

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1934 of 1999**

Falitram, aged about 26 years, S/o Abheyram, R/o Village Medhpar, Police Station Hirri, District Bilaspur (Madhya Pradesh) (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

Criminal Appeal No.2012 of 1999

1. Fagua, S/o Jethu Rawat, aged about 40 years,
2. Bhakku alias Chhamadas, S/o Bitthal, aged about 38 years,
3. Neelkanth alias Jhakku, S/o Bitthal, aged about 35 years,
4. Shobha, S/o Jethu Yadav, aged about 42 years,
5. Devidas, S/o Pyarelal Satnami, aged about 23 years,
6. Mohit, S/o Nohar Yadav, aged about 38 years,

All Appellants are residents of Village Medpar, Police Station Hirri, District Bilaspur

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh) through Station House Officer, Police Station Hirri, District Bilaspur

---- Respondent

and**Criminal Appeal No.2152 of 1999**

Ashok, S/o Shivcharan Satnami, aged 28 years, occupation cultivator, R/o Gram Medhpar, Police Station Hirri, District Bilaspur, Madhya Pradesh (now Chhattisgarh)

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh) through Police Station Hirri, District Bilaspur, Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellants	:	Shri Shashi Kumar Kushwaha, Advocate
For State/Respondent	:	Shri Ashish Shukla, Government Advocate

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

11/9/2015

1. In a mob assault by villager's fifty persons were named and put on trial. Three died during the course of the trial. Thirty Nine have been acquitted. The present eight Appellants in the three appeals alone have been convicted under Sections 302, 148, 149 IPC to life imprisonment with fine of Rs.1,000/-, in the event of failure to pay which, they were required to undergo further one month's imprisonment as ordered on 12.7.1999 by the Second Additional Sessions Judge, Bilaspur in Sessions Trial No.263 of 1994.

2. The prosecution case according to the FIR, Exhibit P-4, lodged by PW-5, Vichardas on 28.9.1993 at 14:45 pm succinctly is that the deceased Sudhe Rawat was the owner of a large area of lands in the village. He had sold certain lands to PW-17, Pawan, who was running a Brick-Kiln on the same. The lands of the deceased were also used as grazing grounds by villagers regarding which the deceased had complained to the police. A proceeding under Sections 107 and 116(3) Cr.P.C. was initiated. The police had asked PW-5, Vichardas to call Appellants Neelkanth alias Jhakku, Bhakku, Abhay, Jawahar Gond, Lakdu Kewat and Patrakhan and his two sons as also deceased Sudhe Rawat to the police station for sorting out the dispute. On 28.8.1993, the aforesaid Appellants along with other villagers went to the police station in a crowd consisting of fifty named persons carrying Lathis and Tangias. They were waiting at a culvert near the police station for the Officer-in-Charge to come. The deceased came with PW-17, Pawan. A verbal dual ensued between Appellant Falit following which the

deceased was assaulted by the mob leading his death.

3. The post mortem of the deceased, Exhibit P-16, was conducted by PW-18, Dr. S.K.Verma, who found a total of twenty injuries on the person of the deceased consisting of lacerated wounds, abrasions, bruises, lacerated wound of scalp from frontal region to occipital and bilateral temporo-parietal region with depression of right half of face and multiple fractures into pieces of bones of skull and face except mandible with missing of bones of skull partly and exposing the crushed brain and multiple fractures of bones of skull with the face completely disfigured which had to be assembled together during post mortem. The 9th, 10th and 11th ribs on the left side were found fractured posterior with the doctor opining that they had all been caused by a hard and blunt object. Death was attributed to the head injury and brain.

4. The present appeals were filed in 1999 and the Appellants were enlarged on bail on different dates in April and June of 2000. In the last week also, no one had appeared on behalf of the Appellants and we had *suo motu* passed over the matter without recording anything in the order sheet regarding lack of representation. Today again when the matter was called out, no one appeared on behalf of the Appellants. We do not consider it necessary to adjourn the matter again on that ground considering that the appeal is very old of the year 1999, in view of the observations contained in (2014) 14 SCC 222 (Surya Baksh Singh v. State of U.P). We have taken up the matter for consideration with the assistance of Shri Shashi Kumar Kushwaha Counsel from the High Court Legal Services Committee and the Learned State Counsel. They have both taken us together through the judgment under appeal, the deposition of witnesses and other evidence considered by the Trial Court which has undoubtedly facilitated us in considering the appeals on merits and deciding the same.

5. Learned Counsel Shri Kushwaha submitted that the number of members in the mob has varied from 50 mentioned in the FIR by PW-5 Vichardas to 70-80 by PW-17, Pawan, also an eyewitness. PW-5, PW-17 and PW-10, Sajjan alias Basant Kumar Pandey, also an eye witness, have not attributed any specific and individual assault by the Appellants alone on the deceased. The allegations of assault are omnibus against the Appellants as members of the mob along with others. Appellant Fagua is alleged to have assaulted on the head only once. The injuries on the head were impossible from a single blow unless others present in the mob also assaulted. It cannot be said that the injuries on the head and which was the cause of death were attributable to Appellant Fagua alone. The Appellants are similarly situated as those acquitted. The Trial Judge has observed that in the nature of the mob assault with omnibus allegations it was difficult to understand who all had assaulted and in what manner giving the benefit of doubt to the others. The Trial Judge has grossly misappreciated evidence to convict the Appellants in the nature of the omnibus assault only because they had been named when otherwise the allegations were common with those acquitted.

6. Learned Counsel for the State opposing the appeals submitted that the Appellants had been specifically named as the assailants. They cannot be put at par with those not named during the assault and given the benefit of doubt. The Trial Judge has committed no error in convicting the Appellants while acquitting the others. The nature of the murderous assault by the Appellants is evident from the number of injuries on the person of the deceased. Blood has been found on the clothes of Appellant Fagua in the forensic report.

7. We have considered the submissions on behalf of the parties and perused the evidence on record also.

8. Section 141 IPC defines an unlawful assembly. Whoever intentionally joins an unlawful assembly with awareness is defined as a member of the same under Section 142. A member of an unlawful assembly armed with a deadly weapon or anything which can cause death is liable under Section 144 IPC. Section 149 creates vicarious liability in every member of the assembly for an offence committed by any other member of the assembly in prosecution of the common object of the assembly or such offence as the members of the assembly knew was likely to be committed in prosecution of the common object to create individual liability. Rarely will there be direct evidence of the common object of the assembly. Invariably it has to be culled out from the facts and circumstances of each case if the assembly was unlawful. The inference in law will have to be drawn from events prior to the occurrence, nature of weapons carried, manner of assault and conduct after the event. Where the assembly is very large caution has to be exercised that innocent are not sucked into the vortex merely because they happened to be present at the time of occurrence but may not have shared the common object. The principles succinctly discussed from plethora of precedents in (2013) 4 SCC 607 (Subal Ghorai v. State of W.B.) observes as follows :-

“53.....It must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all stages. The court must have before it some materials to form an opinion that the accused shared common object. What the common object of the unlawful assembly is at a particular stage has to be determined keeping in view the course of conduct of the members of the unlawful assembly before and at the time of attack, their behaviour at or near the scene of offence, the motive for the crime, the arms carried by them and such other relevant considerations. The criminal court has to conduct this difficult and meticulous exercise of assessing evidence to avoid roping innocent people in the crime. These principles laid down by this Court do not dilute the concept of constructive liability. They embody a rule of caution.”

9. The villagers, 50 to 80 in number had gone to the police station for resolution of the dispute at the call of the police. They were waiting peacefully for the officer-in-charge to arrive. There is no evidence that it was a restive audience with inflamed passions. Merely because there may have been proceedings pending under Sections 107 and 116(3) Cr. P.C or that they all came together cannot lead to any presumption or conclusion that they went to the police station as an unlawful assembly with a common object to teach a lesson to the deceased or kill him. The fact that the villagers were carrying Lathis or Tangias is considered inconsequential. They are items of common use carried by rural people and cannot be described as weapons of assault specifically. Moreover there is no evidence which one of them carried a Lathi and which one a Tangia. The latter is a sharp cutting agricultural instrument. Significantly the injuries on the deceased are all attributable to hard blunt substance and not a sharp cutting weapon.

10. When the deceased arrived with PW-17, a verbal altercation ensued between him and Appellant Falit. Appellant Fagua suddenly assaulted on the head but did not repeat the assault. There is also no material to hold that any common object to kill the deceased developed on the spot. This was followed by an omnibus assault by other members of the mob. Merely because the others assaulted immediately thereafter on the spur of the moment, it cannot be said that they all developed common object to kill. On facts, in the present case it was a mob mentality rather than a common object of the mob to kill the deceased. A mob has a mind of its own unguided by anyone or reason.

11. PW-5, PW-10 and PW-17 reiterated an omnibus assault. It is only that the Appellants were named from amongst the mob. There is no specific attribution which one of them had a Lathi and which one a Tangia and on

what part of the body they assaulted and how many times. The reference to them is evidently only in an omnibus manner. PW-5 has stated that he was totally illiterate and ignorant and did not know what exactly had been recorded in the FIR and he was not in a position to read and understand. He had been kept at the police station for three days. The possibility that the Appellants came to be named separately as members of the mob on police pressure is a distinct possibility. The villagers were known to PW-5, Vichardas, PW-10, Sajjan alias Basant Kumar Pandey and PW-17, Pawan. There is no reason why more could not have been named by them. The presence of blood on the clothes of Appellant Fagua in the FSL report is also not of much significance in the facts of the case except that he was a member of the assembly also. The post mortem report makes it evident that the head injury which was the cause of death was not the result of the single assault by him. There is no separate evidence of the nature of injury caused by him. PW-5, Vichardas has stated that in the melee that followed he could not see who all among the mob were assaulting and generally stated of assault by the members of the mob. The witness further acknowledged that in his 161 Cr.P.C. statement, he had not mentioned that Appellant Neelkanth alias Jhakku, Appellant Bhakku and acquitted co-accused Kewat had assaulted the deceased. PW-17, Pawan, in cross-examination admitted that his police statement was recorded one month later in which the fact that the Appellants assaulted the deceased as deposed in Court had not been mentioned and that they were being named by him in Court for the first time.

12. The Trial Judge did not hold that the assembly was unlawful or had come together with any common object. On the contrary it was held that the assembly became unlawful after arrival of the deceased. There is no finding that the mob developed any common intention even at the spur of the moment. The Trial Judge then arrived at the conclusion that since

identification of the members of the mob was not possible only those who had been named were answerable for the assault giving the benefit of doubt to others. On the own reasoning of the Trail Judge there is no difference between the Appellants and those acquitted except for the fact they had been named from amongst the mob. The reasoning and findings are difficult to uphold.

13. In 1991 Supp (1) SCC 9 (Budhwa v. State of M.P.) dealing with a mob assault it was observed :-

“5.....In a melee where several people are giving blows at one and the same time it will be impossible to particularize the blows. If any witness attempts to do it, his veracity is doubtful. But it cannot be forgotten that it is simpler to make an omnibus statement that all the accused assaulted with their weapons because that obviates close cross-examination.....”

“6. “Where an occurrence takes place involving rival factions it is but inevitable that the evidence would be of a partisan nature. In such a situation to reject the entire evidence on the sole ground that it is interested is to shut one's eyes to the realities of the rural life in our country. It has to be borne in mind that in such situation easy tendency to involve as many persons of the opposite faction as possible by merely naming them as having been seen in the melee is a tendency which is more often discernible and has to be eschewed and, therefore, the evidence has to be examined with utmost care and caution and the court has to adopt a workable test for being assured about the role attributed to every accused” vide *Muthu Naicker v. State of Tamil Nadu*.”

14. Similarly in case of a mob assault it was observed in 1991 Supp (2) SCC 437 (Sherey v. State of U.P.):-

“4....But when there is a general allegation against a large number of persons the Court naturally hesitates to convict all of them on such vague evidence. Therefore we have to find some reasonable circumstance which lends assurance.....”

15. In the entirety of the discussion, we are of the considered opinion that it will not be safe to uphold the conviction of the Appellants alone when they cannot attributed the injuries alone causing the death of the deceased and that there is no difference between them and those acquitted.

16. The convictions are therefore not sustainable. All three appeals are allowed subject to the conditions in Section 437A Cr.P.C.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE