

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.178 of 2017

Arising Out of PS. Case No. -106 Year- 2003 Thana -CHOUTARWA District-
WESTCHAMPARAN (BETTIAH)

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Sahid Mian, Son of Late Balijan Mian, Resident of Village - Pahadi Majharua, P.S.
Chautarwa, District - West Champaran.

.... Appellant

Versus

1. The State of Bihar.
2. Quamuddin Mian, Son of Late Habib Mian
3. Alaudin Mian, Son of Late Habib Mian
4. Noor Alam Mian, Son of Late Habib Mian
5. Hanif Mian, Son of Late Habib Mian
6. Sadre Alam Mian, Son of Late Habib Mian
7. Nabi Alam Mian Son of Late Habib Mian

All six are residents of Village - Pahadi Majhaua, P.S. - Chautarwa, District –
West Champaran.

.... Respondents

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Appearance :

For the Appellant : Mr. Bimlesh Kumar Pandey, Advocate

For the Respondents : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE VIKASH JAIN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

Date: 21-06-2017

The present appeal has been filed against the judgment dated
02.01.2017 passed by learned 1st Additional Sessions Judge, West
Champaran, Bagaha in Sessions Trial No. 205 of 2006, CIS No.
Sessions Case No. 2592 of 2015 by which, inter alia, the respondent
nos. 2 to 7 have been acquitted of the charges under Sections 302/149
and 307/149 of the Indian Penal Code.

The short facts of the prosecution case are that on 17.11.2003
the accused persons Mamun Mian, Bihari Sah and respondent nos. 2



to 7 came with a tractor and started ploughing the disputed plot, upon which the informant Md. Safique and Suja Alam came to the plot and prohibited the accused persons from ploughing the plot until the final order of the court. Scuffle took place when Raushan Ara arrived there to end the quarrel but accused Mamun Mian insisted on ploughing the plot. Bihari Sah ordered the accused persons to kill the informant upon which accused Mamun Mian ran to his house and came back with a gun and fired upon Suja Alam resulting in his instantaneous death. Even as the informant and Roshan Ara were fleeing away, accused Sadre Alam and Quamuiddin Mian assaulted Roshan Ara with lathi and Bihari Sah fired upon the informant injuring him below his left eye.

The learned trial Court held accused Mamun Mian guilty of committing the murder of Suja Alam and sentenced him to life imprisonment with a fine of Rs. 10,000/- and in default of payment of fine, further rigorous imprisonment of two years was awarded. He was also sentenced to three years rigorous imprisonment with a fine of Rs. 5000/- under Section 25 of the Arms Act and in default of payment of fine, simple imprisonment of nine months was awarded. The sentences were ordered to run concurrently.

As regards the respondent nos. 2 to 7, however, the trial court was of the view that criminal liability under Section 149 of the Indian



Penal Code could not be fastened upon them merely because they happened to be present at the place of occurrence. Respondent Nos. 2 to 7 were accordingly acquitted of the charges levelled against them. It is against this part of the judgment that the present appeal has been preferred.

Learned counsel for the appellant submits that the trial court has erred in acquitting the respondent nos. 2 to 7 and they ought to have been convicted under Sections 302/149 and 307/149 of the Indian Penal Code as charged. It is contended that the learned trial court has failed to appreciate the evidences of the prosecution witnesses in their proper perspective and has also not taken note of the evidences of PW 7 and PW 1 who were eye-witnesses and had stated the names of respondent nos. 2 to 7, out of whom respondent nos. 2 and 6 are said to have assaulted PW 1.

Having heard learned counsel for the appellant as well as learned Additional Public Prosecutor appearing on behalf of the State and on perusal of the impugned judgment passed by the trial Court, I do not find any merit in the appeal.

From the evidences on record it would appear that on the order being given by accused Bihari Sah to kill the informant, accused Mamun Mian ran towards his house and came with a gun and thereupon fired upon Suja Alam killing him instantly. It appears that



this fact is borne out from the evidences of PW 1, PW 2, PW 3, PW 4, PW 5 and PW 7. This clearly shows that the other accused persons did not have any common object to commit the murder of Suja Alam and it was accused Mamun Mian alone who ran to his house to fetch a gun and fired upon Suja Alam. We find no infirmity in the finding of the trial court to this effect.

As regards the role of respondent nos. 2 to 7, none of the prosecution witnesses has attributed any overt act on their part, save and except PW 7 Md. Safique, who is the informant of the case and PW 1 Roshan Ara, who have stated about respondent nos. 2 and 6 having assaulted PW 1 by lathi and Bihari Sah having fired upon the informant. PW 1 has stated that she went to the hospital where she was treated. They have also stated that they have been treated in the hospital. However, the other witnesses have not stated anything regarding the role of respondent nos. 2 to 7 and further no injury report of PW 1 Raushan Ara has been brought on record. I therefore find no error in the inference drawn by the trial court that the respondent nos. 2 to 7 were merely present at the place of occurrence and hence, cannot be held criminally liable under Section 149 of the IPC, in absence of evidence that the accused persons including respondent nos. 2 to 7 had acted with common object. From the facts of the present case it is clear that the incriminating act was in excess



of and beyond the common object of the members and hence, the respondent nos. 2 to 7 cannot be held constructively liable for it.

In my view, for the provisions of Section 149 of the Indian Penal Code to be attracted, it must be shown that the incriminating act was done to accomplish the common object of an unlawful assembly and it must be with the knowledge of the other members as one likely to be committed in prosecution of the common object. In the present case, upon the order given by the accused Bihari Sah, accused Mamun Mian ran towards his house to fetch the gun and kill Suja Alam. Similarly, it was alleged that PW 7 Md. Safique was fired upon by Bihari Sah and and PW 1 Raushan Ara was assaulted by Quamudin Mian and Sadre Alam as they were fleeing away. This again demonstrates the lack of common object and consequently, it cannot be accepted that such acts were done to accomplish the common object or that it was within the knowledge of the other members that the act was likely to be committed in prosecution of the common object. It is well known that mere presence in an assembly cannot render a person liable unless there was common object and the incriminating act was actuated by that common object.

In view of the aforesaid facts, duly discussed by the learned trial Court, I am of the considered opinion that the view, taken by the learned trial Court, is a plausible one and does not require any



interference by me in appeal.

This appeal is, therefore, not admitted and shall accordingly stand dismissed.

(Vikash Jain, J)

Dr. Ravi Ranjan, J I agree

(Dr. Ravi Ranjan, J)

B.T/-

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