

IN THE HIGH COUR OF MADHY PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE ANIL VERMA

CRIMINAL APPEAL No. 1261 of 2012

BETWEEN:-

**1. DEEPAK @ DEEPU S/O JAGDISHCHANDRA
PARIHAR, AGED ABOUT 26 YEARS, R/O:
DHANCHA BHAWAN, DEWAS (MADHYA
PRADESH)**

**2. NARENDRA S/O JAGDISHCHANDRA
PARIHAR, AGED ABOUT 34 YEARS, R/O:
DHANCHA BHAWAN, DEWAS (MADHYA
PRADESH)**

**3. HARISH S/O JAGDISHCHANDRA
PARIHAR, AGED ABOUT 32 YEARS, R/O:
DHANCHA BHAWAN, DEWAS (MADHYA
PRADESH)**

**4. JITENDRA S/O JAGDISHCHANDRA
PARIHAR, AGED ABOUT 29 YEARS, R/O:
DHANCHA BHAWAN, DEWAS (MADHYA
PRADESH)**

**5. SULTAN S/O MAKSUD KHAN, AGED
ABOUT 22 YEARS, R/O: DHANCHA BHAWAN,
DEWAS (MADHYA PRADESH)**

**6. KAPIL BERAGI S/O NANDKISHORE
BERAGI, AGED ABOUT 21 YEARS, R/O:
DHANCHA BHAWAN, DEWAS (MADHYA
PRADESH)**

**7. AMIT SINGH S/O BRIJKISHORE SINGH,
AGED ABOUT 20 YEARS, R/O: DHANCHA**

BHAWAN, DEWAS (MADHYA PRADESH)

.....APPELLANTS

(SHRI LAXMI NARAYAN SONI - SENIOR ADVOCATE ALONGWITH SHRI AKHILESH KUMAR SAXENA - ADVOCATE FOR APPELLANT NOS.3, 2, 5, 6 AND 7 AND SHRI RISHABH UPADHYAY - ADVOCATE FOR APPELLANT NO.1.)

AND

**THE STATE OF MADHYA PRADESH GOVT.
THROUGH POLICE STATION INDUSTRIAL
AREA, DIST. DEWAS (MADHYA PRADESH)**

.....RESPONDENT

(MR. AMIT RAWAL - GOVERNMENT ADVOCATE)

**Reserved on : 07/02/2024
Pronounced on : 16/02/2024
Whether approved for reporting : YES**

This appeal having been heard and reserved for orders, coming on for pronouncement this day, the Justice Anil Verma pronounced the following:

J U D G M E N T

This criminal appeal preferred by the appellants under Section 374 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') against the impugned judgment of conviction and sentenced dated 18.10.2012 passed by the Special Judge under SC/ST (under Prevention of Atrocities) Act, Dewas in Special Sessions Trial No.19/2010, whereby the appellants have been convicted and sentenced as under:

Offence u/S	Sentence Awarded	Fine Amount	Imprisonment in lieu of fine
302/149(1) of IPC	Life Imprisonment	1000/-	06 months

302/149(1) of IPC	Life Imprisonment	1000/-	06 months
302/149 (1) of IPC	Life Imprisonment	1000/-	06 months
25/27 of Arms Act	3 years R.I.	500/-	3 months

2. Brief facts of the case are that on 02.11.2009 complainant Virendra Chouhan (PW-14) lodged an FIR (Ex.P-44) at P.S. Industrial Area, Dewas by stating that on the same day at about 4:00 PM, a social function regarding the Nukta of grand mother of appellant No.1 Deepak was over and tents were being uninstalled, at that time, Tony @ Naresh and Minchu @ Pintu on a motorcycle of Ishwar Bamniya came there and constituted an unlawful assembly and they started abusing with the Deepak. When the complainant reached there, at that time, co-accused persons also came there. Thereafter, appellant No.1 Deepak fired upon the Tony by pistol, due to which he sustained injury on his forehead and fell down on the spot, then appellant No.2 Narendra and 3 Harish by means of sword and appellant No.4 Jitendra by means of sabbal started beating the Minchu, due to which Minchu sustained fatal injuries over his head. After hearing hue and cry, other co-accused persons came there armed with knife, baseball bat, wooden stick and sabbal and started beating the Minchu and Ishwar. Deepak again fired upon the Minchu by *katta*. When Ishwar tried to flee away from the spot, he was brutally beaten by the appellants. Whole incident witnessed by Asha, Sunita, Motilal and other persons. Victim Tony, Minchu and Ishwar brought to the hospital, but during the treatment all the three injured persons succumbed.

3. The prosecution case in further is that Investigating Officer B.S.

Kushwah (PW-20) prepared a dead body / shav Panchnama of the deceased persons. Their postmortem was conducted by Dr. A.K. Lanjewar (PW-16) and Dr. A. Shrivastav (PW-5) and as per medical opinion, death of all the three deceased was homicidal in nature. Dr. R.C. Verma conducted the MLC of victim Ishwar, who had been died later on. During the investigation, Investigating Officer went to the spot and collected some pellets, blood stained and simple soil from the spot. A Maruti Omni Van and a Hero Honda motorcycle have also been recovered from the spot. Investigating Officer B.S. Kushwah (PW-20) arrested the accused persons and on the basis of their discovery statement, knife, base ball bat, *desi katta* and sword have been recovered from the possession of appellants. Prior to filing of the charge-sheet, prosecution sanction had been obtained by the District Magistrate, Dewas regarding the prosecution under Arms Act in respect of appellant No.1 Deepak and a Caste Certificate had also been obtained regarding the deceased Ishwar. All the seized articles were sent to the FSL, Sagar for its chemical examination.

4. After completion of investigation, charge-sheet was filed before the JMFC Dewas, who has committed the case to the Special Judge under SC/ST (Prevention of Atrocities) Act. Prosecution has examined as many as 20 witnesses, while defence has examined 9 witnesses. The trial Court after scrutinizing the entire evidence available on record, acquitted the co-accused Sonu @ Ghanshyam and Prashant Choudhary from all the charges and convicted and sentence the appellants as mentioned herein above. Being aggrieved by the impugned judgment, the appellants have preferred this appeal.

5. Learned counsel for the appellants contended that the impugned judgment passed by the trial Court is neither legal nor proper nor correct. The trial Court was wrong in believing the prosecution witnesses and discarding the defence version and drawing unwarranted inferences. From perusal postmortem report of the deceased, it is clear that they did not sustain any gun shot injury. Prosecution has failed to prove the guilt of the appellants beyond reasonable doubt. The material prosecution witnesses had been turned hostile and have not supported the case of the prosecution. Hence, it is prayed that the appeals be allowed and the appellants be acquitted from all the charges by setting aside the impugned judgment passed by the trial Court.

6. *Per contra*, learned counsel for the respondent / State opposes the prayer and prays for dismissal of this appeal by submitting that the trial Court on the basis of cogent evidence available on record, came to the conclusion that the deceased persons were murdered by the appellants. The trial Court has not committed any error in holding that the appellants are guilty for the aforesaid offence, therefore, present appeal deserves to be dismissed.

7. In the present case, firstly it is to be considered that as to whether the death of deceased Tony, Minchu and Ishwar were homicidal in nature or not. In this connection, the statement of Dr. A. K. Lanjewar (PW-16) and Dr. A. Shrivastav (PW-5) are important, who have conducted the autopsy of deceased persons. Dr. R.C. Verma (PW-4) conducted the MLC of victim Ishwar, who has been died later on.... Eight wounds were all over the body of the deceased including the vital parts like ear,

abdomen, thigh and head etc, and injuries were caused by sharp edged weapon and by hard and blunt objects. Injuries No.1 to 6 were dangerous to life. Dr. A. Shrivastav (PW-5) conducted the autopsy of deceased Tony @ Naresh, he found five injuries during the external examination. During the internal examination he found that frontal bone, nasal bone and orbital bone were fractured and cause of death was shock due to the injury on the brain and due to the cut on trachea and hemorrhagic. He has given autopsy report (Ex.P-3) during the autopsy of deceased Minchu @ Vijay, he found 13 external injuries all over the body and during the internal examination occipital bone was found fractured and opined that mode of death was shock due to the injuries over the head and ruptured of the liver and hemorrhagic.

8. Dr. A. K. Lanjewar (PW-16) conducted the autopsy of the deceased Ishwar and opined that death was caused due to the multiple injuries on the vital parts, which was caused by hard, sharp and blunt objects and autopsy report is (Ex.P-49). All three doctors opined injuries found on the dead body of all three deceased persons were sufficient in -ordinary course of nature to cause death. There is no evidence available on record, which shows that the aforesaid injuries sustained by the deceased persons were caused by themselves or sustained in any accident. Thus, there is no reason to disbelieve the cogent findings given by Dr. A.K. Lanjewar, Dr. A. Shrivastava and Dr. R.C. Verma that death of all the three deceased are homicidal in nature.

9. Besides from the medical evidence Sunita Shinde (PW-1), who happens to be sister of deceased Ishwar categorically deposed in her

statement that at the time of incident she was going to her home along with her sister Asha, at that time accused Deepu @ Deepak fired upon Tony by using a *Katta*, therefore, due to which Tony fell down on spot, then accused appellant Nos.2 Narendra, No.3 Harish and No.4 Jitendra attacked upon his neck by means of sword, Narendra and Jitu caught hold the Minchu from the back side and Hari gave blow of sword over the neck of Minchu. Then all the accused persons have beaten the Minchu. When she along with Asha tried to ask for help on telephone, accused Sultan and Jitu caught hold them and prevented them from calling anybody. At the same time, Narendra hit the Ishwar over his head by Sabbal and Amit gave a blow of knife on the Ishwar. Jitu also stabbed gupti on the abdomen of Ishwar. Tony and Minchu died on the spot and Ishwar died during the treatment in the hospital.

10. Asha (PW-3), who is another eye witness, also corroborated the statement of Sunita (PW-1) by stating that in front of them, all the three accused persons brutally beaten the deceased Tony, Minchu and Ishwar by means of *Katta*, knife, sword, stick and sabbal, due to which Minchu and Tony died on the spot and Ishwar died six days after the incident during the treatment in hospital.

11. Makbool (PW-7), Virendra Chouhan (PW-14) and Ajay Tomar (PW-18) are the eye witnesses have turned hostile and have not supported the case of prosecution, but Sitabai (PW-8), who is the mother of Minchu deposed that in front of her Deepu fired upon the deceased and all the accused persons started beating him by means of sword, sabbal and knife, at that time, Asha and Sunita were also present there.

12. Learned counsel for the appellants contended that witnesses Sunita, Asha and Sitabai are the family members of deceased Ishwar and Minchu. They being the interested witnesses, possibility of false implication cannot be ruled out. In support of his contention, learned counsel for the appellants placed reliance upon the judgment of Allahabad High Court in the case of **Suman and Ors. Vs. State of U.P. 2000 Cri. L. J. 528, Kali Ram Vs. State of Himachal Pradesh 1973 AIR 2773** and **Parshuram Pandey and Ors. Vs. State of Bihar (2004) 4 Crimes 248.**

13. Although Sunita (PW-1), Asha (PW-3) are the real sisters of deceased Ishwar and Sita Bai (PW-8) is the mother of the deceased Minchu and admittedly they are the close relatives of both the deceased. Hon'ble the Apex Court in the case of **Jodhan Vs. State of Madhya Pradesh (2015) 11 SCC 52** has held as under with regard to appreciation of evidence of interested and inimical witness thus:

“40. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close (relative) would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.”

14. In the case of **Hari Obula Reddy Vs. State of A.P. (1981) 3 SCC**

675, the apex Court has held that *the Court has ruled that evidence of interested witness per se cannot be said to be unreliable evidence. Partisanship by itself is not a valid ground for discrediting or discarding sole testimony.*

15. On the basis of aforesaid law laid down by Hon'ble the Apex Court to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought to be rejected. But in the instant case, all the three eye witnesses, who have deposed against the accused persons are the close relatives, but their presence on the scene of occurrence cannot be doubted, their version is consistent and nothing has been elicited in the cross-examination to shake their testimony. However, there are some minor or trivial discrepancies, but they really do not create a dent in their evidence warranting to treat the same as improbable or untrustworthy. Therefore, the trial Court has rightly relied upon the testimony of all the three witnesses because they have no motive to falsely implicate the accused persons in the instant case and their statement is well corroborated by the medical evidence in regard to the material particulars.

16. In the case of **State of A.P. vs. Pullugummi Kasi Reddy Krishna Reddy** reported in **(2018) 7 SCC 623**, the Apex Court has held as under:

“Discrepancies which do not shake the credibility of the witnesses and the basic version of the prosecution case to be discarded, If the evidence of the witnesses as a whole contains the ring of truth, the evidence cannot be doubted.”

17. Learned counsel for the appellants contended that as per the prosecution story, accused Deepu fired upon Tony by *Katta*, but Tony did not sustain any gun shot injury, therefore, the case of prosecution is doubtful, but from the evidence of Inspector B.S. Kushwah (PW-20), it is proved that he has recovered a *desi katta* from the possession of accused Deepu @ Deepak through seizure memo (Ex.P-26). Inspector B.S. Kushwah also prepared a spot map and recovered used cartridge of 315 bore from the spot *vide* seizure memo (Ex.P-27), therefore, it appears that although the accused Deepu tried to fire upon the deceased Tony, but anyhow Tony escaped himself from gun shot, therefore, used cartridge was recovered from the spot and not in the body of the deceased Tony.

18. It is voluntarily contended that accused persons have no previous enmity with all the three deceased persons and there is no motive to kill them. Incident had taken all of a sudden and in a whisper of moment, therefore, prosecution has failed to prove that accused persons had constituted any unlawful assembly, but in the instant case, it is proved that all the accused persons were armed with deadly weapons like *Katta*, sword, knife and *sabbal* and reached on the spot together and started beating the deceased persons, therefore, their conduct and behavior are sufficient to prove that they have constituted an unlawful assembly and they have common object to kill the deceased persons, therefore, their conviction with the aid of Section 149 of IPC is not justified.

19. Co-ordinate bench of this Court in the case of **Rambabu Vs. State of M.P. ILR 2022 M.P. 1234 (DB)** held that *it is not necessary that each and every member of unlawful assembly must play some overt act in*

commission of offence. In order to find out whatever assembly was unlawful or not, the role played by an individual coupled with language used, arms carried by members and their behavior prior to, during and after the incident along with surrounding circumstances, plays an important role. An assembly which was not unlawful at the very inception, may become unlawful at the later stage.

20. We need not expand on the either side decisions, because the basic principles remains that the important ingredient of unlawful assembly or the number of persons forming it *i.e.* five and their common object. Common object of the persons composing that the assembly could be formed on the spur of moment and does not require prior deliberations. The course of conduct adopted by the member of such assembly, their behavior before, during, and after the incident and the armed carried by them, they are a few basic and relevant factors to determine the common object. In the instant case, the number of accused persons are more than five they reached on the spot armed with deadly weapons. They have previous enmity with the deceased and Deepu. They have attacked the deceased persons with the weapons. This clearly brings down the motives of such attacks as also the object of the unlawful assembly. Moreover, the blows hurled by on the members of complainant party had been wide sufficient force and chosen aims, due to which three persons were died. The background aspect as also the conduct of the accused persons at and during the incident leaves nothing to doubt that each of the member of this assembly remains liable by the offence committed by himself as also by every other member of the assembly.

21. Besides the medical evidence Virendra Chouhan (PW-14) lodged the FIR (Ex.P-44) soon after the incident. Inspector B.S. Kushwah (PW-20) reached on the spot found the deceased Tony and Minchu. He recovered blood stained soil and used / blank cartridge from the spot.

22. Inspector B.S. Kushwah (PW-20) arrested the accused persons and on the basis of their discovery statements they have recovered *Katta*, knife, baseball bat and sword from the possession of the accused persons through documents (Ex. P-9 to P-36). There is no reason to disbelieve the statement of Inspector B.S. Kushwah, which is well supported by the documentary evidence. Seized articles were sent to the FSL, for its chemical examination. As per the FSL report (Ex.P-61) it is proved that used cartridge, which was recovered from the place of incident fired by the country-made *Katta*, which was recovered from the possession of accused Deepu. From perusal of FSL (Ex.P-61), it is also proved that blood was found over the weapons, which were seized from the possession of the accused persons, therefore, all these evidence is also corroborated and proved the case of prosecution beyond any reasonable doubt.

23. From the aforesaid cogent evidence proved by the prosecution, which is available on record, we are quite satisfied that the appellants were members of the unlawful assembly within the meaning of Section 141 of IPC, sharing common object to cause murder of deceased Tony, Minchu and Ishwar and they were armed with deadly weapons used for commission of offence punishable under Section 302 of IPC. Therefore, conviction of all the accused persons under Section 302 read

with Section 149 of IPC being more than five in number is, therefore, proper and no case is made out for calling any interference by this Court in this appeal. The offence under Sections 25 and 27 of Arms Act is also proved.

24. In the result, we find no merit and substance in the appeal and as such it deserves to be dismissed.

25. The judgment of conviction and sentence passed by the trial Court is hereby affirmed. Appeal fails and is hereby dismissed.

26. The appellants No.1 Deepu and 6 Kapil Bairagi are on bail. Their bail bonds are hereby cancelled. They are directed to surrender forthwith before the trial Court for undergoing the remaining part of the sentence, failing which, trial Court shall take suitable action as per the law under intimation to this Court.

27. Office is directed to send a copy of this judgment along with record of the trial court forthwith.

Certified copy as per rules.

(VIVEK RUSIA)
JUDGE

(ANIL VERMA)
J U D G E

Anushree