2014) 3 ALLCRILR 464, (2014) 2 CURCRIR 390, 2014 (2) SCC (CRI) 710, (2014) 3 KCCR 241, (2014) 5 SCALE 126, (2014) 2 CRIMES 149

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Bench: Dipak Misra, K.S. Radhakrishnan

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1102 OF 2006

Om Prakash … Appellant

Versus

State of Haryana …Respondent

WITH

CRIMINAL APPEAL NO. 1103 OF 2006

Radhey Shyam and others … Appellants

Versus

State of Haryana …Respondent

WITH

CRIMINAL APPEAL NO. 1104 OF 2006

Mange Ram and others … Appellants

Versus

State of Haryana …Respondent

J U D G M E N T

Dipak Misra, J.

The present appeals, by special leave, have been preferred against the common judgment and order dated 18.03.2005 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal Nos. 78-DB & 146-DB of 1997 with Criminal Revision No. 219 of 1997 whereby the court has declined to interfere with the judgment of conviction and order of sentence passed by the learned Addl. Sessions Judge, Hisar in Sessions Case No. 40 of 1993 for the offences under Sections 148 and 302 read with Section 149 of IPC and affirmed the sentences of imprisonment for life and payment of fine of Rs. 1000/- by each with the default clause under Section 302 read with Section 149 of IPC and rigorous imprisonment of two years under Section 148 IPC with the stipulation that both the sentences shall be concurrent.

2. Shorn of unnecessary details, the prosecution version is that on 28.06.1993 the informant, Satbir Singh, PW 3, along with his two brothers, namely, Mahinder Singh, PW 7 and Prabhu Dayal (deceased) had gone to Hisar to enroll themselves in the Border Security Force for which interviews were being held at Hisar. About 3.00 p.m. all of them returned from Hisar in a Machanised Cart (Pater Rehra) and alighted at the bus stand of their village, Sadalpur. At that time, the accused-appellants, namely, Man Singh, Radhey Sham, Bhal Singh, Ram Kanwar, Raja Ram, Mange Ram, Kirpa Ram and Prem Singh emerged from the rear of Kotha (chamber), located nearby, Het Ram armed with a gun and all others armed with lathis. All of them raised a lalkara with the intention to assault the informant and his two brothers, Mahinder Singh and Prabhu Dayal, as the later had earlier caused injuries to them. Forming an unlawful assembly, with the common object they inflicted injuries on Prabhu Dayal with their lathis and butt of the gun. Prabhu Dayal fell down on the road. Being scared, the informant and his brother Mahinder Singh ran away and stood near the wall of the water reservoir. Thereafter, Om Prakash came on a tractor bearing registration No. HR-20A-8022, ran over Prabhu Dayal and fled away from the scene of occurrence along with their weapons in the tractor. The informant and his brother Mahinder Singh went to see the condition of Prabhu Dayal who had sustained injuries on his arms, legs, waist and head and bleeding profusely. He was taken to the Government Hospital, Adampur in a Machanised Cart and first aid was given to

him. During his examination by the medical officer he succumbed to his injuries at 5.50 p.m. and the hospital staff informed the nearby police station about his death. The Investigating Officer, Ronaski Ram, PW-8, recorded the statement of Satbir Singh, PW-3, and on that base registered an FIR No. 100/93 at 7.45 p.m. and the criminal law was set in motion.

3. In course of investigation, the investigating agency prepared the inquest report, got the post mortem conducted and collected the blood stained earth vide seizure memo Ext. PM. On 2.07.1993 the Investigating Officer arrested Man Singh, Radhey Shyam, Ram Kumar, Raja Ram and Om Prakash. All of them led to discovery of the weapons used in the alleged commission of crime. After completing the investigation charge-sheet was placed against the aforementioned accused persons.

4. The accused persons pleaded innocence and false implication due to animosity. Be it noted, in course of trial after some evidence was recorded, the learned trial Judge, on the basis of an application preferred by the public prosecutor under Section 319 of the Code summoned the other accused persons, namely, Bhal Singh, Mange Ram, Kirpa Ram, Het Ram and Prem Singh to face trial.

5. In order to prove its case, the prosecution, examined eight witnesses, namely, Dr. Pratap Singh, PW-1, Om Prakash, Patwari, PW- 2, Satbir Singh, PW-3, Dr. P.L. Jindal, PW-4, Basant Kumar, PW-5, Ram Kumar, Asst. Sub Inspector, PW-6, Mahinder Singh, PW-7 and Ronaski Ram, Investigating officer, PW-8. No evidence in defence was adduced by the accused. However, a copy of the judgment relating to land dispute between the parties and copy of FIR No. 6 dated 9.1.1993 and copy of Election Petition, Ext. DC titled as Sohan Lal v. Nardwari and others were tendered in evidence to substantiate the plea of enmity. The learned trial Judge on appreciation of evidence brought on record came to hold that the prosecution had brought home the charges beyond any reasonable doubt and, accordingly, convicted all the accused persons and sentenced each of them as has been stated hereinbefore.

6. Being dissatisfied with the judgment of conviction and order of sentence the accused persons preferred appeal before the High Court raising many a stand and stance. The High Court repelled all the contentions by holding that there was no delay in lodging of the FIR; that there was enmity between the parties inasmuch as litigations were pending; that the two eye witnesses Satbir Singh, PW-3, and Mahinder Singh, PW-7, are natural witnesses and their testimony could not be discarded solely because of their relationship with the deceased; that their evidence is unimpeachable and the contradictions being minor do not create any dent in their version; that the medical evidence assuredly corroborates the ocular testimony of the eye witnesses; that the defective and tilted investigation would not corrode the evidence brought on record which prove the case of the prosecution to the hilt and, eventually, gave the stamp of approval to the verdict of the trial court.

7. Mr. Ram Niwas Kush, learned counsel appearing for the appellants, has urged that there is delay in lodging of the FIR inasmuch though the occurrence took place about 3.00 p.m., yet the FIR was not lodged till 7.45 p.m. and in the backdrop of enmity there was ample time to think, add and embellish the versions, apart from roping in number of persons, which creates a grave suspicion in the whole case put forth by the prosecution. Learned counsel would contend that the evidence

brought on record do not remotely prove that a tractor has made to run over certain parts of the body of the deceased as alleged by the prosecution and, therefore, both the courts have fallen into error by recording the conviction. The last plank of submission is that all the accused persons could not have been convicted under Section 302 IPC in aid of Section 149 IPC.

8. Mr. Ramesh Kumar, learned counsel for the State, supported the conviction and the sentences recorded by the trial court which has been concurred with by the High Court, on the ground that the FIR was lodged in quite promptitude and the appreciation of evidence by both the courts is absolutely flawless.

9. First, we shall deal with the contention pertaining to delay in lodging of the FIR. It is not in dispute that the occurrence took place about 3.00 p.m. and thereafter, the deceased was carried by a merchandised cart to the primary health centre where he was administered some treatment but he succumbed to his injuries. On being informed by the hospital staff, the police arrived at the hospital and recorded the statement of the informant, Satbir Singh, PW-3, and thereafter an FIR was registered at 7.45 p.m. From the sequence of the events which include consumption of time in carrying the injured to the hospital, treatment availed of by Prabhu Dayal, information given by the concerned authority of the primary health centre and arrival of police and also taking note of the distance, i.e., 24 kilometers from the place of occurrence, we do not think that there is any delay in lodging of the FIR. That apart, it is settled in law that mere delay in lodging the first information report cannot by itself be regarded as fatal to the prosecution case. True it is, the court has a duty to take notice of the delay and examine the same in the backdrop of the factual score, whether there has been any acceptable explanation offered by the prosecution and whether the same deserves acceptation being satisfactory, but when delay is satisfactorily explained, no adverse inference is to be drawn. It is to be seen whether there has been possibility of embellishment in the prosecution version on account of such delay. These principles have been stated in Meharaj Singh v. State of U.P.[1], State of H.P. v. Gian Chand[2], Ramdas and others v. State of Maharashtra[3], Kilakkatha Parambath Sasi and others v. State of Kerala[4] and Kanhaiya Lal and others v. State of Rajasthan[5].

10. In the present case, as we find, there is, in fact, no delay. Learned counsel for the appellants would emphasise on the concept that effort has to be made to lodge the report at the earliest, but the "earliest", according to us, cannot be put in the compartment of absolute precision. Apart from what we have stated, the impact of the crime on the relations who are eye witnesses, the shock and panic which would rule supreme at the relevant time and other ancillary aspects are also to be kept in mind. That apart, as we notice, the FIR is not the result of any embellishment which has the roots in any kind of afterthought. Considering the totality of facts and circumstances the submission of learned counsel for the appellants pertaining to delay in lodging of the FIR being totally unacceptable is hereby rejected.

11. The next limb of submission is that the evidence brought on record do not establish beyond doubt that the accused Om Prakash had run a tractor on the deceased. In this context, Satbir Singh, PW-3, and Mahinder Singh, PW-7, the elder brothers of the deceased, have categorically deposed that the accused persons had given blows with lathis and Om Prakash had run the tractor over the

deceased. Dr. Jindal, PW-4, who had examined the deceased prior to death, had found 11 injuries on his body. He had not expressed any opinion on injury Nos. 1, 2, 4, 5 and 8 and observed that final opinion would be expressed after x-ray had been done. In examination-in-chief, referring to his opinion, Ex. PK/1, he has stated that injuries on both legs and arms on the person of the deceased could be caused by tractor wheels and the other injuries could be caused by lathi blows. In the cross-examination barring that he had not found the tyre mark on the pyjama of the injured nothing substantial has been elicited.

12. Dr. Partap Singh, PW-1, who conducted the autopsy, had found the following injuries: -

> "1. A stitched wound 1 ¼ long on the right side of parental region one inch above the hair line. On exploration, there was extra vacation of blood in layers scalp. The wound was superficial.
>
> 2. A scabbed abrasion 1" x 1" on the right cheek. It was red in colour.
>
> 3. Multiple contusions of various sizes and shape, covering the back of chest and abdomen. Reddish in colour.
>
> 4. A stitched wound ½" long on the back of upper arm on right thigh. Wound was bone deep.
>
> 5. Multiple contusions covering the upper half of right fore-

arm, right elbow and lower half of right upper, reddish in colour. On exploration, the underlying bones were fractured (right humorous and upper part of right radius and ulna.)

6. A lacerated wound ½ inch long and ¼" wide, and bone deep present on the upper part of left fore-arm.

7. A stitched wound 1" long on the back of middle of left upper arm. Clotted blood was present.

8. Multiple contusions covering the lower part of left upper arm, elbow and upper part of left fore-arm, reddish in colour. The underlying bones (upper part of left radius, ulna and lower part of left humorous) were fractured.

9. A lacerated and stitched wound 1" long present on the left of leg on its middle. Clotted blood was present. The underlying bones were fractured.

10. A lacerated and stitched wound 1" long present just medial to injury No. 9, clotted blood was present.

11. A lacerated and stitched wound 2" long, present on the front of lower one third of right leg.

12. A stitched wound 1" long, 2 inch lateral to injury No. 11 clotted blood was present.

13. A stitched wound 1 ½" long present 1 ½" medial to injury No. 11. Clotted blood was present."

13. In his examination-in-chief he has clearly stated that some of the injuries could have been caused by the relevant organ of the body/struck by a blunt countering by the wheel of a tractor. The submission of the learned counsel for the appellants is that there is no clear cut opinion by the two doctors and, in fact, there is an irreconcilable contradiction which would show that no injury was caused by running over of a tractor falsifying the case of the prosecution. The said submission leaves us unimpressed inasmuch as we really do not find that there is any contradiction of that nature which would cause a concavity in the version of the prosecution. As we find, the ocular testimony has been corroborated by the medical evidence to a major extent in that regard and hence, it would be inappropriate to discard the prosecution case. That apart, the mental condition of the witnesses can be well appreciated and, in any case, they were not expected to state with exactitude how the injuries were caused by the tractor. From the evidence of Dr. Jindal, PW-4, it is evincible that the injuries sustained by the deceased on his legs and arms could have been caused by the tractor wheels. Similar is the opinion of Dr. Partap Singh, PW-1 and in the cross-examination he has explained why crush injuries were not there. It is also worthy to mention that nothing has been elicited in the cross- examination of the eye witnesses on that score. In fact, no suggestion has also been given. It has come out in the evidence that all the accused persons had carried lathis and most of the injuries were caused due to lathi blows and some by the tractor. Thus, the ocular testimony gets corroboration from the medical evidence, and, therefore, the stance that the prosecution witnesses have made an effort to exaggerate their version ascribing a serious role to Om Prakash, in our considered opinion, is mercurial and deserves to be repelled and we do so.

14. It is next submitted by learned counsel for the appellants that the so called eye witnesses have not ascribed any specific overt act to each of the accused and there are only spacious allegations that they were armed with lathis and inflicted injuries on the deceased. In essence, the submission is that in the absence of any specific ascription or attribution of any particular role specifically to each of the accused Section 149 IPC would not be attracted. In this regard, we may refer to a passage from Baladin and others v. State of Uttar Pradesh[6] wherein a three-Judge Bench had opined thus: -

> "It is well settled that mere presence in an assembly does not make such a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under Section 142, Indian penal Code."

15. The aforesaid enunciation of law was considered by a four-Judge Bench in Masalti v. The State of Uttar Pradesh[7] which distinguished the observations made in Baladin (supra) on the foundation that the said decision should be read in the context of the special facts of the case and may not be treated as laying down an unqualified proposition of law. The four-Judge Bench, after enunciating the principle, stated as follows: -

> "It would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, S. 149 make it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by S. 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly."

16. Common object of an unlawful assembly can also be gathered from the nature of the assembly, the weapons used by its members and the behavior of the assembly at or before the scene of occurrence. It cannot be stated as a general proposition of law that unless an overt act is proven against the person who is alleged to be a member of the unlawful assembly, it cannot be held that he is a member of the assembly. What is really required to be seen is that the member of the unlawful assembly should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141 IPC. The core of the offence is the word "object" which means the purpose or design and in order to make it common, it should be shared by all. Needless to say, the burden is on the prosecution. It is required to establish whether the accused persons were present and whether they shared the common object. It is also an accepted principle that number and nature of injuries is a relevant fact to deduce that the common object has developed at the time of incident. (See Lalji v. State of U.P.[8], Bhargavan and others v. State of Kerala[9], Debashis Daw and others v. State of West Bengal[10] and Ramachandran and others v. State of Kerala[11]).

17. In the case at hand, as the evidence would clearly show, all the accused persons had come together armed with lathis. Het Ram, who died during the pendency of the appeal, was armed with a gun. The eye witnesses who are natural witnesses, being brothers, have deposed in an unequivocal manner about the assault by all the accused persons. The common object is clearly evident. In such a situation, attribution of specific individual overt act has no role to play. All the requisite tests to attract Section 149 IPC have been established by the prosecution.

18. In view of our aforesaid analysis, as all the contentions raised by the learned counsel for the appellants are sans substratum, the appeals, being devoid of merit, stand dismissed.

.....J. [K.S. Radhakrishnan] .....J. [Dipak Misra] New Delhi;

April 16, 2014.

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[1] (1994) 5 SCC 188
[2] (2001) 6 SCC 71

[3] (2007) 2 SCC 170
[4] (2011) 4 SCC 552
[5] (2013) 5 SCC 655
[6] AIR 1956 SC 181
[7] AIR 1965 SC 202
[8] (1989) 1 SCC 437
[9] (2004) 12 SCC 414
[10] (2010) 9 SCC 111
[11] (2011) 9 SCC 257