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SURENDRA AND OTHERS

v.

STATE OF U.P.

(Special Leave Petition (Crl.) No. 2874 of 2008)

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FEBRUARY 28, 2012

[R.M. LODHA AND H.L. GOKHALE, JJ.]

Penal Code, 1860:

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s.302/149 - 'Common object' to cause the death - Held: Inference of common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result - The prosecution, from the entirety of the evidence, has been able to establish that all the members of the unlawful assembly acted in furtherance of the common object to cause the death of the victim.

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Four petitions in the instant special leave petitions along with another accused were prosecuted for commission of offences punishable u/ss 147, 148 and 302/149 IPC. The prosecution case was that a criminal litigation was pending between the three accused (appellants in SLP(Crl) No. 2874 of 2008) and the deceased. On the date of occurrence, they along with the accused (appellant in SLP(Crl.) No. 3354 of 2008), who was their brother-in-law, and another accused waylaid the victim and assaulted him with 'burri', knife and 'lathis', as a result of which the victim died the following day. The trial court convicted all the five accused and sentenced them to imprisonment for life u/s 302/149 IPC. Orders of conviction and sentence u/ss 147 and 148 were also passed. The appeals filed by all the five accused were dismissed.

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In the instant SLPs, it was contended for the petitioners that from the injuries sustained by the deceased which cumulatively resulted in his death, it was evident that the accused did not act in prosecution of the common object to commit murder of the victim. It was further contended for the petitioner in SLP (Crl.) no. 3354 of 2008 that he was a resident of a different village and there was no enmity between the deceased and him and it could not be said that he acted in furtherance of the common object with the other accused to kill the victim.

Dismissing the special leave petitions, the Court

HELD:

In the first place, the motive for the crime has been established. There was criminal litigation pending between the deceased and accused 'S', 'N' and 'Y'. The other accused 'A' is the bother-in-law of these three accused. The enmity between the deceased and the accused party stands proved. Secondly, all the five accused were armed with deadly weapons. Accused 'S' and 'N' were armed with 'burri' and 'knife', respectively, and the other three with lathis. Accused 'S' at the time of incident, exhorted the other accused, to Kill the victim. The attack by the accused party on the victim has been established to be pre-planned and pre-meditated. Thirdly, the evidence of the doctor (PW-5), who conducted the autopsy on the dead body, would show that the deceased had fractured ribs - left 9th, 10th and right 10th and both the lungs of the deceased were lacerated and were found ruptured. The legal position is well established that inference of common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result. The prosecution, from the entirety of the evidence, has been able to establish that all the members of the unlawful

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A assembly acted in furtherance of the common object to cause the death of the victim. The case of accused 'A' is not at all distinct from the case of the other accused. There is no error in consideration of the matter by the High Court. [para 13, 15 and 17] [1175-F-H; 1176-A-D-G]

B Case Law Reference:

1979 (1) SCR 383 held inapplicable para 7

1993 (2) Suppl. SCC 515 held inapplicable para 7

C CRIMINAL APPELLATE JURISDICTION : SLP (crl.) No. 2874 of 2008.

D From the Judgment & Order dated 14.11.2007 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1123 of 1982.

WITH

SLP (crl.) No. 3354 of 2008.

E Nagendra Rai, P.H. Parekh, Subodh Markandeya, Baldev Atreya, J.N.S. Tyagi, R.K. Rathore, Renu Tyagi Rajiv Tyagi, Rajeev . Dubey, (for Kamendra Mishru) for the appearing parties.

F The Judgment of the Court was delivered by

G R.M. LODHA, J. 1. Five persons namely; Surendra, Narendra, Yogesh all s/o Anoop Singh, Amar Pal s/o Jagpal Singh and Anil Kumar s/o Roopchand Tyagi were tried for the murder of Ramchandra Singh under Sections 147,148,302 read with Section 149 of the Indian Penal Code, 1860 (IPC).

H 2. The incident occurred on May 19, 1980 at 1.30 p.m. According to the prosecution case, Ramchandra Singh (deceased) who was on his way on that day to Siana in a buffalo cart with a cement permit and some money was waylaid

by the accused persons; Surendra and Narendra were armed with burri and knife respectively and other three were having lathis with them. There was a criminal litigation pending between the deceased Ramchandra Singh and the accused Surendra, Narendra and Yogesh. These three accused are real brothers. Accused Anil Kumar happens to be their brother-in-law. Surendra, at the time of incident, exhorted the other accused to kill Ramchandra Singh. In the incident, Ramchandra Singh sustained 21 injuries. He died on the next day.

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3. On conclusion of the trial, the IVth Additional Sessions Judge, Bulandshahar convicted the accused for the offence punishable under Section 302 read with Section 149 IPC. Accused Surendra and Narendra were convicted under Section 148 IPC additionally while accused Yogesh, Amar Pal and Anil Kumar were convicted under Section 147 IPC in addition to the offence under Section 302 read with Section 149 IPC. All of them were sentenced to suffer life imprisonment for commission of offence punishable under Section 302 read with Section 149 IPC. Accused Surendra and Narendra were sentenced to rigorous imprisonment for two years for the offence punishable under Section 148 IPC while accused Yogesh, Amar Pal and Anil Kumar were sentenced to rigorous imprisonment for one year for the offence punishable under Section 147 IPC.

4. Aggrieved by their conviction and sentence, the four convicts namely; Surendra, Narendra, Yogesh and Amar Pal filed one appeal while the fifth convict Anil Kumar filed a separate appeal before the High Court. Both the appeals were heard together. The Division Bench of the Allahabad High Court, vide its judgment dated November 14, 2007, dismissed both the appeals.

5. Special Leave Petition (Crl.) No. 2874 of 2008 is at the instance of accused Surendra, Narendra and Yogesh. The other Special Leave Petition (Crl.) No. 3354 of 2008 is at the instance of accused Anil Kumar.

A 6. This Court on October 3, 2008, in both the matters, issued notice limited to the nature of offence. The controversy is confined to this aspect only.

B 7. Mr. Nagendra Rai, learned senior counsel for the petitioners in S.L.P. (Cri.) No. 2874 of 2008 submitted that the injuries sustained by the Ramchandra Singh which cumulatively resulted in his death leave no manner of doubt that the accused persons did not act in prosecution of the common object to commit the murder of Ramchandra Singh. Had the intention been to commit the murder of Ramchandra Singh, C learned senior counsel submitted, accused Surendra would not have used burri as lathi and the other accused would not have caused injuries on the non-vital parts of the deceased Ramchandra Singh. In support of his contentions, Mr. Nagendra Rai, learned senior counsel heavily relied upon the D decision of this Court in *Sarwan Singh and others vs. State of Punjab*¹ and *Kusum Chandrakant Khaushe vs. Hmlingliana and others*².

E 8. Mr. P.H. Parekh, learned senior counsel appearing for the petitioner Anil Kumar in S.L.P. (Cri.) No. 3354 of 2008 adopted the arguments of Mr. Nagendra Rai, learned senior counsel. He further submitted that accused Anil Kumar was not the resident of the village where the incident occurred and there was no enmity between him and the deceased Ramchandra Singh. Accused Anil Kumar had come to the F village to take his wife and merely because he was armed with a lathi, it can not be said that he acted in furtherance of the common object with other accused to kill the victim Ramchandra Singh.

G 9. Mr. Subodh Markandeya, learned senior counsel for the State of U.P. highlighted the injuries sustained by the deceased and the consideration of the matter by the High Court with regard to the nature of offence.

1. (1978) 1 SCC 111.

H 2. AIR 1993 SC 401.

10. Dr. Inder Sen (PW4) was the doctor who attended to the deceased Ramchandra Singh immediately after the incident when he was brought to the Primary Health Centre, Siana. He has proved the injury report (Ex. Ka-2). The following injuries were found on the person of the deceased:

1. Bruise 7 cm x 4 cm on the top of right shoulder.
2. Multiple bruises overlapping each other in an area 10cm x 11cm on the upper 3rd of right upper arm in front outer aspect.
3. Peeling of skin in its entire thickness 5 cm x 3 cm on the back of right forearm, 6 cm below the elbow.
4. Bruise 5 cm x 2 cm on the inner back aspect of the middle of right forearm.
5. Abrasion 7 cm x 1 ½ cm on the inner aspect of right forearm, 3cm above the wrist.
6. Incised wound 1 cm x 1/5 cm x ½ cm on front aspect of right forearm, just above the wrist, with clean cut margins and fresh bleeding.
7. 2 abrasions ½ cm x 1cm on the back aspect of the middle right of the middle ring finger of right hand.
8. Swelling with tenderness 6cm x 5cm on the inner side of right hand to the top of thumb and above the index finger. Fracture suspected.
9. Swelling on first digit of right little finger.
10. Bruise 6 cm x 3 cm on the outer aspect of left upper arm 6 cm below the shoulder.
11. Multiple deep bruises 12cm x 8cm with the peeling of skin in an area 4 cm x 4 cm on the middle of left upper arm front and outer aspect.
12. Bruise below the nail of left thumb with blood oozing from nail band.
13. Bruise 16 cm x 2 cm on the right side of back oblique from axilla to lower angle of shoulder wing.

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- A 14. Bruise 8 cm x 3 ½ cm on outer aspect of back along 10 to 12th rib right side.
15. Bruise 20 cm x 3 cm in horizontal plane on left side of back just above renal angle.
- B 16. Multiple bruise over lapping 12 cm x 10 cm on the outer of right thigh above the knee.
17. Abrasion 2 cm x 1 cm below the left knee.
18. Abrasion 3 cm x 1 cm in front of right leg 11 cm below the knee.
- C 19. Lacerated wound 2 cm x ½ cm x 1 cm on the front of right leg 11 cm above ankle.
20. Bruise 8 cm x 2 cm on the front of the left thigh, 6 cm below the groin.
- D 21. Bruise 10 cm x 2 cm on the lower and of left thigh above the knee."

Dr. Inder Sen (PW4) further stated that the injury Nos. 1,2,4,8,9 to 16, 19 & 20 were caused by blunt object; injury No. 6 was from a sharp weapon and rest were by friction.

- E 11. The post-mortem of the dead body was conducted by Dr. P.C. Agarwal (PW5). He had noted as follows:
- F "A stitched wound 1 ½ long on the right forearm, incised wound on the medial aspect of right wrist, abraded contusion 1/4" x 1/4" on the dorsal aspect of right middle and ring fingers, contusion 12" x 4" on the outer aspect of right arm and top of shoulder, contusion 2 1/2" x 2" on the right back in the lower 3rd, 3 contusions 1/2" x 1/4", 3/4" x 1/4", 1 ½ " x ½ " on the right knee and the 3rd of front of right leg, stitched wound 3/4" on the upper lower third of front of right leg, abraded contusion 1" x 3/4" on the middle of left leg, abraded contusion 1 ½ " x 1/2" on the front side of the left arm, abraded contusion 2" x 1 3/4" on the outer aspect of left arm, contusion 6" x 2" on the front and left side of chest, contusion 3" x 1 1/2" on the left upper thigh

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and contusion 3 1/2" x 1 1/2" on the outer aspect of left middle leg." A

12. In *Sarwan Singh*¹, this Court observed that when the injuries caused were cumulatively sufficient to cause death, it was necessary for the Court before holding each of the accused guilty under Section 302 read with Section 149 IPC to find that the common object of the unlawful assembly was to cause death or that the members of the unlawful assembly knew it to be likely that an offence under Section 302 IPC would be committed in furtherance of the common object. The Court then examined the above question in light of the injuries sustained by the deceased. In paragraph 8 of the report, the injuries have been noticed. The Court then noticed the circumstances of the case particularly that an unexpected quarrel took place between the members of the same family over a dispute as to water rights. Consequently, the Court held that the common object of the assembly was not to cause bodily injury sufficient in the ordinary course of nature to cause death. The Court held that the common object of the assembly, in the circumstances, could only be said to cause injuries which were likely to cause death. In *Sarwan Singh*¹, accordingly, it was held that the offence would be under Section 304 Part-I IPC. B C D E

13. *Sarwan Singh*¹ has no application to the facts of the present case for more than one reason. In the first place, the motive for the crime in the present case has been established. There was criminal litigation pending between the deceased Ramchandra Singh and the accused Surendra, Narendra and Yogesh. The other accused Anil Kumar is the bother-in-law of these three accused. The enmity between the deceased and the accused party stands proved. Secondly, all the five accused were armed with deadly weapons. Accused Surendra and Narendra were armed with burri and knife respectively and other three accused were armed with lathis. Accused Surendra, at the time of incident, exhorted the other accused, "Kill him. He is the bone of contention". The attack by the accused party on the victim has been established to be pre-planned and pre- F G H

A meditated. Thirdly; the evidence of Dr. P.C. Agarwal (PW5) who conducted the autopsy on the body of the deceased would show that the deceased had fractured ribs – left 9th, 10th and right 10th and both the lungs of the deceased were lacerated and were found ruptured. The legal position is well established
 B that inference of common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result. We are satisfied that the prosecution, from the entirety of the evidence, has been able to establish that all
 C the members of the unlawful assembly acted in furtherance of the common object to cause the death of Ramchandra Singh.

14. In, what we have indicated above, the decision of this Court in the case of Kusum Chandrakant Khaushe² also has no application to the facts of the present case.

D 15. The case of the accused Anil Kumar is not at all distinct from the case of the other accused as has been sought to be canvassed by Mr. P.H. Parekh, learned senior counsel.

16. The High Court, while dealing with the question of nature of offence, observed:

E “The last point argued by learned counsel for the appellants was that this was not the case under Section 302 IPC but circumstances and nature of injuries show that this was a case under Section 304 Part-I of Indian Penal Code. But
 F we see no force in this contention because there was enmity between the parties and the attack was well planned. This was not a case of sudden provocation. The injury report Ex. Ka-2 shows that deceased was brutally and badly assaulted by the accused persons and cumulative effect of injuries was the cause of death.”

G 17. We find no error in consideration of the matter by the High Court.

18. Special Leave Petitions are, accordingly, dismissed.

H R.P. Special Leave Petitions dismissed.