

Bhuria and ors. Vs. the State of M.P.

Bhuria and ors. Vs. the State of M.P.

SooperKanoon Citation : sooperkanoon.com/1049538

Court : Madhya Pradesh

Decided On : Jan-23-2013

Appellant : Bhuria and ors.

Respondent : The State of M.P.

Judgement :

1 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR
DIVISION BENCH Criminal Appeal No.181/2004 1. Bhuria, s/o Kallu Agnihotri,
aged about 37 years.

2. Chuttu, s/o Gilla Shukla, aged about 35 years.

3. Abbu, s/o Kallu Agnihotri, aged about 33 years.

4. Ramsharan, s/o Kallu, aged about 47 years.

5. Natthu, s/o Gilla Shukla, aged about 41 years.

6. Ramvishal, s/o Raghunandan, aged about 60 years.

7. Prakash, s/o Kallu Agnihotri, aged about 38 years.

8. Chhota, s/o Raghunandan, aged 37 years.

9. Mahendra, s/o Ram Vishal, aged about 31 years. All agriculturists, r/o village
Bansia, P.S. Nehra, District Chhatarpur, M.P. Versus State of Madhya Pradesh

through the S.H.O., P.S. Chandla, District Chhatarpur, M.P.

----- For Appellants

1 to 7 & 9: Shri Sharad Verma, Advocate. For Appellant No.8: Shri Manot Mishra, Advocate For the State: Shri Umesh Pandey, Govt. Advocate For the complainant:

Shri Gitesh Singh Thakur, Advocate

----- PRESENT:

HONOURABLE SHRI JUSTICE RAKESH SAKSENA HONOURABLE SMT. JUSTICE VIMLA JAIN

----- Date of

hearing:

17. 01/2013 Date of Judgment:

23. 01/2013 2

JUDGMENT

Per: Rakesh Saxena, J.

1. Appellants have filed this appeal against the judgment dated 19.12.2003, passed by First Additional Sessions Judge, Chhatarpur, in Sessions Trial No.127/1992 convicting them under Sections 302/149 and 148 of the Indian Penal Code and sentencing them to imprisonment for life with fine of Rs.2000/- and rigorous imprisonment for three years with fine of Rs.500/-, on each count respectively.

2. In short, the prosecution case is that on 23.4.1992 when complainant Sudhir Singh (PW-4) was getting some rehabilitation work done at Banshiya-Bhura Purwa passage by labourers, accused Mahendra reached there and asked labourers to discontinue work there by next day and to work at his godown. Sudhir remonstrated Mahendra Singh saying that he should not come to his site. After a hot altercation, Mahendra went towards village threatening Sudhir to stay there, saying that he would come back with Rajaram. In the evening, at about 4.30 pm, uncle of Sudhir viz. Chunni, while returning from village Chandla, met Sudhir and both of them started proceeding towards village on a bicycle. Chunni was driving

the bicycle and Sudhir Singh was sitting on its carrier. At about 5 O'clock, when they reached near the godown, accused persons came there in a tractor from the front side. They were armed with guns, spears and Lathis. The tractor was being driven by accused Chhota. As soon as tractor reached near, accused persons started alighting from it. Rajaram exhorted accused Dhillu @ Ram Vishal to assault them. Sudhir jumped from the bicycle and ran away. While 3 Chunni was turning his bicycle back, Dhillu @ Ram Vishal fired a shot from his rifle, which hit in the abdomen of Chunni. Other accused persons also rushed towards Chunni and assaulted him with Lathi, Ballam and feet. When Sudhir asked them not to beat Chunni, some of the accused persons ran after him, therefore, he moved away from there. Sudhir Singh (PW-5), who was at his threshing floor and Ram Bahadur Singh, who was coming from the side of village also shouted, but accused persons intimidated them, therefore, they did not interfere. Complainant Sudhir (PW-4) went running to his village and informed his father Himmat Singh (PW-12), who alongwith Sudhir (PW-4) and other persons reached the spot, where Chunni was lying in injured condition. On way, they saw accused persons going in their tractor towards village Harrai. When Himmat Singh and other persons reached at the spot, Chunni narrated the incident to them. While they were taking Chunni to Police Station, Chandla, on way he died. They carried dead body to police station where Sudhir (PW-4) lodged first information report (Ex.P/

3) at 7.15 pm.

3. Investigating Officer Devesh Kumar Pathak (PW-13), after inquest, sent the body of Chunni for postmortem examination to PHC Chandla where Dr. M.K. Prajapathi (PW-9) conducted postmortem examination and found about 46 injuries on the body of deceased including gun shot and stab wounds vide his postmortem examination report Ex.P/7.

4. During investigation, spot map was prepared, statements of witnesses were recorded, accused persons were arrested and at their instance weapons of offence were recovered

5. After investigation, charge sheet was filed against 11 accused persons. Two of the accused persons viz. Rajaram and Ram Kishore @ Raju however died during

trial.

6. On charges being framed, accused persons abjured their guilt and pleaded false implication due to enmity.

7. Upon trial and after appreciating the evidence adduced by prosecution, learned trial judge held the accused persons guilty, convicted and sentenced them as aforesaid. Being aggrieved by their conviction and sentence, appellants have filed this appeal.

8. Learned counsel for the appellants submitted that the evidence of alleged eyewitnesses viz. Sudhir (PW-4) and Sudhir Singh (PW-5) was not reliable. It was not possible for them to have witnessed the incident. Similarly, the evidence of Jaikaran Singh (PW-2) and Himmat Singh (PW-12) in regard to the oral dying declaration allegedly made by deceased to them was not reliable. It was not possible for deceased to have made such dying declaration in view of the serious nature of injuries suffered by him. Learned counsel further submitted that since accused Chhota, who is alleged to have been driving the tractor and accused Bhuria, Abbu, Natthu and Prakash who are not stated to have wielded any weapon in the first information report, could not have been held to have shared common object of the assembly for committing murder of deceased. Learned trial judge since misappreciated the evidence in this regard, their conviction deserved to be set aside. On the other hand, learned counsel for the State submitted that the evidence of eyewitnesses as well as of witnesses who deposed about the dying 5 declaration was reliable. The impugned judgment of conviction was just and proper, as such did not call for any interference.

9. We have heard the learned counsel for the parties and perused the impugned judgment and the evidence on record carefully.

10. It has not been disputed by the learned counsel for the appellants that the deceased died of a homicidal death. It has been deposed by Sudhir Singh (PW-4), Sudhir Singh (PW-5), Jaikaran Singh (PW-2) and Himmat Singh (PW-12) that deceased suffered injuries and died while being taken to police station. First information report (Ex.P/3) was lodged by Sudhir Singh (PW-4). Inspector Devesh

Kumar Pathak (PW-13), after conducting inquest, sent dead body of deceased for postmortem examination to PHC Chandla. Dr. M.K. Prajapati (PW-9) performed postmortem examination of the body and found 46 injuries on it. The injuries comprised of one entry and exit wound of firearm, 4 lacerated wounds, 3 stab wounds, 26 contusions and 11 abrasions. These injuries were caused by firearm, stabbing object and hard and blunt objects. On internal examination, PW-9 found fracture of frontal and parietal bones, fracture of radius and ulna bones of right hand, fracture of tibia bone of left leg and breaking of costal margin. By the entry wound of gun shot on right side of the chest, ribs of the right side were broken, lung was ruptured and the omentum was coming out from the exit wound. A piece of bullet or pallet was recovered by him from the lacerated part of liver. In his opinion, the cause of death was shock due to excessive bleeding from the injuries caused by firearm and other weapons

11. From the aforesaid evidence it has been undoubtedly established that deceased met with a homicidal death.

12. not the question before us is whether the appellants have been rightly convicted for committing the murder of deceased.

13. The prosecution case rested on the evidence of two eyewitnesses viz. Sudhir (PW-4) and Sudhir Singh (PW-5) and the oral dying declaration made by deceased to Himmat Singh (PW-12) and Jaikaran Singh (PW-2).

14. Sudhir Singh (PW-4) stated that Chunni Singh, the deceased, was his uncle. In the month of April he had taken a contract for putting soil on the passage between Banshiya and Bhura Purwa. On the day of occurrence, labourers viz. Sadhu, Pancha, Ram Ratan, Babu and Chutua were throwing soil. At about 3.00 O'clock, accused Mahendra Agnihotri came there and asked labourers to not to work there and to work at his godown from the next day. When he admonished Mahendra that he should not come to his site and he should go, Mahendra went to his village threatening him that he would come back with Rajaram. At about 4.00 O'clock when his uncle came, he alongwith his uncle proceeded back to his village on his bicycle. He was sitting on the carrier and uncle was driving bicycle. As soon as they reached near the godown, they saw the tractor of accused Rajaram

approaching towards them. Tractor stopped near them and accused Rajaram exhorted Dhillu @ Ram Vishal to kill him. He jumped from the bicycle and ran away. Ram Vishal fired gun shot from his rifle at deceased. From some distance he saw the incident. According to him, the tractor was being driven by accused 7 Chhota Agnihotri. Ram Vishal and Ram Sharan were sitting on its mudguards having rifle and a Ballam. Other accused persons viz. Rajaram, Chhutta, Mahendra, Raju, Bhuria, Abbu, Prakash and Natthu were present in the trolley attached with the said tractor. Rajaram and Chhutta were armed with Ballams. Mahendra had 12 bore gun whereas others had Lathis. After the gun shot fired by Ram Vishal hit Chunni, all the accused persons rushed towards Chunni and assaulted him by their respective weapons. When he asked accused persons to refrain from assaulting Chunni, accused Mahendra, Bhuria and Chhota ran after him to beat, whereupon he ran away but stopped on the other side of a culvert and saw accused persons assaulting Chunni. At the time of occurrence, Sudhir Singh (PW-5) was also present at his threshing floor and had seen the occurrence. After the incident he went to his house and informed the incident to his father Himmat Singh. He, his father, uncle Jaikaran and Kuber then proceeded for the spot in a tractor. On way they saw accused persons going on their tractor trolley towards village Harrai. When they reached near Chunni, he was alive. Chunni narrated the incident to Himmat Singh, Jaikaran Singh and Kuber Singh. They carried Chunni in the tractor to Police Station, Chandla, but, on way, he expired. At police station, he lodged first information report (Ex.P/3). He further stated that when they alongwith investigating officer came back to spot, the bicycle of deceased was not there. The same was later on recovered from the possession of accused Rajaram.

15. Learned counsel for the appellants submitted that the evidence of Sudhir Singh (PW-4) was not reliable because his presence with the 8 deceased was doubtful. If the dispute of accused persons in respect to labourers was with Sudhir Singh (PW-4), there was no reason for them to have assaulted deceased. Learned counsel further submitted that if at all this witness was present at the spot, accused persons would not have left him alive. In fact deceased was killed by some unknown persons and when his dead body was found, false evidence was created by this witness (PW-4).

16. Sudhir Singh (PW-4) was subjected to a very lengthy cross-examination, but nothing could be elicited out to indicate that he was not present at the place of occurrence. He categorically stated that when he alongwith deceased was going on the bicycle, as soon as he saw tractor of accused persons approaching towards them, and Rajaram shouting, he jumped from the bicycle and ran away. He stated that shot of the rifle fired by the accused Dhillu @ Ram Vishal hit deceased from a distance of 20-22 cubit. It was quite reasonable that by the time other accused persons alighted from the tractor and reached near deceased, he could have run away to some distance to reach a safe place. Though there appeared no apparent evidence about the motive on the part of the accused persons to kill the deceased, but it was categorically stated that Dhillu @ Ram Vishal fired gun shot from a distance of 22 cubit, at deceased. Since many times motive lies hidden in the heart of an offender, it may not be proved by direct evidence, but in a case of direct evidence, the lack of evidence in respect of motive does not affect the prosecution case. It was quite natural for Sudhir Singh (PW-4) to have seen the incident from some distance, as his uncle was being assaulted. 9 Merely by the fact that this witness managed to escape and did not interfere or tried to save the deceased, his presence cannot be doubted. The evidence of this witness finds corroboration from the first information report (Ex.P/3) lodged by him soon after the occurrence and also by the medical evidence of Dr. M.K. Prajapati (PW-9) who found one gun shot, 3 stab and about 40 other injuries caused by hard and blunt objects on the body of deceased.

17. Another eyewitness Sudhir Singh (PW-5) stated that at the time of occurrence he was present in his Khalihan (threshing floor). He saw all the accused persons coming in a tractor trolley. The said tractor was being driven by Chhota Agnihotri. When Sudhir Singh and Chunni came on a bicycle, accused Rajram raised a 'Lalkar' to Dhillu Maar sale ko bhaga ja raha hai'. Dhillu @ Ram Vishal jumped from the tractor and fired at Chunni. Other accused persons also alighted from the tractor and went near Chunni. In the meantime, Sudhir, who was sitting on the carrier of bicycle, jumped and ran back. He stayed near a culvert and shouted not to kill his uncle. When some of the accused persons tried to run after him, he ran away. After some time, Himmat Singh, Jaikaran Singh, Sudhir Singh s/o Himmat Singh and Kuber Singh came on a tractor where injured Chunni Singh was lying.

He also went at the spot. At that time Chunni Singh was alive and moaning. He stated that he saw the incident from a distance of about 60-70 paces, but he could not see as to at which part of the body of deceased Rajaram dealt the blow of Ballam.

18. Learned counsel for the appellants referring to the evidence of 10 Shivdatt Patwari (PW-8) stated that it was not possible for Sudhir Singh (PW-5) to have seen the occurrence as there were shrubs between his Khalihan and the place of occurrence. We are unable to accept the submission made by the learned counsel for the appellants because this fact was not suggested to Sudhir Singh (PW-5) in cross examination and further because in the map (Ex.P/6) prepared by Patwari (PW-8) no shrubs were shown at or near about the place of occurrence. The presence of Sidhir Singh (PW-5) at his Khalihan, which was not far away from the place of occurrence, appeared natural. The evidence of this witness stood corroborated from the evidence of Sudhir Singh (PW-4) and also from the fact that his name was mentioned by Sudhir (PW-4) in the first information report (Ex.P/3).

19. Himmat Singh (PW-12), the brother of Chunni Singh, stated that at about 5.00 O'clock in the evening when he was at his house, his son Sudhir Singh came running and informed him that accused persons were bent upon killing Chunni. He then alongwith his brother Jaikaran, sons Kuber and Sudhir went in a tractor trolley towards godown. As soon as they came out of village, they saw accused persons going in a tractor trolley towards village Harrai. When they reached near Chunni, who was lying on the way, they saw injuries on his body. He was alive. He told to them that accused persons came in a tractor trolley, Ram Vishal fired gun shot at him and others assaulted him with Ballam, Lathis and the butt of gun. When they were carrying him in the tractor for treatment, on way he died. All of them then went to Police Station Chandla where his son Sudhir lodged report. Similar statement was given by Jaikaran 11 Singh (PW-2), another brother of deceased.

20. Learned counsel for the appellants placing reliance on the case of Darshan Singh and others v. State of Punjab-AIR 198.SC 55.submitted that since deceased had suffered serious gun shot and number of other serious and bleeding injuries, it was not possible for him to speak. In fact he was already dead. The evidence of

dying declaration was fabricated by the brothers of deceased due to enmity. Learned counsel referring to the police statement of Himmat Singh (Ex.D/4) submitted that the name of accused Ram Sharan was not disclosed by him in the police statement whereas he improved before the Court in naming Ram Sharan also. Learned counsel also pointed out that Himmat Singh did not mention in Ex.D/4 that Jaikaran Singh (PW-2) accompanied him when he went to spot.

21. In case of Darshan Singh (supra) Apex Court held that the conviction can rest on a dying declaration if it inspires confidence. When from the medical evidence it is found that vital organs of the deceased like peritoneum, stomach and spleen were completely smashed, he cannot be said to be in a fit state of mind and body to make any kind of coherent or credible statement relating to the circumstances which resulted in his death. Therefore, his dying declaration could not be relied upon.

22. On perusal of the evidence of Dr. M.K. Prajapati (PW-9) it is apparent that about 45 injuries were found on the body of deceased. Because of gun shot injury on the right side of chest, his ribs were broken. Lung was ruptured. His diaphragm and intestines were ruptured. 12 Small intestine and liver was also ruptured. The membranes were lacerated. Frontal and parietal bones of skull were broken and bones of hands and leg were also fractured. The deceased had died because of excessive haemorrhage from the injuries caused by firearm as well as other injuries. Apart from gun shot injury, he had also suffered three stab injuries on the leg and numerous injuries on other parts of his body. In these circumstances, in our opinion, it would not be safe to place reliance on the evidence of the said oral dying declaration by holding that deceased was in fit state of mind and body to make a dying declaration or that he was alive. No doubt eyewitnesses viz. Sudhir Singh (PW-4) and Sudhir Singh (PW-5) stated that by the time Himmat Singh and Jaikaran Singh reached the place of occurrence, deceased was alive and had narrated the incident to them, but it seems sheer exaggeration by them.

23. Learned counsel for the appellants placing reliance on the ratio of Apex Court in the case of Dajya Moshya Bhil and others v. State of Maharashtra-AIR 198.SC 171.submitted that since appellants Chhota Bhuria, Abbu, Natthu and Prakash

were empty handed and did not cause any injury to deceased, it could not held that they were aware of the intention of remaining accused persons to kill the deceased. In the circumstances of the occurrence, it was also not possible for them to knot that others had an object to cause death of deceased. As such, their conviction under Section 302/149 IPC was not justified. Learned counsel for the State, per contra submitted that from the very fact that all the accused persons came together in a tractor, some of whom were 13 armed with deadly weapons including guns, it could be inferred that the common object of assembly was to commit murder of deceased.

24. In case of Dojya Moshya Bhil (supra) the Apex Court while considering the liability of appellants 2 and 3 in the case observed that even though they came unarmed when they chased deceased with appellant 1, who was armed with a Dharya a weapon of cutting and pelted stones, an inference of common intention being formed on the spur of moment cannot be made. The fact that appellant 1 was armed with a Dharya and appellants 2 and 3 pelted stones causing injuries may permit all inference that appellants 2 and 3 could have shared the common intention with appellant 1 of causing grievous hurt to deceased. Therefore in the circumstances, the minimum common intention that can be attributed to appellants 2 and 3 is one of causing grievous hurt with a sharp-cutting weapon like a dharya. Thus appellants 2 and 3 are shown to have committed all offence under S. 326 read with S. 34 of the Penal Code and they should be convicted accordingly.

25. It is true that appellants in the case in hand have been convicted under Section 302 read with Section 149 of the Indian Penal Code, but if the evidence of complainant Sudhir Singh (PW-4) is carefully scrutinized, it can be seen that in the first information report he attributed no weapons to aforesaid five accused persons. Accused Chhota was driver of the tractor whereas Bhuria, Abbu, Natthu and Prakash were unarmed. He, in the court, however, improved and stated that they were armed with Lathis. Other witness Sudhir (PW-5) also stated that these accused persons were armed with Lathis. But, since these accused persons were 14 stated to be unarmed in first information report (Ex.P/3), in our opinion, it would be safer to hold that they had no weapons and they did not cause any injury to deceased. We, however, find it established that remaining other accused who

were armed with guns, Ballam and sticks caused injuries to deceased as a result of which he died.

26. not the question before this Court would be whether accused Chhota, Bhuria, Abbu, Natthu and Prakash would be liable for committing murder of deceased vicariously for the acts done by other accused persons. The Apex Court for such a situation, in case of *Allauddin Mian and others, Sharif Mian and another v. State of Bihar*-AIR 198.SC 145.observed:- In order to fasten vicarious responsibility on any member of an unlawful assembly the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. Under this section, therefore, every member of an unlawful assembly renders himself liable for the criminal act or acts of any other members or members of that assembly provided the same is/are done in prosecution of the common object or is/are such as every member of that assembly knew to be likely to be committed. This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly. What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the 15 assembly will become liable for the same. Therefore, any offence committed by a member of an unlawful assembly in prosecution of any one or more of the five objects mentioned in Section 141 will render his companions constituting the unlawful assembly liable for that offence with the aid of S.

149. It is not the intention of the legislature in enacting S.149 to render every member of an unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to invoke S. 149 it must be shown that the incriminating act was done to accomplish the common object of the unlawful assembly. Even if an act incidental to the common object is committed to accomplish the common object of the unlawful assembly it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. *** Where the common object of the unlawful assembly was to kill the father of the deceased girls and on frustration of that object in consequence of the father who had gone inside the house to fetch a spear, having been prevented from coming out of the house, two of the accused killed the deceased, other accused could not be punished for the acts of killing for accomplishing the common object it was not necessary to kill the two girls who were not hindrance to accused in question from accomplishing their common object.

27. Keeping in view the ratio of the aforesaid Apex Court's decision, if we analyze the situation occurring in the instant case, it can be readily inferred that the cause of incident was that Sudhir Singh (PW-4) had admonished accused Mahendra when he went to his site and asked his labourers to discontinue work there. This, in all probability, infuriated accused Mahendra who challenged him that he would come back with Rajaram. If this was the cause, which provoked accused persons to teach a lesson to Sudhir, the common object of the assembly formed by them must be to commit murder of Sudhir Singh (PW-4), but when accused persons found Chunni Singh with Sudhir, they instead attacked him and caused his death. Sudhir escaped unhurt. In these 16 circumstances, in our opinion, it cannot be held that initially the common object of the assembly was to commit murder of Chunni, but suddenly when Sudhir escaped, some of them took up in their minds to kill Chunni Singh. In these circumstances, in our opinion, it cannot be held established that the persons who were empty handed, and who did not cause injury to deceased also shared the common intention or the common object of the assembly of those accused persons who actually caused injuries and committed murder of the deceased. Therefore, appellants viz. Bhuria, Abbu, Natthu, Prakash and Chhota, who were not armed and caused no injury to deceased, cannot be held liable for causing death of Chunni.

28. For the reasons stated hereinabove, conviction and sentence of appellant No.1 Bhuria, No.3 Abbu, No.5 Natthu, No.7 Prakash and No.8 Chhota on the charge under Sections 148 and 302/149 of the Indian Penal Code deserves to be and is hereby set aside. They are acquitted. The conviction and sentence of remaining appellants viz. appellant No.2 Chuttu, No.4 Ramsharan, No.6 Ram Vishal and No.9 Mahendra awarded to them by the trial court on the aforesaid counts is affirmed.

29. Appeal partly allowed. (RAKESH SAKSENA) (SMT. VIMLA JAIN) JUDGE JUDGE shukla 17 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR Criminal Appeal No.181/2004 Bhuria and others vs. State of Madhya Pradesh

JUDGMENT

For consideration (Rakesh Saxena) JUDGE __/01/2013 Hon'ble Smt. Justice Vimla Jain JUDGE __/01/2013 POST FOR __/01/2013 (Rakesh Saxena) Judge __/01/2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com