



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal Nos.1303-1305 of 2022

Santosh Singh

...Appellant

Versus

The State of Madhya Pradesh and Ors.

...Respondents

With

Criminal Appeal No.1306 of 2022

J U D G M E N T

K. VINOD CHANDRAN, J.

Seventeen persons were accused of ambushing three persons of a family and killing one of them, whose brothers were the other two members. Before the Trial Court, three persons were absconding and their trial was split up. Fourteen accused faced trial of which A1, A6, A12 and A13 were convicted and the others acquitted. The injured brother, an eyewitness to the incident filed an appeal against the acquittal of the ten accused. The four convicts, filed three

appeals, two joining in one, against their conviction and sentence. The High Court in the appeal filed by the convicted accused confirmed the conviction only against A1 and acquitted the other three accused. In the appeal filed by the injured victim, the acquittal of the other accused by the Trial Court was confirmed. Three appeals before us are filed by the injured/de-facto complainant against the acquittal of all the accused. One appeal has also been filed against A1, which is unnecessary since his conviction and sentence as handed down by the Trial Court has been upheld in appeal.

2. The incident, as per the prosecution story is that the victim/deceased along with PW1, PW8, PW10 to PW12, PW18 and another brother of PW1 were sitting near the barn owned by PW1's family when A1 along with A8 and A9 came in search of the victim and hurled abuses and threats at them. When they walked away, the victim along with others proceeded home. While nearing their house, they were ambushed by 17 persons including A1, A8 and A9, clearly targeting the deceased and shooting him dead. In the melee,

PW1 was also hit with a *lathi* and he sustained injuries on his left eye. PW1's nephew, a 15-year-old child having witnessed the scuffle, ran to their house and raised an alarm. PW2, the wife of PW1, PW6 the wife of PW8 along with the mother of PW1 rushed to the scene of occurrence. They saw the incident where the 17 persons had surrounded the brothers and the mother pleaded for mercy. However, without listening to the cries of mercy, one of the brothers was shot dead and the other was hit with a *lathi*. The victim who was shot, was carried to the police out-post and then to the hospital where the Doctor declared him dead, who also examined the injured victim, PW1. The Doctor, PW3, issued a postmortem report with respect to the deceased and an injury report with respect to PW1.

3. The Trial Court, on evidence recorded found unequivocally the presence of Ajeet Singh @ Babbe Singh (A1) who had shot Virender Singh. Rajeev Lochan Singh, A13, it was found was not only present but was carrying a double barrel gun, who also refused to listen to the cries of the

mother of the deceased and retorted that the entire family will be liquidated. A6, Nagendra Singh along with the absconding Rammu Singh had caught hold of the deceased and dragged him, when Dalpartap Singh, A12, exhorted A1 to kill at which point A1, shot the deceased. It was on the said allegedly uncontested testimonies of the multiple eyewitnesses, that the Trial Court convicted the four accused. A13 was not originally arrayed when the charges were framed and was later summoned to be tried on orders of the High Court under Section 319 of the Criminal Procedure Code, 1973 (CrPC). The witnesses were recalled and examined in chief and A13 permitted to cross-examine them.

4. The High Court with respect to A13 found that the *alibi* pleaded by him supported by DW2, a Deputy Superintendent of Police (DSP) working in the concerned area was not established. The *alibi* was with respect to A13 being at Piparjhar, where he had taken his daughter to sit for an examination. It was found that A13 had not produced any

documentary evidence of unimpeachable veracity to prove his presence at Piparjhar, other than the testimony of a retired DSP, thus failing to prove the alibi pleaded. However, it was found that one of the eyewitnesses, PW10 had not spoken of A13's presence and since there was no specific allegation against A13; of an overt act, he cannot be found guilty of the offence alleged. The mere presence of A13 will not bring in common intention or common object; incapable of mere presumption by the Court. Despite A13 carrying a double barrel gun, no shot was fired from the gun. There being no overt act on the part of A13, there is nothing to show that he had participated in furtherance of the common object of the unlawful assembly, held the High Court. He was acquitted under Section 302 and Section 148 of the IPC, finding neither Section 149 nor Section 34 of the IPC enabling his conviction.

5. As far as Nagendra Singh, A6 is concerned, he was seen holding the hands of the deceased while Dalpratap Singh, A12 exhorted the other accused to fire upon the deceased. It

was found that the victim was shot at close range with the gun on his chest, in which circumstance a person holding the victim would also sustain injuries. It was also found that the persons who were involved in the altercation could not specifically speak of a person having been held down by another person. The allegation against A6 thus was found to be unnatural and he was acquitted.

6. With respect to Dalpratap Singh, A12, the only overt act was exhortation to A1, which it was found was difficult to be identified as that of A12, especially at night. It was also held that if the intention was to kill the deceased, then there was no reason why a command should be attributed to one of the members. A12 was also acquitted finding them entitled to the benefit of doubt.

7. Insofar as A1 is concerned, there is clear evidence as to the shot having been fired by him and there is no appeal by him. We are in the other appeals concerned only with the acquittal of A6, A12 & A13. We find no reason to acquit A13 only for the reason of his inclusion in the trial, much later to

its commencement, under Section 319, or on the alibi projected, which was not established.

8. The finding of the Trial Court was reversed by the High Court on the premise that his mere presence with a double barrel gun, without having shot at the victim does not implicate him with the crime even under Section 149 or Section 34 of the IPC. This finding according to us cannot be countenanced. His presence at the scene of occurrence along with some others with a double barrel gun if established, even if the fatal shot had not been fired by him; he can be roped in on common intention and object, if he is proved to be a part of the group of accused; constituting either an unlawful assembly under Section 149 or under Section 34 of the IPC.

9. The eyewitnesses spoke of the presence of Nagendra Singh and he having held the victim while A1 shot him. The reasoning of the High Court that a person holding down a victim, when a shot is fired at close quarters, would also sustain injuries, is in the realm of a surmise, not validated by

any expert opinion. In fact, the discrepancy pointed out, as to the testimony of the eyewitnesses whether they had seen A6 dragging the victim or holding him down, was found by the Trial Judge to be inconsequential. The common intention of A6 is clear by his act of having held down the victim, was the finding of the Trial Court; which we agree with, if available in the evidence.

10. Insofar as the Dalpratap Singh, A12 is concerned, the only accusation was his exhortation. In fact, even the FIS speaks of such exhortation having been made by A12.

11. The learned Senior Counsel appearing for the appellant in the two different appeals argued that the eyewitness had spoken in tandem about the presence of all the accused. It is significantly pointed out that the names of the accused were not stated in the FIS by PW1. As to A6, A12 & A13 there is cogent and consistent testimony by all the eyewitnesses of the respective roles played by them in the unlawful assembly. Even the others, whose presence was unequivocally spoken of by the witnesses are to be convicted

on the ground of common intention and object. The Trial Court and the High Court failed to discern the impact of Section 149 and acquitted the other accused on the flawed premise of no specific overt act having been alleged against them. The medical evidence is consistent with the oral testimonies, and none ought to have been acquitted.

12. The accused sought to challenge the presence of PW1 by indicating his duty on the 8th, 9th and 10th also spoken of by a defense witness. The accused also raised the contention that the witnesses were all related and hence interested. Those who were unrelated, the alleged material witnesses, turned hostile. The testimonies of most of the eyewitnesses, as to the incident, were omitted in their Section 313 statement. There is no seizure or recovery of weapon effected and there was no forensic or ballistic examination carried out. A13's name was not spoken of by many of the eyewitnesses when the trial had proceeded without A13 on the array of accused. The later examination in chief, indicates clear tutoring which cannot be relied on. The exhortation made by

A12, is impossible of reliance in the melee and lack of light to identify. A6 has been unnecessarily roped in and there is no reason to hold down a person to drag him, when he is shot at; which could endanger a person standing nearby. The view expressed by the High Court is a plausible view and on the mere reason of there being another possible view, an acquittal cannot be reversed

13. The death caused by a shot injury has been unequivocally established by the testimony of PW3, the Doctor. The Doctor spoke of an egg-shaped tattered gunshot wound on the left, on the upper side of the sternum and its shape was 4 cm long and 5 cm breadth, with the outside area showing an abrasion of 2 cm and depth of 20 cm. The direction of the wound was from top to bottom and the bullet which entered the body caused a fracture on one-third portion of the ribs, squeezed the pulmonary vessels and the throat and trachea, showing a torn wound filled with blood. Thirty-four shells of the bullet and plastic cap and packaging

material were recovered from his body. The death was due to gunshot injury, prior to his death.

14. PW1's presence is proved by the injuries sustained which has been narrated by PW3 Doctor from Exhibit P5, the injury report. In fact, the eyewitness had specifically spoken of PW1 having been hit on the eyes and the two injuries on the right parietal part of the skull and one on the whole of the left eyebrow and there was redness in the eyes. PW1 also sustained a crack wound on the right parietal portion on the middle of the head and an injury on the hand and the lumbar portion. Though, the injuries sustained by PW1 were stated to be simple in nature, the injuries sustained were in consonance with the statement of hit by a *lathi* of PW1.

15. The prosecution through PW1 itself explained that he being a daily wage worker, leave is to be granted without a formal application and his presence would be marked. The presence marked would have raised a suspicion but for the fact that even on the 10th day his presence was marked as 'on duty'. Admittedly, the death of his brother occurred on 9th

and he would have definitely taken a leave on the next day. The practice of marking attendance of a daily wage worker, despite his absence, though has to be deprecated, we cannot run away from the fact that it is usually done. The same cannot lead to disbelieving the testimony of PW1 or doubting his presence on the day when the offence was committed; especially when he had suffered an injury in the course of the same incident which led to the death.

16. On this broad overview of the facts and also keeping in mind the trite law, of an acquittal order not being lightly interfered with, we have to look at the evidence. One of the compelling arguments raised by the accused was that the FIS did not contain the 17 names of the persons who were available in the 'unlawful assembly' which contention is raised on the strength of Exhibit P1, a 'Dehati Merg Intimation' as registered on 10.03.2004 at the Garhwa Police Station which contained a very brief narration of A1 along with 16-17 other men having assaulted the brother of the informant, PW1 and A1 having fired at his brother on the left

side of sternum. The victim died at about 02.30 O'clock in the early hours of 10.03.2004 as recorded therein. True, there are no names specified therein but the same is inconsequential, considering the fact that the Police Station had an outpost where the first informant, PW1 had given a detailed statement on the very same night of the incident, which is Exhibit P2 produced before the Trial Court. In substantiation of the same, we have to immediately look at the evidence of PW17, who was the Assistant Sub-Inspector, manning the Naudihwa Outpost of Garhwa P.S. PW17 recorded the First Information Statement (FIS) dated 09.03.2004, as stated by Santosh Singh, PW1. The time & date of such FIS, as seen from Exhibit P2, FIR is 23.00 O' clock on 09.03.2004; the shooting itself having occurred at 8.00 O' clock of the same night. It is pertinent that the FIS indicates the names of 17 persons and speaks of the victim remaining unconscious since the time he sustained the injury. In fact, the 'Dehati Merg Intimation' at Exhibit P1 recorded on, the next morning, of 10.03.2004 speaks of the death having occurred at the Primary Health Centre at

Ghorawal, District Sonabhadra, Uttar Pradesh at 02.30 O' clock on 10.03.2004. There can, hence, be found no inconsistency on the basis of the FIR and the FIS.

17. Now, we come to the testimonies of the witnesses, especially that of the eyewitnesses who spoke in a chorus as to the names of the assailants and the specific role assigned to each of them. A1 shot and aimed at the chest of the victim, A6 having held down the victim while the shot was fired and A12's exhortation to fire also has been categorically stated by the eyewitnesses.

18. The closely related eyewitnesses are PW1, PW2, wife of PW1, PW6 and PW8, wife and husband who are respectively the sister-in-law and brother of PW1. PW10 to PW12 & PW18, of whom PW11 and PW12 also relatives of the deceased, were sitting along with PW1 and the victim at their barn, who too witnessed the incident with PW14 to PW16. PW12 though claimed to have sustained the injury and shown it to the police, there is no such injury report submitted before Court. PW13 only saw the dead body and cannot be stated to be an

eyewitness. PW14 to PW16; neighbours & PW18, though projected as eyewitnesses turned hostile. PW9, a neighbor came to the spot after the shot was fired. He deposed that he saw the accused standing there but his specific testimony was that his Section 161 statement was recorded 7-8 days later.

19. What remains are the testimonies of PW1, PW2, PW6, PW8, PW10 and PW11. Of these, we have our own suspicion with respect to PW2, PW6 and PW8 who are close relatives of the deceased. Related witnesses cannot be merely termed interested witnesses, if their presence at the scene of occurrence is natural. Here, their presence is natural since the spot, where the ambush occurred and the victim was shot, was very near the house of the victim. Our suspicion, however, is on account of their testimony itself. PW2 and PW6 spoke of having come out from the house, being informed of the scuffle, by the son of PW6. There were many omissions put to the two witnesses of statements made in chief examination, not recorded in their Section 161 statements. PW2 spoke of the incident having occurred at the barn of her

husband. PW6 spoke of the assault having been carried out in front of a temple. PW8 admitted that his deposition was taken 10 to 13 days later. Hence, the reliable testimonies are of PW1, PW10 and PW11, which would be sufficient insofar as the incident spoken of, particularly, the shot injury sustained by one of the brothers and the injury with *lathi* sustained by PW1. PW11 is also a close relative of PW1.

20. What assumes relevance from the examination of PW1 for our purpose is that PW1 speaks of A1 having carried a single barrel gun and A13 having carried a double barrel gun in his deposition before Court. PW2 also spoke of A13 having carried a gun which was an addition from her Section 161 statement. PW10 and PW11 categorically stated that A13 was not present at the scene of occurrence. The threats levelled by A13, as spoken of by PW1 and PW6 also do not figure in their Section 161 statements. More pertinently, there is no such plea of A13 having carried a gun, or levelled threats against PW1 and his family, disclosed in the FIS. Pertinent also is the fact that many of the eyewitnesses who were

examined before A13 was arrayed under Section 319, did not speak of his presence. They spoke of A13's presence only when they were recalled and again examined-in-chief.

21. Hence, despite disagreeing with the reasoning of the High Court in acquitting A13, we are unable to find any substantive evidence against him from the testimonies or otherwise, which are also not available in the prior statements of the witnesses and we are unable to persuade ourselves to reverse the acquittal of A3.

22. Having said that, we specifically notice that the FIS spoke of A12 having exhorted to shoot on everyone when A6 and an absconding accused caught hold of PW1's brother for A1 to shoot him, at a close range, with a 12 bore gun. It is also specifically noticed in the FIS that the bullet hit near the left part of the victim's sternum which is in consonance with the medical report as proved before Court by PW3, the Doctor who conducted the postmortem. In fact, the Doctor deposed on the trajectory of the bullet and the body had only an entry wound, indicating that it did not exit the body. The entry

wound was in the upper part of the left side of sternum having a depth of 20 cm and the direction of the wound was 'right-downward-posterior'. Thirty-four pellets were recovered from the body, wedged inside the wound and the plastic cap and packing material of the bullet also was recovered from the dead body itself. This indicates that the bullet had entered the upper left part of the sternum and traveled downward with the pellets and cover of the bullet embedding in the body itself.

23. The reasoning of the High Court to absolve A6 on the premise that if he holds on to the victim then he would have sustained an injury cannot at all be countenanced. The bullet entered the body and remained inside the body with the pellets scattered around the body, inside the wound. There is hence no possibility of a person holding on to the victim sustaining any injury. As was rightly found by the Trial Court whether A6 held down the victim or dragged him is inconsequential insofar as the overt act having been disclosed clearly from the role attributed to that accused.

24. Likewise, the common object and intention of A12, if not under Section 149 definitely under Section 34 is discernible from the exhortation made which was consistently stated by PW1 in his FIS and in his testimony before Court. The eyewitnesses, persons of the locality had spoken of an electric light from the nearby temple having lit up the scene of occurrence. The absence of light is sought to be established by the defense by examining a lineman working with the Electricity Board, as DW1. Though he spoke of no electric connection to the temple, he admitted that the houses in the area had electric connections. There were also suggestions put to him that the locals used to light up the temple from a connection drawn from their houses or straight from the electric pole, which was denied. In any event the houses in the area were electrified and even otherwise the accused are well known to the witnesses and identification could also be from their voice.

25. Insofar as the other people in the group, though their names have been deposed by the witnesses, their roles are

not spoken of. The intention to frame them for reason of enmity existing for the last 6-7 years, as between the victim's family and A1, whose associates the other accused were, cannot be completely ruled out. The presence of A1, A6 and A12 is very clear and is spoken of by PW1 from the inception. It is trite that it is not the multiple witnesses that brings credibility to the prosecution version; which has to be found from the testimony itself and corroboration is looked for, if the testimony is doubtful. The deliberate attempt to bring in the other accused though they may not have been present, even if found by the Court cannot lead to the credible part of the testimony being disbelieved on the other aspects.

26. The principle of '*falsus in uno, falsus in omnibus*' is not applicable to India and as has been famously held, here, the Courts have a duty to separate the grain from the chaff in analyzing evidence. Carrying out such a measure, we are inclined to find the presence of A1, A6 and A13 as spoken of by PW1, PW10 and PW11 at the incident spot and the shooting having occurred as narrated by them. The medical

evidence provides enough corroboration for the death having occurred, as spoken of by the witnesses and PW1's testimony being truthful, corroborated by the injury sustained by him as spoken of by PW3, the Doctor. But the others were added without just cause and in that context we cannot but notice, that after the shooting of her son, the mother of the victim passed away, almost simultaneously, out of shock or by suicide, is not clear.

27. On a conspectus of the above reasoning, we are of the opinion that the acquittal as against A6 and A12 passed by the High Court has to be reversed and we do so. The acquittal of A13 by the High Court is sustained. We, hence, allow the Appeal against the acquittal of A6 & A12 by Criminal Appeal No.176 of 2013 and convict A6 & A12 but sustain the acquittal of A13, dismissing the appeal against his acquittal by Criminal Appeal No.75 of 2013. The conviction and sentence as awarded by the Trial Court shall stand restored insofar as A6 and A12 are concerned. The appeal by the defacto

complainant from the conviction and sentence affirmed in Criminal Appeal No. 104/2013 is rejected as unnecessary.

28. The appeal filed by the *de facto* injured complainant against the other accused was dismissed by the High Court. It was found that based on the specific role assigned to the convicted accused, the Trial Court held them guilty of the charges and sentenced them, whereas the prosecution failed to prove the case against other accused. On a reading of the testimonies of the witnesses, we found only omnibus allegations of the presence of all these persons at the time of the incident without anything stated as to the role played by each of them. Though we are conscious that if they were part of the assembly, then there could be inferred a common object and intention, however, their involvement or even their participation in the unlawful assembly is not established beyond reasonable doubt. In the totality of the circumstances, especially by reason of the veracity of the testimonies examined by us in the other appeals, we find absolutely no reason to interfere with the order of the High

Court in Criminal Appeal No.445 of 2013, refusing to reverse the acquittal of the other accused. We hence find no reason to entertain Criminal Appeal No.1306 of 2022 which stands dismissed.

29. A6 and A12 are granted two weeks' time to surrender before the Sessions Court to serve the sentence, failing which the Sessions Court shall take appropriate steps to apprehend them.

30. Ordered accordingly.

31. Pending application (s), if any, shall stand disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI
SEPTEMBER 08, 2026.