

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 274 of 2000**

1. Narendra, S/o Visheshar Satnami, aged about 19 years
2. Lalji, S/o Bhukhau Satnami, aged about 19 years,
3. Birendra, S/o Visheasar Satnami, aged about 25 years,
4. Ram Prasad, S/o Adhar Satnami, aged about 22 years,
5. Uttam Kumar, s/o Vishnu Prasad, aged about 25 years,
6. Suresh Kumar, S/o Visheasar Satnami, aged about 22 years,
7. All R/o Gram-Banbrad, Thana-Nandni, Distt. Durg (M.P.)

---- Appellants

Versus

State of M.P. Through P.S.Nandni,
District – Durg (M.P.) (Now State of
Chhattisgarh)

---- Respondent

For Appellants:	Smt. Kiran Jain, Advocate
For Respondent/State:	Smt. Smita Ghai, PL

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board**Per Navin Sinha, Acting Chief Justice****23/03/2015**

1. Originally six appellants were convicted. Appellant No.2-Lalji and Appellant No.4-Ram Prasad have been deceased during the pendency of the appeal. Appellant No.1-Narendra has been

convicted under Section 148 IPC to two years rigorous imprisonment. He has further been convicted under Section 302/149 IPC to life imprisonment. Appellant Nos.3, 5 & 6-Birendra, Uttam Kumar and Suresh Kumar have been convicted under Section 147 IPC to one year rigorous imprisonment and under 302/149 IPC to life imprisonment as ordered by the Additional Sessions Judge, Durg on 10.1.2000 in Sessions Trial No.282/98.

2. First Information Report, Exhibit P-1 was lodged on 23.6.1998 by Sonvati, PW-1, aunt of the deceased Jai Karan at 14.00 hours with regard to an assault on the deceased at 13.30 hours. The witness stated that she was going from her house to the kirana store when the Appellants came together variously armed with sword and iron rod, threatened to kill the deceased and then started to assault him. The witness was also threatened. The assault was also witnessed by Savitri and Triveni. The M.L.C of the injured who was subsequently deceased, Exhibit P-16 was done by Dr. V.V.B. Rao, PW-11, who found five incised injuries on the right side of the jaw below the left angle of the mouth and fracture of mandible, another incised wound below the above mentioned wound. An incised wound over the right palm. Another incised wound over the left parietal region of the scalp (6 cms x 1 cm x 1 cm). An incised wound over the left thumb, an incised wound over chin and neck and an incised wound over the scalp, right palm and left thumb. The victim was given artificial resuscitation and shifted to Intensive Care Unit. The injuries were opined to be caused by sharp and heavy weapons dangerous to life. The deceased died the same day and the postmortem was

done on 23.6.1998 itself at about 8.15 pm marked as Exhibit P-15 by Dr. P.C. Deshmukh, PW-9 who opined that death was a result of shock due to head injuries.

3. Learned Counsel for the Appellants submitted that PW-1 & 2, the alleged eyewitnesses have only made specific allegations of assault against Appellant No.1-Narendra with a sword. The allegations against others are omnibus with no specific nature of assault attributed to any one of the others. Both the eyewitnesses were related to each other and the deceased. There is no independent witness even though the occurrence was in a public place and Sonvati, PW-1 stated in deposition that Rajulal, Rama, Rajau and Anand had also witnessed the assault but they have not been examined. No explanation has been furnished for their non-examination. The Appellants are also related to each other and Itwari, PW-3, father of the deceased has deposed that 10-15 years earlier, Appellants Narendra and Birendra had been punished for abduction of his wife. The possibility of false implication of the entire family therefore cannot be ruled out. Shanti Bai, PW-7, an independent witness named in the First Information Report has denied having witnessed the occurrence. The Appellants in their defence under Section 313 Cr.P.C had denied the allegations alleging false implication.

4. Learned Counsel for the State opposing the appeal submitted that Sonwati, PW-1 and Triveni, PW-2 are both reliable witnesses. Their evidence cannot be rejected merely because they are related to the deceased. Their evidence cannot be shut out completely and may only have to be more closely scrutinized.

The trial court has not found any discrepancy or contradiction of a nature in their evidence so as to doubt their being eyewitnesses. It is not uncommon that in nature of such assaults made in an open place, it is only the family members who come forth as witnesses and others not related to the family themselves prefer to stay away rather than getting involved in legal complications and fear of retribution by the accused. Appellant No.1-Narendra may have been armed with a sword, but it has come in the deposition of Sonwati, PW-1 and Triveni, PW-2 that all the Appellants were variously armed with sword and iron rod. They had obviously surrounded the deceased to ensure that he did not have any opportunity to escape during the assault. Common object is apparent from their coming together armed surrounding the deceased and then assaulting preceded by threats to kill him. The nature and number of injuries is sufficient to demonstrate that their common object was to kill the deceased.

5. We have heard Learned Counsel for the parties and examined the evidence on record also. The Appellants are all alleged to have come armed with sword and iron rods. They surrounded the deceased and then made the assault preceded by shouts to kill him. The fact that they all came armed together and surrounded the deceased before the assault mouthing their intention to kill him is sufficient indication of their common object to kill the deceased. There can hardly be direct evidence of common object. It has to be culled from all surrounding circumstances in the facts of a case. In the facts of the present case, common object is apparent. The defence that the deceased died due to the

head injury attributed to Appellant No.1-Narendra only and that there is no specific allegation of assault attributed to the others much less on any part of the body leaves us unimpressed. The number of incised wounds found on the person of the deceased is sufficient to indicate that the assault was made by more than one person.

6. In the facts of the present case, we are satisfied to hold that the assembly of six persons for reasons discussed hereinbefore was an unlawful assembly. Their common object was to kill the deceased. The liability is therefore vicarious and individual overt acts are not required to be proved as observed in (2012) 11 SCC 237 (Krishnappa v. State of Karnataka) as follows:-

“20. It is now well-settled law that the provisions of Section 149 IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.

“21. The factum of causing injury or not causing injury would not be relevant, where the accused is sought to be roped in with the aid of Section 149 IPC. The relevant question to be examined by the court is

whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not.”

7. The evidence of an eyewitness cannot be rejected only because they may be related and that despite the availability of independent witnesses, they had not been examined. More often than not, it is related witnesses who come forward to ensure that the guilty are put to trial. Independent witnesses, especially when the assault is in a public place prefer to stay away to avoid legal complications and the fear of retribution by the accused. If the witnesses are related, the Court will scrutinize their evidence closely to satisfy itself that they were speaking the truth. Sonvati, PW-1 is consistent in her deposition with the statements made by her the First Information Report. She specifically deposed that apart from Appellant No.1-Narendra, Appellant Ram Prasad and others were armed. At best, it may have excluded deceased/Appellant Lalji who needed a stick to walk according to the witness, but even he participated in surrounding the deceased followed by the assault. She has adequately explained that the Appellants had all surrounded the deceased and therefore, she could not see properly which of them assaulted in what manner and on which part of the body. She also deposed that the independent witnesses whom she named on witnessing the assault closed the doors of their house. This is considered perfectly natural by us for reasons discussed above. Triveni, PW-2, another eyewitness related to the deceased stated that Appellant No.1-Narendra and No.3-Ram Prasad both had sword in their hands and others had rods. The fact that it may not have

been mentioned in her statement under Section 161 Cr.P.C is not a material contradiction when we read the evidence of the two eye-witnesses together. Triveni, PW-2 is also named in the FIR itself.

8. That non examination of the independents witnesses named by Sonvati, PW-1 cannot weaken the otherwise credible evidence of Sonwati, PW-1 and Triveni, PW-2 also finds support from the observations in (2013) 12 SCC 539(Sheo Shankar Singh v. State of U.P.) observing as follows:-

“16. In fact, the trial court, as well as the High Court have specifically dealt with this very contention. The trial court, while considering the said submission, has noted that according to the investigating officer, when he approached those other witnesses, none of them were prepared to come and give evidence in the court and that they were not even prepared to disclose their names and that having regard to the background of the accused party who were notorious criminals, none of them were prepared to risk their life and give evidence in the court. The trial court has also noted that the crime committed by the appellants in shooting the deceased to death in the broad daylight was so gruesome, there was a fear complex set in the minds of the people around that place and, therefore, mere non-examination of the other independent witnesses in the absence of any lacuna in the evidences of Pws 1 and 3, cannot be held to be disastrous to the case of the prosecution. The said view was fully approved by the High Court and, in our considered opinion, there is no reason to take a different view than what has been held by the courts below.”

9. In view of the clear, convincing and reliable eye-witness account evidence of Sonvati, PW-1 and Triveni, PW-2, the fact that

Shanti Bai, PW-7 also referred to as an eye-witness in the First Information Report went hostile can hardly be of any help to the Appellants.

10. The memorandum and alleged recovery of weapons of assault does not inspire confidence. In any event it can at best be corroborative material only on which alone conviction cannot be founded. In view of the nature of the eye-witness account available from Sonvati, PW-1 and Triveni, PW-2, memorandum and seizure of the alleged weapons of assault is not considered very relevant and necessary for discussion.

11. Bhagwan Prasad, PW-4 proved Exhibit P-4, seizure of blood stained earth from the place of occurrence. Dr. P.C. Deshmukh, PW-9 who conducted postmortem also opined that the injuries had been caused by sharp cutting and hard blunt objects. Sonvati, PW-1 and Yogendra Mishra, PW-10 proved the inquest report Exhibit P-3. Dr. V.V.B. Rao, PW-11 who conducted M.L.C of the injured before his being deceased also opined that all the injuries had been caused by similar sharp cutting and hard blunt objects. He further opined that they could not have been caused by a single person.

12. V.K. Shukla, PW-13, the Investigating Officer proved Exhibits P-3 and Exhibit P-4. He also proved recording the statements of Sonvati, PW-1 and Triveni, PW-2 as deposed by them.

13. In the facts and circumstances of the case coupled with the entirety of the evidence, the lack of any defence urged under Section 313 Cr.P.C except a bold denial of any question, we find

no reason to interfere with the conviction and sentence of the Appellants.

14. The bail bonds of surviving Appellants – Narendra, Birendra, Uttam Kumar and Suresh Kumar are cancelled. They are directed to surrender forthwith and/or be taken into custody for serving out the remaining period of their sentences.

15. The appeal is dismissed.

ACTING CHIEF JUSTICE

JUDGE

Priya