

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2023:AHC-LKO:81345-DB

Reserved on: 03.11.2023

Delivered on: 12.12.2023

Reserved

Case :- CRIMINAL APPEAL No. - 227 of 1985

Appellant :- Vidhya Sagar Misra And Ors.

Respondent :- State

Counsel for Appellant :- Sri Shanker Sharma,Amithabh
Srivastava,Vinod Kumar

Counsel for Respondent :- G.A.,Brij Mohan Sahai,Nahar Singh
Chauhan

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per: Rajan Roy, J.)

1) Heard Sri Amitabh Srivastava and Sri Vinod Kumar, learned counsel for the appellants and Sri R.S. Dwivedi, learned A.G.A. for the State.

2) This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 29.03.1985 passed by First Addl. Session Judge, Sitapur in Session Trial No.05/1983 arising out of Case Crime No.336/1982, Police Station-Maholi, District-Sitapur, convicting all the appellants for the offence under Sections-302/149 I.P.C. and sentencing them to undergo rigorous imprisonment for life. They have also been convicted under Section-147 I.P.C. and sentenced to undergo one year's rigorous imprisonment. The accused-Vidya Sagar, Manohar Lal and Suresh Kumar have been additionally convicted for the offence under Section 148 I.P.C. and each of them have

been sentenced to undergo rigorous imprisonment for two years. The accused- Manohar Lal has also been convicted for the offence under Section 354 I.P.C. and has been sentenced to undergo rigorous imprisonment for one year.

3) At the very outset, it needs to be mentioned that only appellant nos.2 and 6 i.e. Suresh Kumar and Krishna Murari are alive. Rest have died. Therefore, this appeal has been heard and is being decided only in relation to them.

4) The prosecution case in nutshell is that on 25.09.1982 at 07:00 A.M., P.W.1-Kiran Devi had gone to relieve herself in the 'Chari' fields of Harivansh towards west of the village when she was accosted by accused-Manohar Lal who was armed with a 'Tamancha'. Manohar Lal caught hold of her hand and tried to pull her into the 'Chari' field. The father of P.W.1, deceased-Tribeni Sahai along with his nephew Ram Gopal (P.W.3) were returning from the southern side after having relieved themselves at the 'Khalihanwali Taliya'. They heard the shouts of Kiran (P.W.1) and rushed towards her, raising an alarm, and challenging Manohar Lal whereupon, Manohar Lal left her and ran towards the village, shouting. On his shouts, accused namely, Krishna Murari and Kamlesh came, armed with lathis, and ran to strike informant-P.W.3. At this moment, Tribeni Sahai, the deceased, hit Kamlesh and Krishna Murari with his lathi, in his defence. On hearing the commotion, other accused namely, Vidya Sagar armed with a 'Tamancha', Suresh Kumar armed with a licensed gun and Shyam Lal & Ram Shankar armed with lathis came rushing from the village. They surrounded Tribeni Sahai. Informant-P.W.3 ran shouting. On his shouts, some of the villagers including Harivansh (P.W.2) came. Then, Manohar, Vidya Sagar and Suresh Kumar fired upon Tribeni Sahai from their tamancha and gun which hit Tribeni Sahai. He fell down in the agricultural field of Shiv Shankar. On being challenged, the accused ran towards the west. F.I.R. was lodged on 25.09.1982 at 09:15 A.M. at P.S.-Maholi, District-Sitapur.

- 5) Inquest was conducted same day at 09:15 A.M. to 11:05 A.M. The Inquest Report is Ex.Ka.6.
- 6) Post-mortem was conducted on the next day i.e. 26.09.1982 at 04:00 P.M. Post-mortem report is Ex.Ka.2.
- 7) Ex.Ka.13 is the siteplan prepared by the Investigating Officer on the statement of witnesses.
- 8) After investigation, chargesheet was filed against nine accused under Sections 147, 302/149 I.P.C. The accused, namely, Manohar Lal, Vidya Sagar and Suresh Kumar were also charged with the offence under Section 148 I.P.C. The accused- Manohar Lal was additionally charged of the offence under Section 354 I.P.C. All the accused denied the charges. They were put to trial.
- 9) The prosecution produced as many as eight witnesses in support of its case. P.W.1-Kiran Devi is daughter of the deceased-Tribeni Sahai whom Manohar Lal tried to drag in the 'Chari' field. P.W.2-Harivansh is the owner of 'Chari' field where Manohar Lal tried to drag P.W.1. He had also gone to relieve himself and has witnessed the event. P.W.3-Ram Gopal is nephew of the deceased. P.W.4-Somrat Sharma is the Constable who had taken body of the deceased for post-mortem. P.W.5- Dheerendra Goyal is the doctor who conducted autopsy on body of the deceased. P.W.6-Jeevan Ram had collected the recovered items i.e. plain and blood stained soil and had taken them for chemical examination to Agra. P.W.7-Laddan Khan is the Constable who had collected the sealed envelope containing six pellets recovered from the body of the deceased -Tribeni Sahai and deposited the same at the police station. P.W.8-O.P. Singh is the Investigating Officer.
- 10) Defence produced Sri Ram Vilas (D.W.1) and Awadh Bihari Lal (D.W.2), as witnesses.

11) Statement of the accused was recorded under Section 313 Cr.P.C. Their case was one of denial and false implication on account of political rivalry. According to some of the accused, the body of the deceased was found at the 'Taliya' and was taken to the police station, therefore, it was a case of false implication.

12) On a consideration of facts and evidence on record, the trial court convicted the appellants as already stated in the earlier part of the judgment. Out of the nine accused, seven were convicted.

13) The contention of learned counsel for the appellants was that there is no recovery of the weapon allegedly used in commission of the crime. Pellets were found in the body of the deceased. There was prior enmity between the parties and story has been cooked up and an F.I.R. has been lodged falsely implicating the appellants herein only two of whom i.e. appellant nos.2 and 6 survive. Ingredients of Section 149 I.P.C. are not satisfied and therefore, it is not proved that surviving appellants were part of an unlawful assembly with the common object to kill the deceased. There are no injuries on Ram Gopal and Kiran Devi which is surprising considering that three persons are alleged to have fired from their guns and there were several others who had used lathis to commit the crime. In fact, there is no injury of lathi and appellant no.6, namely, Krishna Murari has been assigned the role of using lathi. Therefore, so far he is concerned, there is no doubt that the trial court has erred in convicting him. The judgment of the trial court is against the weight of evidence and is based on conjectures and surmises. The abrasions and lacerated wounds have not been explained by the prosecution. The appeal is liable to be allowed.

14) Learned A.G.A. on the other hand has opposed the appeal and submitted that learned trial court has rightly convicted the appellants on the basis of evidence which has been correctly appreciated by it. The appeal is liable to be dismissed.

15) As per post-mortem report, there were as many as six injuries on the body of the deceased, five of which were firearm wounds and one was an abrasion on the left arm above the elbow. On dissection, a lacerated wound was found on right apex and middle lobe outer surface two wounds were found and no Rib was fractured. Direction of gun shot was from front to back. Six small metallic pellets were recovered from the body of the deceased and handed over to the police. The cause of death is mentioned as shock and hemorrhage as a result of ante-mortem injuries.

16) P.W.5-Dr.Dheerendra Goyal has proved the post-mortem report. He has testified that injuries received by the deceased were sufficient in the ordinary course to cause death. These were firearm injuries. These injuries could have been caused on 25.09.1982 at 07:00 A.M. In cross examination, he has opined that considering the dispersion of pellets with respect to injury no.1, the shot was fired from a distance. As regards injury no.2, he opined that it had been fired from close quarters. The shot which caused injury no.4 had been fired from a little more distance than injury no.2. The shot resulting in injury no.5 had been fired from quite a distance. On the basis of injury nos.1, 2, 4 and 5, he opined that about four shots had been fired on the deceased.

17) From the medical evidence itself, it is evident that it is a case of murder. Whether surviving appellants (appellant nos.2 and 6 i.e. Suresh Kumar and Krishna Murari) are guilty of the said offence and other offences with which they were charged on not, is to be judged by us.

18) At this stage, it is not out of place to mention that appellant no.2-Suresh Kumar has been assigned the role of firing from his licensed gun which he was carrying coming from the village on hearing the shouts. Appellant no.6-Krishna Murari also came on hearing the shouts of Manohar Lal but he is stated to be carrying a lathi. It is not out of place to mention that there is only one abrasion and one lacerated wound on the deceased's body, on dissection.

19) Now, when we examine the testimony of prosecution witnesses, we find that P.W.1-Kiran Devi - daughter of the deceased has stated that she had gone to relieve herself in the morning in the 'Chari' field of Harivansh (P.W.2) when she was accosted by accused-Manohar Lal who was armed with a tamancha. Manohar Lal tried to pull her in 'Chari' field. The 'Chari' in the agricultural fields was quite tall. It is then that she shouted and her father-Tribeni Sahai and Ram Gopal (P.W.2) came rushing from the south. Manohar Lal was reprimanded by them and they tried to catch hold of him. Manohar Lal ran towards the village. On the shouts of Manohar Lal, the accused-Krishna Murari and Kamlesh came with lathis. Though in examination-in-chief she has stated that these two started beating Ram Gopal (P.W.3) with lathi and she has stated that in defence of Ram Gopal her father-Tribeni Sahai struck lathi blows upon Krishna Murari and Kamlesh but, in cross-examination, she has denied this fact. She has stated as under:- "यह कहना गलत है कि कृष्ण मुरारी व कमलेश राम गोपाल को मारने लगे। बल्कि उन्हीं ने लाठी चलाई। मैंने यह बयान दरोगा जी को दिये थे कि कृष्ण मुरारी व कमलेश गांव के लाठियाँ लिये आये और राम गोपाल को मारने दौड़े" यह कहना गलत है कि बयान मुझको सिखाये गये इसलिए गलती हो जाती है। मेरे चिल्लाने पर मनोहर ने मेरा हाथ नहीं छोड़ा था।" She has stated, then, Vidya Sagar armed with a tamancha, Suresh Kumar armed with a licensed gun and Shyam Lal & Ram Shankar armed with lathis, came. Manohar Lal was also with them armed with a tamancha. All these people surrounded her father. Then the accused Vidhya Sagar, Suresh Kumar and Manohar Lal fired upon her father who hit and fell down in the agricultural fields of Shiv Shankar. She has also stated about presence of Harivansh (P.W.2) and other villagers at the time of the incident.

20) In cross-examination, she has stated that when her father was wielding the lathi upon Krishna Murari and Kamlesh, Vidhya Sagar came in about half a minute, meaning thereby, the fight with the lathis started

earlier and thereafter, the two accused, namely, Vidhya Sagar and Suresh Kumar came, armed with firearms. Manohar Lal who had rushed towards the village also came back carrying the same tamancha which he was carrying earlier and, thereafter, these three fired upon Tribeni Sahai who died as a result thereof. She has also stated that when Krishan Murari and Kamlesh had wielded lathis upon her father, the latter was not hit by them. She has also spoken about presence of P.W.3-Ram Gopal near the deceased at the time of the incident. She has stated that she saw Manohar running towards the village upto the house of Krishna Murari who along with Kamlesh, came with lathis. She has also stated in her cross-examination that she was too shocked at the time of being accosted by Manohar Lal, and thereafter, during the fight, to run away, and she stood still, watching the incident.

21) P.W.2- Harivansh who is an independent witness has stated that he had gone to relieve himself in the morning towards west of the village when he heard the alarms of Ram Gopal (P.W.3). He ran in the said direction just as other villagers did. He reached the boundaries of Kripa Shankar's agricultural field and saw the seven accused armed with tamancha, gun, and lathis, who had surrounded Tribeni Sahai. He has unequivocally stated that the accused-Vidya Sagar, Suresh Kumar and Manohar Lal fired upon Tribeni Sahai and the latter fell in the agricultural field of Shiv Shankar after being hit by bullets and he died there. On being challenged, the accused ran away towards the west. He has also spoken about presence of P.W.3 and P.W.1 at the scene of crime.

22) In cross-examination, he has fairly stated that he had not seen the exchange of lathis but when he reached he saw that the accused had surrounded Tribeni Sahai. He has also stated that Tribeni Sahai was standing with a lathi but was not using it. It is not out of place to mention that as per the testimony of P.W.1, by then, lathi blows had already been struck and after that the accused armed with weapons had come from the village. P.W.2 has narrated direction from which firing took place and also

the direction in which deceased was standing. Medical evidence and the direction of injuries and shots being fired, as mentioned in the post-mortem report, support the ocular testimony especially that of P.W.2 in this regard. The firing was taking place from the east i.e. from the village side. The accused were standing 20 to 22 paces away from the deceased. The deceased was facing east, therefore, the shots were fired from the front as has been mentioned in the post-mortem report. There are no inconsistencies/ contradictions in the testimony of P.W.2 and none has been brought forth by the defence.

23) P.W.3-Ram Gopal is the informant. He has proved submission of tehrir by him. He has stated that he along with the deceased had gone to relieve himself towards west of the village i.e. Khaliyanwali Taliya and they were returning after relieving themselves when he heard shouts of her cousin i.e Kiran Devi (P.W.1). Both of them looked towards north. P.W.1 was standing on the boundaries of Harivansh's 'Chari' field. They had heard shouting from there. They rushed towards her to save her. He has testified having seen the accused-Manohar Lal holding the hand of P.W.1 and armed with a country-made pistol. He has testified having seen the accused-Manohar Lal trying to pull P.W.1 inside the 'Chari' crop. They tried to catch hold of Manohar Lal when he ran towards the village in the east, shouting. On hearing his shouts and on his alarm, Kamlesh and Krishan Murari came armed with lathis. They ran to beat him up, whereupon, Tribeni Sahai-the deceased hit them with his lathi in defence. On hearing the commotion, the accused-Vidhya Sagar armed with a tamancha, Suresh Kumar armed with a licensed gun, Manohar Lal armed with a country-made pistol and Shyam Lal & Ram Shankar armed with lathis, came rushing. When they i.e. Tribeni Sahai and Ram Gopal ran towards the village raising an alarm, other villagers including Harivansh came. At this time, the accused-Vidya Sagar, Manohar Lal and Suresh fired from their firearms upon his uncle i.e. Tribeni Sahai who was hit by their gunfire and fell dead in the field of Shiv Shankar.

24) P.W.8, the Investigating Officer of the case has proved lodging of the F.I.R. Ex.Ka.3. He has also stated about preparation of siteplan on the statement of the witnesses. He has spoken about arresting Krishna Murari and Kamlesh and also that at the time of arrest they had injuries on their body.

25) It is relevant to mention that there are five firearms wounds on the body of the deceased and out of the nine accused, three have been assigned the role of firing, including Suresh Kumar (appellant no.2). Krishna Murari (appellant no.6) has not been assigned the role of firing. The sixth injury of abrasion has not been explained by the prosecution. There is no such evidence that Krishna Murari struck the deceased with his lathi. In fact, P.W.1 and other witnesses have stated that they chased Ram Gopal (P.W.3) and in this process, the deceased-Tribeni Sahai in order to defend Ram Gopal struck these accused with his lathi, in defence, but there is no evidence that Krishna Murari hit Triveni Sahai with his lathi. Moreover, there were four accused who were wielding lathis, three of whom have died and no specific role has been assigned to Krishna Murari in this regard. After being chased by Ram Gopal and Triveni Sahai, Manohar Lal ran towards the village and raised an alarm. It is on his alarm that firstly Krishna Murari and Kamlesh rushed with lathis in their hand and chased Ram Gopal. Now, obviously, Krishna Murari in such a short span of time would not know as to what had transpired prior to Manohar Lal rushing to the village and the possibility of he having come to the aid of Manohar Lal in the belief that latter was being targeted by the informant's side, cannot be ruled out. As already stated, there is no evidence that Krishna Murari tried to inflict injuries on Tribeni Sahai or inflicted such injuries on the body of the deceased which were likely to cause death. In fact, medical evidence does not support such a hypothesis. After Tribeni Sahai wielded his lathi to protect Ram Gopal from Krishna Kumar and Kamlesh, on hearing this commotion, other five accused including Vidhya Sagar armed with tamancha, Suresh Kumar armed with

licensed gun and Manohar Lal armed with tamancha came from the village along with Shyam Lal and Ram Shankar who were armed with lathi and all of them surrounded Tribeni Sahai. It has also come in the ocular testimony of P.W.1 to P.W.3 that it is Vidhya Sagar, Suresh Kumar and Manohar Lal who fired upon Tribeni Sahai and their bullets/ pellets hit him as a result of which he fell down in the field of Shiv Shankar. It is nobody's case that death was caused due to any lathi blow. The single injury of abrasion on his body could have been caused as a result of such fall. The factum of Suresh Kumar having come from the village armed with a licensed gun along with others who were armed shows the active role played by him as also the common object of unlawful assembly of which he was a part. However, it is difficult to draw similar conclusion with regard to Krishna Murari whose presence at the scene appears to have been only on the initial shouts of Manohar Lal when he was chased by Ram Gopal and Tribeni Sahai. Therefore, as already stated, his presence on the scene could have been occasioned by the said shouts of Manohar Lal without knowing as to what had actually transpired as the time was too short for him to know about it. In view of the above, it cannot be said that he was part of unlawful assembly having common object to kill the deceased. Moreover, at the cost of repetition we may state that they only chased Ram Gopal with their lathis but did not hit him and, to defend Ram Gopal, it is Tribeni Sahai-the deceased who struck blows on them with his lathi as has been stated by the prosecution witnesses. In the meantime, the other accused came, three of whom were armed with firearm weapons and they fired upon Tribeni Sahai resulting in his death. Therefore, based on the sequence of events and the evidence on record, it is not possible for this Court to arrive at a conclusion that Krishna Murari (appellant no.6) was also part of the unlawful assembly with the common object of killing the deceased-Tribeni Sahai, though, we have no doubt that Suresh Kumar was certainly so.

26) As regards testimony of D.W.1 and D.W.2, having gone through the same, we do not find it to be relevant in any manner. D.W.1 is the Lekhpal and D.W.2 is the Headmaster of Primary School, Rajuapur. He has testified about age of P.W.1-Kiran Devi which is not of much relevance. He has not testified nor has he brought any document to show that on the date of incident at the relevant time, Kiran Devi (P.W.1) was at school. Therefore, their testimony is of no consequence.

27) On the basis of our appreciation of evidence on record, we are of the opinion that not only the murder of Tribeni Sahai is proved, the fact that Suresh Kumar (appellant no.2) was part of an unlawful assembly with the common object of killing Tribeni Sahai is also proved beyond reasonable doubt and he has rightly been convicted by the trial court of the offence under Section 302 read with Section 149 I.P.C. as also Sections 147 and 148 I.P.C. **So far as the appeal of appellant no.2, namely, Suresh Kumar is concerned, the same is dismissed.** He has rightly been convicted and sentenced by the trial court.

28) However, learned trial court has erred in convicting Krishna Murari (appellant no.6) of the offence under Section 302 read with Section 149 I.P.C. It has failed to consider and appreciate the evidence on record in the right perspective and its findings regarding guilt of Krishna Murari (appellant no.6) in this regard are perverse. **We, therefore, allow the appeal of appellant no.6, namely, Krishna Murari** and set aside his conviction for the charge under Section 302 read with Section 149 I.P.C. as also Section 147 I.P.C. Consequently, his sentence is also set aside.

29) Non-bailable warrants were issued for production of appellant nos.2 and 6 during pendency of the appeal in pursuance to our earlier orders but the same could not be executed as is evident from report of Chief Judicial Magistrate, Sitapur dated 12.10.2023.

30) In view of the above, Krishna Murari i.e. appellant no.6 shall be set free forthwith. The non-bailable warrant issued against him for his

production during pendency of appeal shall not be given effect. Bail bonds submitted earlier are cancelled and sureties are discharged. The appellant no.6 is directed to file a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A of the Code of Criminal Procedure within six weeks.

31) As regards appellant no.2, namely, Suresh Kumar, as he was enlarged on bail during pendency of appeal and non-bailable warrants issued against him on account of his non-appearance on relevant dates has also not been executed, therefore, the appellant no.2 shall be taken into custody forthwith and sent to jail to serve out the sentence. The C.J.M. concerned shall ensure compliance of the same.

32) The application filed on behalf of the appellant nos.2 and 6 for recall of order dated 15.09.2023 by which non-bailable warrants were ordered to be issued for their production is also disposed of in the aforesaid terms.

33) The original records shall be remitted back to the trial court for necessary action, as per law.

(Ajai Kumar Srivastava-I,J.) (Rajan Roy,J.)

Order Date :-12.12.2023

Shanu/-