

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.639 of 2019

Arising Out of PS. Case No.-32 Year-1998 Thana- BELDOUR District- Khagaria

KAILASH RAM @ KAILASH DAS Son of Tejo Ram Resident of Village -
Ram Nagar, P.S. Beldour, District - Khagaria

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Sanchay Srivastava, Advocate Mr. Siddhartha Prasad, Advocate Mr. Om Prakash, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 20-09-2023

The present criminal appeal has been preferred against the judgment of conviction dated 01.04.2019 and the order of sentence dated 02.04.2019, passed by Sri Narayan Prasad Singh, F.T.C.-1st, Khagaria in Sessions Trial No. 289 of 2001/Trial No. 290 of 2018, Net No. (SC) 1943 of 2013, arising out of Beldour P.S. case No. 32 of 1998, whereby and whereunder the appellant has been convicted for the offences under Section 302/149 of the Indian Penal Code (hereinafter referred to as “ the I.P.C.”) and Section 27 of the Arms Act, and sentenced to undergo life imprisonment and to pay fine of Rs. 10,000/- under Section



302/149 of I.P.C. and in default of payment of fine, the appellant was further directed to undergo simple imprisonment for three months. The appellant has also been sentenced to undergo rigorous imprisonment for five years and a fine of Rs. 5,000/- under Section 27 of the Arms Act and in default of payment of fine, the appellant was further directed to undergo simple imprisonment for one month. All the sentences were directed to run concurrently.

2. The prosecution case, as per the fardbeyan of the informant Suresh Singh made before the Officer-in-charge of Beldour Police Station on 21.05.1998, at about 7.30 a.m. at Maheshkhunt-Saharsa Road in presence of the villagers, is that informant along with his son Sunil Singh, brother Sudhakar Singh, Sudhir Singh, Jitendra Singh, Vijay Singh, Jageshwar Singh, Tejnarayan Singh, Ranjeet Singh and Ramvriksha Singh was sitting on the chair in front of his house situated near Bazar Samiti when accused persons, fifteen in number, named in the F.I.R, including the appellant armed with rifle, gun, pistol, musket and other arms came there and surrounded them. The accused persons started indiscriminate firing as a result of which Ramvriksha Singh, Sudhakar Singh and one unknown died at the spot. The accused persons thereafter loaded the dead bodies on a



tractor and went towards west Telihar Gawas. When the accused persons went away, the informant saw Jitendra Singh lying in injured condition in a maize field behind Samiti house and was brought to the Sadar Hospital, Khagaria for treatment. The informant further stated that about 25 rounds shot were fired and the occurrence as alleged took place due to old enmity between deceased Sudhakar Singh and accused Kishori Chaudhary.

3. On the basis of fardbeyan of the informant, Beldour P.S. case No. 32/1998 was registered under Sections 302, 201/34 of the I.P.C. and Section 27 of the Arms Act and investigation was taken up. On completion of the investigation, a charge-sheet was submitted and accordingly cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed under Sections 302/149 of the I.P.C. and Section 27 of the Arms Act to which the appellant pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether twelve witnesses, namely, PW1 Shambhu Singh, PW2 Sudhir Prasad Singh, PW3 Vijay Kumar, PW4 Sunil Kumar, PW5 Jai Krishna Singh, PW6 Ranjeet Singh, PW7 Dr. Sajjan Kumar Pansari (doctor), PW8 Dr. Purushottam Kumar Sinha(doctor), PW9 Sanoj Kumar, PW10 Sunita Devi, PW 11 Suresh Singh



(informant), PW12 Vedbhushan Prasad Singh and PW13 Vinay Kumar Singh. Prosecution has also produced some documents as exhibits viz. Ext. 1 writing and signature of PW7 (doctor) on post-mortem report of Jitendra Singh, Ext. 1/a writing and signature on post-mortem report of Jainarayan Mahto @ Laddu Mahto, Ext. 1/b writing and signature of PW8 on the post-mortem report of Sudhakar Singh, Ext. 1/c writing and signature of PW8 on post mortem report of deceased Ramvriksha Singh, Ext. 2 signature on post-mortem report of the doctor on the dead body of Sudhakar Singh and signature of informant on fardbeyan, Ext. 2/a signature of Dr. S.K. Gupta on the post-mortem report of deceased Sudhakar Singh, Ext. 3 signature of PW 12 on seizure list. The defence has produced two witnesses in support of its case viz. DW1 Kailash Ram and DW 2 Ramrakshi Chaudhary. The defence has also exhibited certain documents as Ext. A certified copy of the deposition of Jai Krishna Singh dated 25.1.2012 deposited in the court of Additional Sessions Judge-III, Khagaria in Sessions Case No. 407/2010, Ext. B certified copy of deposition of Vijay Singh, deposited in Sessions Case No. 407/2010 on 16.2.2012, Ext. C certified copy of Parcha regarding homestead land and Ext. D Parwana in the name of Ramcharitra Mandal. Thereafter, the statement of the appellant was recorded under section 313 of the



Cr.P.C. After conclusion of the trial, the learned Trial Court convicted and sentenced the appellant in the manner indicated above.

5. The learned Counsel for the appellant submitted that the judgment of conviction and the order of sentence suffered from several infirmities that had been overlooked by the learned trial Court, rendering the impugned judgment unsustainable in the eyes of the law. The learned counsel argued that there are material discrepancies in the testimonies of the eyewitnesses amongst themselves. Furthermore, they pointed out that the place of occurrence, as well as the manner of occurrence, is highly doubtful. Despite the prosecution's assertion of indiscriminate firing, no bullet marks were found on the walls of the house. More importantly, none of the witnesses who were present inside suffered any injury. The learned counsel has demonstrated that the appellant did not share any common object to commit the murder of the deceased individuals and argued that the appellant was implicated in this case primarily due to a land dispute. Additionally, they submitted that the prosecution deliberately refrained from examining the material and independent witnesses, despite the presence of many such witnesses at the place of occurrence. Consequently, the learned counsel submitted that the



findings of the learned trial Court were flawed in terms of both the law and the facts, bereft of sound legal reasoning, devoid of merit, and consequently, the judgment of conviction should be set aside.

6. The learned A.P.P. for the State, on the other hand, has submitted that the judgment of conviction and order of sentence under challenge require no interference, as the prosecution has been able to prove the case beyond all reasonable doubts. It is observed that the testimony of the witnesses has been consistent throughout, thereby strengthening the prosecution's case, and minor inconsistencies in the witnesses' testimonies do not undermine the entirety of their evidence. It has been submitted that there is no doubt regarding the place of occurrence, as the Investigating Officer recovered incriminating materials from there. The learned counsel contended that merely because Nageshwar Singh was not examined by the prosecution, a Criminal Court is not to lean to draw the adverse inference that if he was examined, he would have given a contrary version. Moreover, if the accused was under impression that his evidence would help the defence, it was open to the accused to examine him as defence witness. Furthermore, the counsel for the State submitted that the prosecution has established its case through concrete evidence that all accused persons including the appellant



had the common object of killing the deceased persons. As such, the counsel contended that the guilt of the appellant has been satisfactorily proven by the evidence adduced during the course of the trial, and, therefore, there is no infirmity in the judgment of conviction and order of sentence rendered by the Trial Court.

7. After hearing the arguments advanced by the learned counsels appearing for the parties and upon thorough examination of the entire material available on the record, the following issues arise for consideration in the present appeal:

(I) Whether the prosecution has established the place of occurrence beyond reasonable doubt?

(II) Whether there are any material discrepancies in the testimonies of the prosecution witnesses, namely PW 1, PW 2, PW 3, and PW 5, which undermine the credibility or reliability of their evidence?

(III) Whether the prosecution has successfully established that the common object of the unlawful assembly was to cause the death of the deceased persons, and whether the appellant, as a member of the unlawful assembly, shared this common object?



8. With reference to the first issue as formulated above, the learned counsel for the appellant has drawn this Court's attention to the testimony of the eyewitnesses who have stated in their depositions that the accused persons engaged in indiscriminate firing. Strangely, however, neither the individuals inside the house were injured, nor were any bullet marks found on the walls. To address this peculiar aspect, it is crucial to closely examine the testimonies of PW 2 and PW 3. PW 2, in his deposition, indicated that approximately 20-25 rounds of bullets were fired from three different directions by the accused persons. Remarkably, not all of these bullets struck the thatched house constructed from bamboo sticks. Additionally, he emphasized that none of the persons who were concealed inside the house suffered injuries as a result of the gunfire. Similarly, PW 3, in his deposition, asserted that no bullets penetrated the interior of the house, and the gunfire originated exclusively from the eastern side. Therefore, regarding the absence of injuries sustained by individuals seeking shelter inside the house, it becomes evident that since no bullets penetrated the house, there is no basis for considering injuries to those who sought refuge within. Furthermore, upon examining the testimonies of prosecution witnesses, including PW 1 to PW 6, it becomes evident that they



consistently stated that three individuals, Sudhakar Singh, Ramvriksha Singh, and Jainarayan Mahto, who were seated outside the Bazar Samiti house, were killed in the indiscriminate firing carried out by the accused persons, including the appellant. On the other hand, the fourth deceased, Jitendra Singh, who was also seated outside the house, fled towards the maize field after being shot, where his body was later discovered drenched in blood. Since, the Investigating Officer of the case had died, he could not be examined. However, a careful review of the seizure list reveals that the Investigating Officer found blood outside the house in the Bazar Samiti and also recovered four recently fired cartridges. The fact of this recovery is corroborated by PW 12. In the case of ***Balwan v. State of Haryana, reported in (2014) 13 SCC 560*** the Hon'ble Apex Court in paragraph 18 of the judgment has observed that “...*The investigation officer, PW 18, Sub-Inspector Balwan Singh has seized bloodstained earth from the occurrence place and that clinches the situs of the crime. The contention of the appellants that the occurrence had not taken place in the house of Bani Singh is devoid of merit...*” Moreover, the post-mortem reports of all the deceased individuals indicate that the injuries found on their bodies were consistent with firearm wounds.



Thus, considering the facts of this case as indicated above, we are of the considered opinion that there remains no doubt as regards to the place of occurrence. Accordingly, the issue no. I is decided in the *affirmative*.

9. With the regard to second issue as formulated above, we have given our anxious consideration to the testimonies of eye witnesses, namely, PW 1, PW2, PW3 and PW5. PW 1, during his deposition, estimated that roughly 250-300 rounds of bullets were discharged during the incident. In contrast, PW 2, in his deposition, claimed that approximately 20-25 rounds of bullets were fired by the accused individuals from three distinct directions. Conversely, PW 3, in his deposition, was unable to provide an exact count of the rounds fired by the perpetrators but did emphasize that the bullets were originating solely from the east direction. On the other hand, upon careful review of the *fardbeyan*, it appears that approximately 25 rounds of bullets were fired by the accused individuals. While there are variances in the eyewitness accounts regarding the number of rounds, it is crucial to note that all testimonies consistently affirm the occurrence of gunfire. Witnesses may sometimes tend to overstate or embellish their accounts. As stated by the Hon'ble Apex Court in the case of *Subal Ghorai v. State of W.B., (2013)*



4 SCC 607 that “...Experience shows that witnesses do exaggerate and this Court has taken note of such exaggeration made by the witnesses and held that on account of embellishments, evidence of witnesses need not be discarded if it is corroborated on material aspects by the other evidence on record. Therefore, the fact that some witnesses have not referred to certain accused in their police statements but have attributed role to them in the court, does not lead us to conclude, in the peculiar facts of this case, that the said witnesses are not credible witnesses.”

In addition to these disparities, we have taken note of the variations in the witnesses’ accounts of the timeline of incident. PW 1, in his deposition, stated that when the firing began, he fled in fear towards the south and sought refuge beneath a *chowki* in a shop belonging to Pagal Shah. He remained hidden there for an hour until the accused individuals had departed. In contrast, PW 2, in his deposition, stated that it took approximately half an hour for the accused individuals to retreat, and within 15 minutes after their departure, those inside the house, including PW 2, emerged. PW 5, in his deposition, stated that when the firing began, he sought refuge inside the house. He stayed indoors for approximately 15 minutes during the incident and exited the



house alongside PW 1, PW 2, PW 3, PW 4, PW 9, PW 11, and PW 12. These varying accounts of the timeline surrounding the incident do not necessarily indicate inaccuracies but rather highlight the subjective nature of human perception and memory, particularly in high-stress situations. As such, these discrepancies in the timing of the occurrence should be understood in the context of the witnesses' individual experiences and psychological responses to the event. Furthermore, it is worth noting that the testimony of these witnesses was recorded with a significant time gap of approximately 10 years. Also, the presence of witnesses at the place of occurrence (P.O) during the incident appears to be quite natural, as their residences were situated nearby. Therefore, these minor discrepancies or variations in the details of an incident should not undermine the prosecution's case unless they directly impact its central elements. It is crucial to recognize that isolated inconsistencies in a witness's statement, or even minor discrepancies, should not automatically lead to the rejection of their entire testimony. At this juncture, we find it relevant to refer to the judgment of Hon'ble Supreme Court in the case of *State of Rajasthan v. Kalki*, reported in (1981) 2 SCC 752, wherein in paragraph 8 it was held as under:



“8...In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person...”

Therefore, considering the factual context of this case and the legal principles discussed above, this Court is of the opinion that there are no significant material discrepancies in the testimonies of PW 1, PW 2, PW 3, and PW 5. Accordingly, the issue no. II is decided in the ***negative***.

10. Before we advert ourselves to the appreciation of the evidence in relation to the third issue, this Court deems it appropriate to briefly state the law as settled by the Hon'ble Supreme Court with regard to the constructive or vicarious liability on the members of the unlawful assembly. The Hon'ble Supreme Court, in ***Daya Kishan v. State of Haryana***, reported in ***(2010) 5 SCC 81***, made observations in paragraphs 26 and 27, which are as follows:

“26. Section 149 IPC creates a constructive or vicarious liability on the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. The basis of the constructive guilt under Section 149 IPC is mere membership of the unlawful assembly with the requisite common object or



knowledge. This section makes a member of the unlawful assembly responsible as a member for the acts of each and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149.

27. There are two essential ingredients of Section 149 viz. (1) commission of an offence by any member of an unlawful assembly, and (2) such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. Once the court finds that these two ingredients are fulfilled, every person, who at the time of committing that offence was a member of the assembly has to be held guilty of that offence. After such a finding, it would not be open to the court to see as to who actually did the offensive act nor would it be open to the court to require the prosecution to prove which of the members did which of the offensive acts. Whenever a court convicts any person of an offence with the aid of Section 149, a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but that in pursuance of such common object the offence was committed. There is no manner of doubt that before recording the conviction under Section 149 IPC, the essential ingredients of Section 149 IPC must be established.”

In light of the law settled by the Hon’ble Supreme Court,

we shall now appreciate the evidence available on record. The



learned counsel for the appellant demonstrated that the appellant has not shared the common object, if any, to commit the murder of the deceased persons. Further, it is submitted that due to the land dispute, the appellant was roped in through a general and omnibus allegation of firing as most of the eyewitnesses specifically stated that it was Kishori Chaudhary and Mangal Singh as the ones who perpetrated the firing upon the deceased individuals. As for the appellant, none of the witnesses mentioned whom the appellant assaulted or with what weapon. As evident from the principle stated above, a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of common object but also the object was unlawful. Therefore, the Court requires some materials to form an opinion that the accused shared common object. To discern the common object of an unlawful assembly at a specific stage, one must consider various factors 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. Upon scrutinizing the testimonies of the prosecution witnesses, who are the eyewitnesses in this case, namely PW 1 to PW 6, and reviewing



the *fardbeyan*, it becomes evident that these witnesses have explicitly stated in their depositions that they saw the appellant, along with other named accused individuals coming from different directions, armed with weapons like guns, rifles, and pistols, arrive at the Bazar Samiti and engage in indiscriminate firing upon the deceased individuals who were sitting outside the house. When the accused individuals initiated the firing, these witnesses, in a state of panic, sought refuge in a safe place. They also stated in their depositions that from their respective places of hiding, they saw the accused individuals forcefully bringing Nageshwar Singh's tractor at gunpoint. Subsequently, they witnessed the accused loading the three dead bodies onto the tractor and heading towards the northwest direction (riverside). Eyewitnesses PW 1 to PW 6 consistently stated that they identified the appellant as being present in the assembly armed with a weapon and engaging in indiscriminate firing. However, the mere failure of these witnesses to specify the nature of the weapon used by the appellant and the individuals targeted by his gunfire does not absolve him, especially when his participation in the indiscriminate firing is not disputed. The fact that all the accused persons came together, armed with deadly weapons, and engaged in indiscriminate firing clearly demonstrates that each



accused shared a common object. The Hon'ble Supreme Court in *Yunis v. State of M.P. (2003) 1 SCC 425* has held:

“9. ... Even if no overt act is imputed to a particular person, when the charge is under Section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction. The fact that [the accused] was a member of the unlawful assembly is sufficient to hold him guilty.”

In terms of motive, compelling evidence emerges from eyewitnesses PW 1 and PW 4, who attest to the longstanding enmity between co-accused Kishori Chaudhary and Mangal Singh with the deceased Sudhakar Singh. Additionally, PW 2 and PW 3 have testified that Kishori Chaudhary had persistently demanded a 1/4th share in the Bazar Samiti rent and a *rangdari tax* amounting to Rs. 25,000-50,000, a demand that was consistently denied. Further, it is apparent from the testimony of PW 2 and PW 3, both of whom confirmed that it was Kishori Chaudhary who initiated the firing, with the other accused individuals subsequently engaging in indiscriminate firing. PW 4 and PW 11 have also stated in their depositions that co-accused Kishori Chaudhary and Mangal Chaudhary were responsible for shooting at Sudhakar Singh and the other deceased individuals. Therefore, the arrival of the appellant with co-accused Kishori Chaudhary and Mangal Singh, along with other armed accused



persons, early in the morning at approximately 5:45 a.m., armed with deadly weapons such as guns, rifles, pistols, etc., and subsequently resorting to indiscriminate firing, strongly implies that there was some sort of prior concert, prior to arriving at the scene of the crime regarding preparedness to cause death. Moreover, the multiple firearm injuries sustained by the four deceased individuals, as documented in the post-mortem reports, overwhelmingly substantiate the assertion that the accused individuals shared a common object to cause the deaths of these victims.

Thus, in light of the factual matrix of this case and considering the established legal position as discussed above, this Court is of the view that the prosecution has succeeded in establishing that the common object of the unlawful assembly was to kill the deceased individuals, and the appellant shared the same objective. Accordingly, the issue no. III is decided in the *affirmative*.

11. In view of the findings arrived at on the issues formulated hereinabove, we are of the considered opinion that the prosecution has successfully proven the charges beyond reasonable doubt against the appellant.



12. Consequently, the appeal is dismissed. The judgment of conviction dated 01.04.2019 and the order of sentence dated 02.04.2019, passed by Sri Narayan Prasad Singh, F.T.C.-1st, Khagaria in Sessions Trial No. 289 of 2001/Trial No. 290 of 2018, Net No. (SC) 1943 of 2013, arising out of Beldour P.S. case No. 32 of 1998, stand affirmed.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

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