



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

CRIMINAL APPEAL NO.412 OF 2012

SURESH DATTU BHOJANE & ANR. ...APPELLANTS

VERSUS

STATE OF MAHARASHTRA ...RESPONDENT

With

CRIMINAL APPEAL NO. 651 OF 2013

SATISH RAMA BHOJANE ...APPELLANT

VERSUS

THE STATE OF MAHARASHTRA ...RESPONDENT

J U D G M E N T

PANKAJ MITHAL, J.

1. Counsel for the parties were heard.
2. Under challenge in the present criminal appeals is the judgment and order dated 18.10.2010 of High Court of Judicature at Bombay whereby it has dismissed the criminal appeals of appellants confirming the judgment and order of the Trial Court

dated 21.02.2002 convicting accused Nos. 1-6 including the present appellants (i.e. A-3, A-5 & A-6) for offences punishable under Sections 147, 148, 302 r/w 149 and 307 r/w 149 of IPC and at the same time acquitting A-7 and A-8.

- 3.** The Trial Court vide judgment and order dated 21.02.2002 acquitted accused Nos. 7 & 8, convicted the remaining accused Nos. 1-6 and sentenced them for an offence under Section 302 r/w 149 of IPC with rigorous imprisonment for life and fine of Rs. 100/- and in default, to suffer further imprisonment for period of 1 week.
- 4.** There are two separate appeals arising out of impugned judgment and order dated 18.10.2010 which have been clubbed together vide order of this Court dated 22.04.2013. Criminal Appeal No. 412/2012 has been filed by accused Nos. 5 & 6 and Criminal Appeal No. 651/2013 has been filed by accused No. 3. Therefore, in the present appeals, we are concerned only with conviction of accused No. 3 (Satish Rama Bhojane), accused No. 5 (Suresh Dattu Bhojane) and accused No. 6 (Anna @Anil Maruti Bhojane).

- 5.** The allegations in the present appeals relate to a group assault conducted by all accused persons with deadly weapons which resulted in the death of one Mohan Mungase and injuries to his brother Nandkumar Mungase (PW-5) and one Maruti Nakate (PW-7).
- 6.** The Trial Court records reveal that the prosecution case is, that accused Nos. 2 and 3 are sons of Mama Bhojane and his wife Chhaya (accused no. 8). Mama Bhojane was owner of one country liquor shop at village Borale. He had entrusted the country liquor shop to the accused No. 1. Later on, he entrusted the country liquor shop to deceased Mohan Mungase and his brother Nandkumar Mungase (PW-5) for the purpose of running it. Hence, accused No.1 got annoyed over such entrustment of the shop to deceased and his brother Nandkumar Mungase (PW-5).
- 7.** On 06.02.1999 at about 7:00 pm, the deceased Mohan Mungase, his cousin Balu Mungase (PW-8), Anil Dhanve and Yuvraj Mungase were sitting at shop of Shiva Chougule situated at Village Borale. At that time accused Nos. 1, 3, 4, 5 and 6

came there and abused the deceased Mohan Mungase and extended death threats. Thereafter, they went to the house of Mama Bhojane.

- 8.** The deceased Mohan Mungase in order to apprise Mama Bhojane about the incident also went to his house along with Balu Mungase, Anil Dhanve and Yuvraj Mungase. When he entered the house, he found that Mama Bhojane was not there and instead his wife (A-8) was there along with all the accused.
- 9.** At that time, a telephonic information was received by Nandkumar Mungase (PW-5) at his residence that his brother deceased Mohan Mungase has picked up some quarrel at the house of Mama Bhojane. On receiving the said information, Nandkumar Mungase (PW-5) arrived at the house of Mama Bhojane and he was followed by his sister Savita (PW-4). It is pertinent to note here that Nandkumar Mungase (PW-5) was married on 04.02.1999 i.e. 2 days earlier to the incident and, therefore, his sister had come to attend the marriage and was staying with them.

- 10.** Nandkumar Mungase (PW-5), upon reaching the house of Mama Bhojane, saw his brother Mohan Mungase inside the house along with all the 8 accused persons. Accused Nos. 1-4 were armed with swords whereas accused No.7 had a scythe in his hand. The accused No. 8 had chilli powder. Accused Nos. 1-8 together had attacked Mohan Mungase by swords and when he tried to intervene, he too was assaulted with the swords but was intervened by her sister Savita (PW-4) and was rescued. At that very point of time, Maruti Nakate (PW-7) had also come to the house and was also assaulted.
- 11.** In the meantime, Anil Dhanve who had accompanied Mohan Mungase to the house of Mama Bhojane, went to the police outpost where police constable Mahadeo Metkari (PW-9) and police constable Malkotgi were present. Upon being informed of the quarrel, both of them proceeded to the house of Mama Bhojane. When the police constables reached there, Savita (PW-4) was fetching the injured Nandkumar Mungase (PW-5) and Maruti Nakate (PW-7) out of the house. The accused Nos. 2 and 3, armed with swords, were still following the injured but finding that the police have arrived, they closed the door from

inside. Thereafter, all the accused escaped the place of incident through the roof of the house.

12. Police constable Mahadeo (PW-9) took the injured Nandkumar Mungase (PW-5) and Maruti Nakate (PW-7) to the Mangalwedha Police Station. Thereafter, they were sent to the Rural Hospital, Mangalwedha from where they were referred to the Civil Hospital, Solapur. Thereafter, Savita (PW-4) lodged the report at 2:15 am on the same night at Mangalwedha Police station. Crime No. 10/99 under section 302 and 307 r/w 34 of the IPC and under Section 135 of the Bombay Police Act was registered on the basis of her report.

13. Charges (Exhibit 2) under Sections 148, 302 r/w. 149, 307 r/w. 149 of I.P.C. and Section 135 of the Bombay Police Act were framed on 23.02.2000. The accused did not plead guilty to the charges.

14. In all there were eight accused persons. They were as followed:

A-1 - Dhondappa

A-2 - Sachin

A-3 - Satish

A-4 - Manohar
A-5 - Suresh
A-6 - Anna Bhojane
A-7 - Kondabai Nakate
A-8 - Chaya Bhojane

- 15.** It is pertinent to note that A-7 and A-8 were acquitted by the Trial Court and there was no appeal filed against their acquittal and as such the conviction remained as against A-1 to A-6. A-1 had died during the pendency of the appeal in the High Court and his appeal stood abated. Thus, leaving A-2 to A-6 but in appeals we are only concerned with three of them that is A-3, A-5 & A-6.
- 16.** The learned Trial Court held that the prosecution has succeeded in establishing that the appellant accused Nos. 1-6, armed with deadly weapons, had formed an unlawful assembly with common object to commit murder of the deceased Mohan Mungase and had injured two others.
- 17.** The conviction is challenged herein mainly on the ground that there was no active participation of the appellants i.e., A-5 &

A-6 visible from evidence on record so as to form a common object which would warrant application of Section 149 of IPC.

- 18.** The prosecution of the appellants hinges primarily on the evidence of the informant, Savita (PW-4), sister of the deceased, Nandkumar Mungase (PW-5), brother of the deceased and that of the Constable Mahadeo (PW-9).
- 19.** Nandkumar Mungase (PW-5) in his statement has clearly described that he and the deceased Mohan Mungase were looking after the Country Liquor Shop of Mama Bhojane for the last 8 to 9 months before the date of incident. Earlier, the said shop was managed by one of the accused Dhondappa (A-1). But as the management was entrusted to him and his brother, he got annoyed and used to abuse them. On the date of incident at about 8.15 pm to 8.30 pm, he had received a telephonic call which was picked up by his mother that there is a quarrel in the house of Mama Bhojane. Therefore, he went running to the said house and his sister Savita (PW-4) followed him. On reaching the house he saw the accused Dhondappa (A-1), Sachin (A-2), Satish (A-3) and Manohar (A-4), who were all

armed with swords, beating his brother Mohan Mungase. He heard Dhondappa shouting not to leave Mohan Mungase and to kill him. He then saw Dhondappa dealing a blow of the sword on the head of his brother as a result of which he fell down. Then the accused Sachin (A-2), Satish (A-3) and Manohar (A-4) assaulted him with swords. He and his sister kept on shouting not to beat him but in vain. The accused Dhondappa (A-1) rather gave a sword blow to him on his right hand, the other accused Sachin (A-2) and Satish (A-3) hit him on the right shoulder and below the left side of the throat. Before they could give any other blow to him, his sister Savita (PW-4) intervened and at the same time one of his friends Maruti Nakate (PW-7) also arrived. A sword blow was also given on the back of Maruti Nakate (PW-7), then his sister Savita (PW-4) pushed him and Maruti Nakate outside the house. Meanwhile, somebody informed that the police had arrived. The accused persons on hearing this closed the door of the house and escaped. The police sent us to the Police Station from where we were referred to the Government hospital Mangalwedha and finally to the Civil Hospital Sholapur.

- 20.** There are no material contradictions in the testimony of the aforesaid Nandkumar Mungase (PW-5) and his statement could not be shaken even in the cross-examination. No doubt, he has not assigned any specific role to A-5 and A-6, nonetheless, he had repeatedly mentioned that 7 accused persons were present at the scene of the crime which means there were three other persons in addition to A-1 to A-4 who were armed with swords.
- 21.** The informant Savita (PW-4) in her statement clearly mentioned that though she was married outside the village, she had come to the Village Borale to take care of her sick mother and for the marriage of her brother Nandkumar Mungase (PW-5). Her brother Mohan Mungase and Nandkumar Mungase used to run Country Liquor Shop. On the date of the incident, while she was cooking in the house, a telephonic call was received by her mother which was handed over to his brother Nandkumar Mungase (PW-5) who after attending the call immediately left for the house of Mama Bhojane where her other brother Mohan Mungase has picked up quarrel with some persons. She followed his brother Nandkumar Mungase (PW-5) and came to the house of Mama Bhojane. There was electric light in the

house and she saw the accused Dhondappa (A-1), Sachin (A-2), Satish (A-3), Manohar (A-4), Anna Bhojane (A-6) Kondabai Nakate (A-7) and the wife of Mama Bhojane i.e. Chaya Bhojane (A-8). The accused Kondabai Nakate (A-7) was having scythe whereas others were armed with swords. The accused Chaya Bhojane (A-8) was having chilli powder. She saw all the accused assaulting Mohan Mungase with swords. She and her brother Nandkumar Mungase kept on shouting not to assault him but Satish (A-3) kept on assaulting her brother with the sword, even Maruti Nakate (PW-7) who came and tried to intervene was not spared and was hit in the back. She saw the accused climbing staircase running out from the backside of the house. The injured were taken to the Police Station and then to hospital in a jeep and she lodged the report at the Police Station. Her evidence could not be dislodged through cross-examination, rather it supported the prosecution version as also the statement of his brother Nandkumar Mungase (PW-5).

- 22.** The police constable Mahadeo (PW-9) accompanied by constable Malkotgi reached the place of occurrence of the crime on receiving information of the quarrel from one Anil Dhanve of the

Village Borale. When he reached, there was a crowd opposite to the house. He saw two men and a woman coming out of the house. The accused Sachin (A-2) and Satish (A-3) were at the door of the house, ready to assault these two men who on seeing the police closed the door. He saw Mohan Mungase lying in the pool of blood inside the house through the gap between the two doors. He saw accused Dhondappa (A-1), Sachin (A-2), Satish (A-3) and Manohar (A-4) inside the house armed with swords and Kondabai (A-7) armed with scythe. Then he saw the accused running away by jumping over roof of the house. Nandkumar Mungase (PW-5) had sustained bleeding injuries on his right hand and the neck. Maruti Nakate (PW-7) was also injured in the back. Both the injured were taken to hospital by the people. He i.e. constable Mahadeo (PW-9) and constable Malkotgi did not go with them to the hospital but went to the police out post which is ½ km. away from the place of crime.

- 23.** A reading of the statement of Constable Mahadeo (PW-9) also reveals the same story as narrated by Nandkumar Mungase (PW-5) and Savita (PW-4). There appears to be no direct conflict between his statement and that of other two material witnesses.

- 24.** One another eye-witness Balu Mungase (PW-8) though had turned hostile, but has repeated the same story that the accused persons were armed with swords and that Savita (PW-4) took Nandkumar Mungase (PW-5) and Maruti Nakate (PW-7) outside the house. Both of them had sustained injuries; Nandkumar Mungase on his hand and neck and Maruti Nakate on his back.
- 25.** In view of the aforesaid testimony of the eye-witnesses, the courts below have rightly held that the deceased Mohan Mungase was killed by the accused persons on the fateful day in the house of Mama Bhojane.
- 26.** The only point which arises for consideration is whether in the facts and circumstances of the case, the accused A-5 and A-6 could also be convicted as they were not alleged to have been armed with any weapon and have not been assigned any specific role.
- 27.** The aforesaid accused persons may not be armed and may not have been assigned any specific role but nonetheless their presence at the scene of the crime along with other accused

persons is duly established. They were held to be part of the unlawful assembly with common object. The evidence of Nandkumar Mungase (PW-5) proves the presence of Suresh (A-5) and Anna (A-6). He has also stated that they were armed with swords at the material time. They were likely to strike him with sword but was timely saved by Savita (PW-4). The testimony of Savita (PW-4) also speaks about the armed presence of both the above accused and that they have *gheraoed* the deceased Mohan Mungase. The evidence of both the above eye-witnesses clearly proves that both of them were present at the scene of the crime and were having the common object to kill Mohan Mungase. All of them had joined together and have come to the house of Mama Bhojane after a quarrel was picked up with the deceased Mohan Mungase earlier to the incident at the shop of Shiva Chougale situate in the village.

- 28.** The accused A-5 and A-6 are undoubtedly part of unlawful assembly and were having the common object viz the killing of deceased Mohan Mungase and his brother Nandkumar Mungase. They had a clear motive for the above purpose as the country liquor shop which was settled in favour of A-1 was

subsequently entrusted to the deceased and his brother by the owner Mama Bhojane. The accused A-5 and A-6 were present even at the time when the deceased was threatened with dire consequences while he was sitting on the platform of a shop just before the fatal incident. They both were present in the house of Mama Bhojane when the crime took place. The assembly of all the accused persons in the house of Mama Bhojane with the deadly weapons was apparently for the purposes of teaching a lesson to the deceased and his brother to settle the score arising from the entrustment of the country liquor shop. Therefore, both A-5 and A-6 were certainly part of the unlawful assembly having the common object and as such are guilty of the offence as envisaged under Section 149 of the IPC.

- 29.** The accused A-5 and A-6 have been charged under Section 149 IPC. Therefore, their presence with the other co-accused amounted to an unlawful assembly which is sufficient for conviction, even if they may have not actively participated in the commission of the crime. It goes without saying that when the

charge is under Section 149, the presence of the accused as part of the unlawful assembly itself is sufficient for conviction¹.

- 30.** In view of the aforesaid testimony of the eye-witnesses and the concurrent findings of the facts recorded by the courts below about the presence of A-5 and A-6 at the scene of the crime as part of unlawful assembly and their active role in surrounding the deceased with the common intention to kill him, we are of the opinion that they cannot escape the conviction.
- 31.** Besides the above, there is hardly any scope for interference with the conviction and sentence of A-3. He has been assigned an active role in the crime. All the eyewitness has categorically stated about his presence and that he was armed with deadly weapon, i.e., sword and that he had also wielded blows not only upon the deceased but upon the injured persons. In the light of the aforesaid evidence, there is no flaw in his conviction.
- 32.** The submission that he has already undergone over 13 years of incarceration and therefore some leniency be shown and his sentence be reduced to that he had already undergone or

¹ Yunis alias Kariya vs. State of Madhya Pradesh, AIR 2003 SC 539

alternatively he may be prematurely released has no substance. The minimum sentence for committing murder is life imprisonment and therefore is not liable to be reduced. In the event he has already undergone sufficiently long incarceration and is eligible for remission, he may or as a matter of fact even the others are at liberty to apply for remission for premature release in accordance with the policy of the State. In the event any such application or representation is made by any of the appellants, the same shall be considered most expeditiously by the authority concerned in accordance with law and in the light of the remission policy of the State in vogue.

33. The appeals lack merit and are dismissed with the above observations.

..... **J.**
(ABHAY S. OKA)

..... **J.**
(PANKAJ MITHAL)

NEW DELHI;
JULY 08, 2024.