

NON-REPORTABLEIN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**CRIMINAL APPEAL NO(s).1887 OF 2019**
(arising out of SLP (Crl.) No(s). 5666 of 2017)

STATE OF UTTAR PRADESH

...APPELLANT(S)

VERSUS

RAVINDRA @ BABLOO AND OTHERS

...RESPONDENT(S)

JUDGMENT**NAVIN SINHA, J.**

The State as appellant assails the acquittal of the three respondents by the High Court, reversing their conviction under Sections 302/149, 307/149, 147, 148 and 452 of the Indian Penal Code ordered by the Trial Court.

2. The assault took place on 10.01.2002 at about 4.30 PM. Two persons Mahendra Singh and Lokesh, who were father and son

respectively, have been deceased. PW-1, Smt. Mahendri, wife of deceased Mahendra Singh, is an injured eye witness. PW-3, the wife of deceased Lokesh is also an eye witness. Five persons were originally accused. One of the accused Satyendra @ Minto was deceased during the course of the trial. The three respondents were armed with spade, iron rod and country-made pistol respectively. The injuries found on the deceased and the injured PW-1 are as follows:

Injuries of deceased Mahendra:

- i) Multiple incised wounds of various sizes 18 cm x 4.5 cm x bone deep and 6 cm x 2 cm x bone deep on the back of left and right side of head, back of head and fresh blood was oozing from the head. The cleavage of the wound was clean out.
- ii) Multiple incised wounds 16 cm x 5 cm. The depth of the wound cannot be said. There was fresh bleeding from the left side face and neck. The edge was clean out.

Injuries of deceased Lokesh:

- i) Incised wound 13 cm x 2 cm x bone deep on the back of right head just 3 cm above the right ear.
- ii) Incised wound 10 cm x 4 cm x bone deep on the back of head just above the right ear and above the back hairline. The largest incised wound was 18 cm x 1 cm and the smallest wound was 5 cm x 1 cm.
- iii) Incised wound 9 cm x 2 cm x bone deep on left side face just beside the nose which was extended from the beginning of left eye till chin.
- iv) Incised wound 8 cm x 2.5 cm was found on left side neck. One

- blood vessel under this wound was cut.
- v) Incised wound 5 cm x 5 cm x muscle deep in front of left shoulder.
 - vi) Incised wound 3 cm x 25 cm x muscle deep in the middle of right hand.
 - vii) Multiple contusions in the area of 14 cm x 8 cm in front of right shoulder.
 - viii) Incised wound 25 cm x 1 cm x muscle deep in the middle of right hand.
 - ix) Multiple straight abrasions of 24 cm found in the middle of navel, stomach and chest.
 - x) 3 cm x 1.5 cm punctured wound in the left gallinule region (part of belly which connect waist) for which the intestine was coming out.
 - xi) Abrasion 3 cm x 1 cm was found on the front part of penis.

Injuries of PW-1, Mahendri:

- i) Incised wound 5 cm x 1 cm x bone deep on the let head, back of left ear. There was fresh bleeding from the injuries and the edge of the injury was clean cut.
- ii) Incised wound 10 cm x 6 cm x bone deep on left wrist and left forearm. There was fresh bleeding from the injuries and the edge of the injury was clean cut.
- lii) Incised wound 7 cm x 2 cm x bone deep on right wrist. There was fresh bleeding from the injury and the edge of the injury was clean cut.
- iv) Incised wound 3 cm x 1 cm x muscle deep on right wrist. There was fresh bleeding from the injury and the edge of the injury was clean cut.

3. The occurrence fueled by enmity occasioned due to a land dispute is an admitted fact. The High Court opined that in absence of

injuries on the two deceased and the injured not being commensurate to the nature of weapons possessed by the three respondents entitled them to acquittal.

4. Mr. Ravindra Kumar Raizada, learned counsel appearing for the appellant, submitted that the High Court erred in setting aside a well-considered order of conviction. PW-1 was injured in the same incident. The presence of PW-3 as an eye witness has also not been doubted. The number of injuries found on the injured and the two deceased cumulatively corroborates the number of assailants. The conviction of the co-accused Prem, on the evidence of the same witnesses has not been interfered with. The allegations of assault by the respondents is specific. Acquittal of the respondents, in view of the nature of ocular evidence available, is unsustainable.

5. Mr. Ankul Chandra Pradhan, learned senior counsel appearing for the respondents, submitted that the order of acquittal by the High Court is well reasoned. There is discrepancy between the ocular and medical evidence, which is a sufficient to sustain the acquittal. If two views are possible, the acquittal may not be interfered with.

6. We have considered the submissions on behalf of the parties,

perused the materials and evidence on record.

7. The original five accused are stated to have been armed with iron rod, spade, sword, tabbal and country made pistol. The charge was under Section 302 read with 149, Section 307 read with 149. The respondents fully armed, entered the house of the deceased Lokesh and when the latter ran out for his safety, he was chased and assaulted. One of the respondents fired at the deceased who fell down, after which the others assaulted. Deceased Mahendra and PW-1 fell over the deceased Lokesh to save him when they were also assaulted. Eleven injuries have been found on the person of deceased Lokesh. A spade, sword and tabbal are well capable of causing incised injuries.

8. It is an undisputed fact evident from the allegations and the evidence that the accused who were all well armed constituted an unlawful assembly. The common object of the assembly and that it was shared by all of them with awareness is also evident from their conduct in having chased and assaulted the deceased Lokesh and then in having persisted with the assault even after the deceased Mahendra and PW-1 fell over the former in an effort to protect him, notwithstanding which the respondents persisted with the assault. In

a case of a mob assault, especially when there is no doubt with regard to the ocular evidence, to look for corroboration of each injury by correlating it with the evidence of a prosecution witness to a particular accused and then to discredit the prosecution case on that basis cannot be upheld and is contrary to the principles of criminal jurisprudence regarding common object and the necessary ingredients for the same.

9. The manner of occurrence, the fact that all the accused were well armed, they chased the deceased Lokesh coupled with the assault on those who tried to come to the rescue of the deceased, the number of injuries on the two deceased and the injured leaves no doubt in our mind that the assailants were most definitely more than two persons. In the nature and number of injuries, there can be no doubt that the assailants may well have been five in number. Likewise, the fact that there may not be any firearm injury on the deceased is considered irrelevant for fixing vicarious liability as member of an unlawful assembly once the presence of the accused possessed of a weapon of assault chasing the deceased along with others stands established by reliable ocular evidence.

10. The determinative factor is the assembly consisting of five or

more persons fully armed and who entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The respondents well understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. IPC. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all.

11. The "common object" of an assembly is to be ascertained from the acts and language of the members comprising it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. Sharing of common object is a mental attitude which is to be gathered from the act of a person and result thereof. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be

translated into action or be successful.

12. In ***Lalji and ors. vs. State of U.P.***, (1989) 1 SCC 437, it was observed:

“10. Thus, once the court holds that certain accused persons formed an unlawful assembly and an offence is committed by any member of that assembly in prosecution of the common object of that assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing of that offence was a member of the same assembly is 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 or require the prosecution to prove which of the members did which of the offensive acts. The prosecution would have no obligation to prove it.”

13. We, therefore, are unable to hold that there is such gross variation between the ocular evidence and the medical evidence so as to discredit an injured witness and an eye witness to order acquittal.

In ***Kamaljit Singh vs. State of Punjab***, (2003) 12 SCC 155, it was observed:

“8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out. When the acquittal by the trial court was found to be on the basis of unwarranted assumptions and manifestly erroneous appreciation of

evidence by ignoring valuable and credible evidence resulting in serious and substantial miscarriage of justice, the High Court cannot in this case be found fault with for its well-merited interference.”

14. The order of the acquittal of the respondents is set aside and they are directed to surrender within four weeks for serving out the remaining period of their sentence. The appeal is allowed.

.....**J.**
(Ashok Bhushan)

.....**J.**
(Navin Sinha)

New Delhi,
December 18, 2019