

GAHC010021392020



2025:GAU-AS:1403

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./42/2020

SRI SURESH MUNDA AND 11 ORS
S/O- SRI MUTAL MUNDA

2: SRI RAJEN MUNDA
S/O- LATE BIJAY MUNDA

3: SRI RUPSING MUNDA
S/O- LATE SWARUP MUNDA

4: SRI JOYSING MUNDA
S/O- LATE BONGI MUNDA

5: SRI CHELA MUNDA
S/O- SRI GARDE MUNDA

6: SRI MANTU MUNDA
S/O- LATE BHIM MUNDA

7: SRI DIPAK MUNDA
S/O- LATE BIJOY MUNDA

8: SRI KANU MUNDA
S/O- LATE DURGA MUNDA

9: SRI KACHUA MUNDA
S/O- LATE MANDO MUNDA

10: SRI MARKI MUNDA
S/O- LATE GUNA MUNDA

11: SRI GANGA MUNDA
S/O- SRI RUPSING MUNDA

12: SRI DIMAN MUNDA

S/O- LATE BHIM MUNDA
ALL ARE RESIDENTS OF VILL.- JAMNGURI
MUNDAGAON
P.O AND P.S. HOWRAGHAT
DIST.- KARBI ANGLONG
ASSAM
PIN- 782481

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY PUBLIC PROSECUTOR, ASSAM

2:SRI JALESWAR RAM HARIJAN
S/O- LATE KESHAV HARIJAN
RESIDENT OF VILL.- JAMNGURI
MUNDAGAON
P.O AND P.S. HOWRAGHAT
DIST.- KARBI ANGLONG
ASSAM
PIN- 782481

Advocate for the Petitioner : MR. H R KHAN, MR. N ISLAM,MS. N GOSWAMI,MRS M
BARMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI
HONOURABLE MR. JUSTICE K. SEMA

JUDGMENT

(S. K. Medhi, J)

The instant appeal has been preferred under Section 374 of the Cr.P.C, against the judgment and order dated 07.01.2020 passed by the learned Sessions Judge, Karbi Anglong in Sessions Case No. 19 of 2001, corresponding to G. R. Case No. 446 of 1996, under Sections 147 /148 /149 /324 /326 /302 / 436 of the Indian Penal Code (IPC), by which the appellants were sentenced to

undergo Rigorous Imprisonment (RI) of 6 (six) months for Section 147 of the IPC, RI of 1 (one) year for Section 148 of the IPC, RI of 3 (three) months for Section 447 of the IPC, RI of 6 (six) months for Section 324 of the IPC, RI of 2 (two) years and to pay fine of Rs.500/- in default, Simple Imprisonment (SI) of 1 (one) month for the Section 436 of the IPC and RI of life and to pay fine of Rs.1,000/- in default, SI for 2 (two) months for Section 302 of the IPC, each. All the sentences were to run concurrently.

2. The criminal law was set into motion by lodging of an Ejahar dated 29.08.1996 by the PW-3. It has been stated that on the previous night around 45 (Forty-Five) persons of Munda community from Jamuguri village armed with bows, arrows and guns had surrounded the residences of the people belonging to the Harijan community and launched attack by arrows and set ablaze the houses. As a result of the attack, Krishna Harijan, Keshwar Harijan and Sripati Harijan sustained grievous injuries. The homestead and properties were burnt to ashes. The informant had also identified number of accused persons. The details of the properties which were destroyed were also given. Based on the Ejahar, the formal F.I.R. was registered and investigation was made. In the meantime, injured Keshwar Harijan, who is the father of the informant, had passed away. After completion of the investigation, the Charge-sheet was laid, whereafter, charges were framed by the learned Court and on its denial, the trial had begun.

3. In the trial, the prosecution had adduced evidence through 11 (eleven) number of witnesses. Thereafter, witnesses of 4 (four) number of E.O(s) were also taken.

4. PW-1 is the Sarkari Gaonbura from village Tilai Danga and had deposed

that the complainant was from the neighbouring village Jamuguri. In his cross-examination however, he had clarified that he was not present at the place of occurrence and did not know who had committed the offence.

5. PW-2 is also from the same village as PW-1 and is a signatory in the Seizure List, which was proved as Exhibit-1. In his cross-examination, however, he had clarified that he was not present in the place of occurrence and does not know who had committed the offence.

6. PW-3 is the informant, who had deposed that 40-45 (Forty to Forty-Five) persons had attacked the residential houses of the informant and the families in which, his father, mother and one brother were grievously injured. Subsequently, his father had died at the Diphu Hospital, where he was taken in a precarious condition. His mother, Sripati and brother, Krishna had also undergone treatment for a month in the Diphu Hospital. He had stated that the reason for the attack was monetary dispute. He had also deposed that he could recognise the accused persons in the moonlight as it was a full moon night. The aspect of recognition was also reiterated in the cross-examination. In the cross-examination, however, he had stated that he did not see who had shot the father, mother and brother and could only hear regarding the fact that accused Kanu Munda had shot his father, accused Suren Munda had shot his mother and accused Jatia Munda had shot his brother by bow and arrow.

7. PW-4 is the brother of the informant, who had also stated that he could witness the attack and also, the killing of his father and injuries caused to his brother and mother. He had also deposed that he could recognise the accused persons as it was a full moon night.

8. PW-5 is the elder brother of the informant, who was himself injured. He had stated that due to the injuries sustained, he had become senseless. In his cross-examination, he had, however, stated that accused Chandra Kanta had shot him with bow and arrow. He had also deposed that the accused had burnt down their house.

9. PW-6 is the brother-in-law of the informant, who had also deposed about recognising the accused persons in the moonlight. He had also identified the accused in the dock. In his cross-examination, he had made a categorical statement that he could see accused Kanu Munda shooting his father-in-law by bow and arrow. He reiterated that he could recognise all the accused persons and knew each one of them by name.

10. PW-7 is the mother of the informant, who was also injured in the attack. She had deposed that she saw the appellant-accused Kanu Munda shooting her husband and also Jatiya Munda shooting her son Krishna and accused Suren Munda shooting her by bow and arrow. In the cross-examination, she has reiterated that it is accused Suren Munda who had shot her.

11. PW-8 is the brother-in-law of the informant, who had also deposed against the accused persons.

12. PW-9 is the Police Officer, who had conducted the initial investigation.

13. PW-10 is the doctor, who had proved the post-mortem Report as Exhibit-6. He had however, mentioned that the post-mortem was done by another doctor, namely, Dr. Ripunjoy Kakoty, who had, however passed away and therefore, the post-mortem was proved by him.

14. PW-11 is the I.O., who had laid the Charge-sheet which was proved as Exhibit-8. As mentioned above, the Court had also examined 4 (four) numbers of E.O(s), who are mainly connected with the effecting of the Warrant of Arrest and P & A. All the 4 E.O(s) had deposed regarding their part in executing the W.A. and P&A. After completion of the prosecution evidence, the implicating materials were put to the accused persons in their examination under Section 313 of the Cr.P.C., where they had denied the allegations.

15. It may be mentioned at this stage that though the Charge-sheet was laid against 18 (eighteen) persons, 5 (five) of them had absconded and accordingly, the trial was conducted against 13 (thirteen) persons.

16. Based on the aforesaid materials on record, the learned Sessions Court, Karbi Anglong, Diphu, had passed the impugned judgment convicting and sentencing the appellants in the manner described above.

17. It may however be mentioned that so far as appellant No. 1 is concerned, there was an issue raised regarding his juvenility and accordingly, an Interlocutory Application was filed in this proceeding. Consequent thereof, appellant No.1 was released as a juvenile.

18. We have heard Shri H. R. Khan, learned counsel for the appellants. Also heard Ms. B. Bhuyan, learned Senior Advocate & Additional Public Prosecutor for the State.

19. Shri Khan, the learned counsel for the appellants has submitted that amongst the present appellants, it is only against appellant no. 8- Kanu Munda certain witnesses have testified to be eyewitness implicating him. The other 2 accused persons are Suresh Munda and Jatia Munda. Though Suresh Munda

was initially arrayed as the appellant no. 1, his prayer of juvenility has been accepted. The other accused Jatia Munda is not an appellant. He accordingly submits that the involvement of rest of the appellants is not proved by the evidence of the prosecution witnesses.

20. He has submitted that there are inconsistencies with the evidence on record adduced by the prosecution. He has highlighted that so far as the evidence of PW-1 and PW-2 are concerned, those are hearsay and those witnesses were not even present at the place of occurrence. So far as the evidence of PW-3, PW-4, PW-5, PW-6, PW-7 and PW-8 is concerned, there are inconsistencies with regard to the specific act attributed upon the appellants. He submits that as per the PW-3, it is appellant, Kanu, who had shot his father, appellant Suren, who had shot his mother and appellant Jatia, who had shot his brother. PW-4 had also made a similar deposition regarding the individual acts of the appellants. The PW-5, who had suffered injuries and is the elder brother of the informant has, however, deposed in his cross-examination that it is appellant Chandra Kanta who had shot him with bow and arrow. He submits that there is a major inconsistency with the acts attributed upon the appellants as the injured person had named another appellant, whereas, P.Ws-3 & 4 had named a different person. He has also highlighted that even PW-7, the mother who was also injured had stated that victim Krishna was injured by Jatia.

21. With regard to the F.I.R., the learned counsel has submitted that all the appellants were not even named in the FIR and therefore, the proceeding against them was not in accordance with law. It is submitted that the appellants are innocent and on vague charges, the proceeding was initiated against them.

22. On the aspect of the implication and conviction under Section 149 of the

IPC, the learned counsel has submitted that the aforesaid Section cannot be applied on its own and has to be related to Section 141 of the IPC. It is submitted that the ingredients of Section 141 of the IPC are required to be strictly fulfilled to bring in the implication under Section 149 of the IPC. In this regard, he has relied upon the case of ***Subran @ Subramanian and Ors. vs. State of Kerala***, reported in ***(1993) 3 SCC 32***. The learned counsel, accordingly, submits that the impugned judgment of conviction and sentence is liable to be interfered with and the benefit of doubt is required to be given to the appellants. He has also submitted that it was admittedly a large group and no individual acts having been attributed to the appellants, they cannot be held guilty and punished.

23. *Per contra*, Ms. B. Bhuyan, the learned APP, has defended the impugned judgment. She has submitted that PW-3, PW-4, PW-5 and PW-7 had made specific implications against the appellants. The involvement of the appellants, who had actually caused injuries by shooting with the bow and arrow were specifically named. She has highlighted that PW-3 could recognize all the accused persons and had also named them. As regards the motive, the learned APP has submitted that monetary transaction clearly appears to be the motive and as a Police case was lodged after a Bisar regarding the aforesaid monetary transaction, the attack appears to be out of revenge. The aspect of motive is also proved by PW-4, PW-5 and PW-7. She has submitted that the motive was also apparent as the weapons carried by the accused persons were dangerous in nature, namely, bow, arrow and dao. They had trespassed into the premises of the informant and had caused the injuries leading to the death of the father of the informant as well as burning down of the house and shops.

24. On the aspect of the application of Section 149 of the IPC, the learned APP has submitted that the application of Section 149 was correctly done on the facts and circumstances of the case. Regarding the interpretation of the aforesaid provision of law she has relied upon the following case laws:

(i). ***Ramchandran and Ors. vs. State of Kerala***, reported in **(2011) 9 SCC 257**.

(ii). ***Ramesh and Ors. vs. State of Haryana***, reported in **(2010) 13 SCC 409**.

(iii). ***Surendra Singh vs. State of Rajasthan and Ors.***, reported in **AIR 2023 SC 1889**.

(iv). ***State of Uttar Pradesh vs. Ravindra alias Babloo and Ors.***, reported in **(2019) 19 SCC 65**.

(v). ***Shaji and Ors. vs. State of Kerala***, reported in **(2011) 5 SCC 423**.

(vi). ***Mohan Singh vs. State of Punjab***, reported in **AIR 1963 SC 174**.

25. In the case of ***Ramesh (Supra)***, the Hon'ble Supreme Court has laid down as follows:

“12. ... In our opinion the common object of an unlawful assembly has to be gathered from the nature of the assembly, arms possessed by them and the behaviour of the assembly at or before the occurrence. It is an inference which has to be deduced from the facts and circumstances of each case. To attract the mischief under Section 149 of the Penal Code, it is not necessary that each of the accused must commit some illegal overt act. When the assembly is found to be unlawful and if offence is committed by any member of the unlawful

assembly in prosecution of the common object, every member of the unlawful assembly shall be guilty of the offence committed by another member of the assembly. It has to be borne in mind that an assembly which is not unlawful when assembled may subsequently become an unlawful assembly.”

26. The Hon’ble Supreme Court in the case of **Surendra Singh** (supra) has laid down as follows:

“10. ... At this stage the decision of this Court in the case of Bharwad Mepa Dana (supra) on applicability of Section 149 Indian Penal Code is required to be referred to. Before this Court it was the case on behalf of the prosecution that thirteen named persons formed an unlawful assembly and the common object of which was to kill the three brothers. Twelve of them were tried by the Sessions Court who acquitted seven and the High Court acquitted one more. This brought the number to four. It was the case on behalf of the Accused that as the High Court convicted only four persons falling below the required number of five, they could not have been convicted with the aid of Section 149 Indian Penal Code. The aforesaid contention was negated by this Court. This Court observed that merely because two other persons forming part of the unlawful assembly were not convicted as their identity was not established, the Accused cannot be permitted to say that they are not forming part of the unlawful assembly and they cannot be convicted with the aid of Section 149 Indian Penal Code. In the said decision it is specifically observed and held that the essential question in a case Under Section 147 is whether there was an unlawful assembly as defined under 141, Indian Penal Code, of five or more than five persons. The identity of the persons comprising the assembly is a matter relating to the determination of the guilt of the individual Accused, and even when it is possible to convict less than five persons only, Section 147 still applies, if upon the evidence in the case the Court is able to hold that the person or persons who have been found guilty were members of an assembly of five or more persons, known or unknown, identified or unidentified.

10.2. Now once the Respondent Accused was found to be member of the unlawful assembly of more than five persons and he actually participated in commission of the offence may be the fatal blow might have been given by the another Accused, in the present case Bhupendra Singh, still with the aid of Section 149 Indian Penal Code, Respondent Accused can be convicted for the offence Under Section 302 Indian Penal Code with the aid of Section 149 Indian Penal Code. The case would certainly fall within first part of Section 149 Indian Penal Code. As per first part of Section 149 Indian Penal Code if an offence is

committed by any member of unlawful assembly in prosecution of the common object of that assembly, every person who, at the time of that offence, is a member of the same assembly, is guilty of that offence. ...

27. The Hon'ble Supreme Court in the case of ***Ravindra alias Babloo (Supra)***, has laid down as follows:

"...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.

12. In Lalji v. State of U.P., it was observed: (SCC p. 442, para 10)

"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."

28. The learned APP, accordingly, submits that the present may not be a fit case for interference and the impugned judgment is required to be affirmed. The learned APP has, however, pointed out that the aspect of compensation may be considered which was not done at the time of passing the impugned judgment.

29. The rival contentions have been duly considered and the materials placed on records have also been carefully examined.

30. In the instant case, it is not in doubt that a large group of persons were involved. The Ejahar itself states that around 45 (Forty-Five) persons had come as a group, who had committed the offence involving murder and burning down of the house apart from causing injuries to a few. The Ejahar was lodged by PW-3, who, in his deposition had stated that he could recognize the accused persons in the moonlight as it was a full moon night. The aforesaid assertion is also reiterated in the cross-examination. The aspect of recognizing the accused persons is also deposed by PW-4, PW-6 and PW-7. The PW-6 has also made an additional statement that all the accused persons were recognized in the dock and in his cross-examination, he had deposed that he knew each and every one of the accused persons by name. From the aforesaid deposition, it is not in dispute that the identities of the appellants were in doubt. The only aspect which is to be examined is their involvement in the offence. Admittedly, in the Ejahar lodged by PW-3 and the depositions made, the specific allegations have been made against the appellants, more particularly, 3 (three) of the appellants, who had done the overt act of shooting by bow and arrow. The only inconsistency which may be termed as such is with regard to the specific overt act attributed to appellants Kanu, Suren and Jatia. The learned counsel for the appellants has highlighted that while PW-3 had stated that his brother (PW-5), was shot by Jatia, who is absconding, the PW-5, in his deposition has, however, stated that it is the appellant, Chandra Kanta, who had shot him with bow and arrow. It also appears that the aspect of involvement of accused, Jatia (absconding), so far as shooting of Krishna Harijan (PW-5) by bow and arrow, is also stated by PW-4 and PW-7. It however, cannot be overlooked that it was a huge group of 40-45 (Forty to Forty-Five) persons, who had attacked the house in the middle of the night, when the inmates were sleeping and within a short

time, the incident had taken place. Under those circumstances, the inconsistency which has been pointed out could be natural and would not be fatal to the prosecution case.

31. We have also noted that so far as the deposition of PW-3 is concerned, in his cross-examination, he had stated that he could only hear that accused Jatia had shot his brother, Krishna. On the other hand, when the injured himself as PW-5 had specifically named appellant Chandra Kanta, who is one of the accused, the inconsistency which has been pointed out would not be relevant as it was the injured witness whose evidence, which otherwise, appears to be trustworthy has to be taken into consideration. The aspect of recognizing the appellants has been consistent so far as the depositions of PW-3, PW-4, PW-5 and PW-6 is concerned.

32. As noted above, the identities of the accused persons were not in dispute. This brings us to the aspect of the application of Section 149 of the IPC. Section 149 of the IPC is a part of Chapter-VIII. Section 141 defines unlawful assembly, wherein, there is a requirement of 5 (five) or more persons and the common object of the persons have also been laid down. In the explanation, it has been clarified that an assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly. Juxtaposed under Section 149, every member of an unlawful assembly guilty of offence committed in the prosecution of common object has been stated. For ready reference, Section 149 of the IPC is extracted hereinbelow:

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object. - If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that

assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

33. The decisions of the Hon'ble Supreme Court has clearly laid down the true ambit and purport of the aforesaid provisions of law. The observations made in the case of **Mohan Singh** (supra) would also be helpful to come to a correct interpretation which is extracted herein below:

"...9. In dealing with the, question as to the applicability of S. 149 in such cases, it is necessary to bear in mind the several categories of cases which come before the Criminal Courts for their decision. If five or more persons are named in the charge as composing an unlawful assembly and evidence adduced by the prosecution proves that charge against all of them, that is a very case where S. 149 can be invoked. It is, however, not necessary that five or more persons must be convicted before a charge under S. 149 can be successfully brought home to any members of the unlawful assembly. It may be that less than five persons may be charged and convicted under S. 302/149 if the charge is that the persons before the Court, along with others named constituted an unlawful assembly; the other persons so named may not be available for trial along with their companions for the reason, for instance, that they have absconded. In such a case, the fact that less than five persons are before the Court does not make section 149 inapplicable for the simple reason that both the charge and the evidence seek to prove that the persons before the court and others number more than five in all and as Such, they together constitute an unlawful assembly. Therefore, in order to bring home a charge under S. 149 it is not necessary that five or more persons must necessarily be brought before the court and convicted. Similarly, less than five persons may be charged under S. 149 if the prosecution case is that the persons before the Court and others numbering in all more than five composed an unlawful assembly, these others being persons not identified and so not named. In such a case, if evidence shows that the persons before the Court along with unidentified and un-named assailants or members composed an unlawful assembly, those before the Court, can be convicted under section 149 though the unnamed and unidentified persons are not traced and charged. Cases may also arise where in the charge, the prosecution names five or more persons and alleges that they

constituted an unlawful assembly. In such cases, if both the charge and the evidence are confined to the persons named in the charge and out of the persons so named two or more are acquitted leaving, before the court less than five persons to be tried, then S. 149 cannot be invoked. Even in such cases; it is possible that though the charge names five or more persons is composing an unlawful assembly, evidence may nevertheless show that the unlawful assembly consisted of some other persons as well who were not identified and so not named. In such cases, either the trial court or even the High Court in appeal may be able to come to the conclusion that the acquittal of some of the persons named in the charge and tried will not necessarily displace the charge under section 149 because along with the two or three persons convicted were others who composed the unlawful assembly but who have not been identified and so have not been named. In such cases, the acquittal of one or more persons named in the charge does not affect the validity of the charge under section 149 because on the evidence the court of facts is able to reach the conclusion that the persons composing the unlawful assembly nevertheless were five or more than five. It is true that in the last category of cases, the court will have to be very careful in reaching the said conclusion. But there is no legal bar which prevents the court from reaching such a conclusion. The failure to refer in the charge to other members of the unlawful assembly un-named and unidentified may conceivably raise the point as to whether prejudice would be caused to the persons before the Court by reason of the fact that the charge did not indicate that un-named persons also were members of the unlawful assembly. But apart from the question of such prejudice which may have to be carefully considered, there is no legal bar preventing the court of facts from holding that though the charge specified only five or more persons, the unlawful assembly in fact consisted of other persons who were not named and identified. That appears to be the true legal position in respect of the several categories of cases which may fall to be tried when a charge under section 149 is framed."

34. It is absolutely clear that the offence under which Section 149 of the IPC would have an implication is not confined to the offence under Section 141 but the offence which an unlawful assembly commits. It is made clear that any offence which is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or which the members of

that assembly knew to be likely to be committed, each of the member of the unlawful assembly is guilty of that offence. It becomes clear that specific overt act is not required to be performed by each of the members of the unlawful assembly and the only requirement is to be a member. In the instant case there is the aforesaid ingredients are fully met.

35. In the conspectus of the aforesaid discussion based on the materials on records including the evidence, we are of the opinion that the conclusion arrived at by the learned Sessions Judge, Karbi Anglong in the judgment and order dated 07.01.2020 in Sessions Case No. 19 of 2001 is in accordance with law and would not warrant any interference.

36. The appeal is accordingly dismissed.

37. Send back the LCRs.

JUDGE

JUDGE

Comparing Assistant