
(1982) 12 SC CK 0022

In the Supreme Court Of India

Case No : Criminal Appeal No. 853 of 1981

Vithal Bhimashah Koli

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-12-1982

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 201

Citation : AIR 1983 SC 179 : (1982) 2 SCALE 1325 : (1983) 1 SCC 431

Hon'ble Judges : Y. V. Chandrachud, C.J;O. Chinnappa Reddy, J

Bench : Division Bench

Judgement

1. The first of nine accused, who were tried by the learned Third Additional Sessions Judge, Solapur is the appellant in this appeal by special leave under Article 136 of the Constitution. All the nine were charged with offences under sees. 120(B), 147, 148, 307 read with Section 149, 201 read with Section 149 and 341 read with Section 149. Four, out of them, A-1, 6, 7 and 9 were further charged with an offence u/s 303 read with Section 149 while the remaining five accused were charged u/s 302 read with Section 149. The learned Sessions Judge convicted all the nine accused of the various offences. He convicted A-1, 6, 7 and 9 of the offence u/s 303 read with Section 149 and sentenced them to death. He convicted A-2, 3, 4, 5, and 8 u/s 302 with Section 149 and sentenced them to suffer imprisonment for life. On appeal, the High Court of Maharashtra found that there was no unlawful assembly and therefore, acquitted all the accused of the various charges under sees. 147, 148 and 149 read with the other substantive 15 sections of the penal code. A-7, 8 and 9 were acquitted of all the remaining charges also. A-1 was convicted u/s 303 and the sentence of death was confirmed. A-1 and 6 were convicted u/s 323 in regard to the injuries caused to PW-3 and sentenced to imprisonment for three months. A-2, 3, 4 and 5 were convicted u/s 323 in regard to the injuries caused to the deceased and sentenced to imprisonment for three months. A-1, 2, 3, 4, 5 and 6 were all convicted u/s 201 and sentenced to suffer imprisonment for three years. A-6 was further convicted u/s 27 of the Arms Act and duly sentenced. The first accused whose

sentence of death has been confirmed, has appealed to this Court after obtaining special leave under Article 136 of the Constitution.

2. It appears from evidence which cannot be disputed that in the village of Telgaon, there is bitter faction between two groups, one led by the deceased Siddappa and the other led by Laxman Desai, A-6. There were the usual round of criminal cases between the parties. Some months prior to the present occurrence, Bhimanna, brother of PW-3, the principal witness in this case, had been murdered. A-1, 6, 7 and 9 and two others had been convicted of murder in that case and sentenced to suffer life imprisonment. At the time of the present incident, they were on bail. On October 17, 1980, the deceased went to the shop of Swami to purchase betel leaves and betel nuts. As usual with him, he was carrying a gun on his left shoulder. At that time, his brother, PW-2 was sitting on a platform near the shop of Swami. After purchasing the betel leaves and betel nuts, the deceased proceeded towards the Maruti temple. PW-3 was at that time standing near the Laxmi temple offering prayers. A little before he saw Siddappa coming from the side of the Gram Panchayat and proceeding towards the Maruti temple, he saw A-1 sitting to the north of the Maruti temple with an axe in his hands. He noticed A-3 following Siddappa. All of a sudden, A-3 caught Siddappa from behind and they started grappling with each other. Just then A-4, 5 and 8 came running from the house of Narsappa and started dragging Siddappa towards Mahadev temple. As Siddappa was being dragged, his gun slipped from his shoulder and fell down. A-5 noticed PW-3 there, hit him with a stick on his back. Meanwhile, A-2, 6 and 7 also came running to the spot from the lane by the side of the house of Rama Koli and eight or nine assailants started assaulting Siddappa. When A-5 beat him on his back, PW-3 fell down in the ditch between the Laxmi temple and Mahadev temple. A-1 came there running and gave him a blow with the axe, which was with him. He missed and gave a second blow which hit him on the head. PW-3 sustained a bleeding injury. He, however, continued to witness the incident, according to him, sitting up in the ditch. He saw all the accused persons assaulting the deceased. A-1 gave an axe-blow on the face of Siddappa and again gave a second blow on the neck. A-6, who had an axe in one hand and Siddappa's gun in the other also gave an axe-blow. A-2 gave an axe-blow in the waist region of Siddappa. All of them started dragging Siddappa towards Bhandar Kavthe Road. PW-3 became frightened that he might also be killed and ran to the house of Ganapati Kumbhar. PW-2, the brother of the deceased, who was sitting near the betel shop of Swami heard the screams of Siddappa and ran towards Mahadev temple. He saw all the accused assaulting Siddappa with axes. A-6 also had Siddappa's gun in his hand which he pointed towards PW-2, threatening to shoot him if he came forward. PW-2 noticed PW-3 lying injured by the side of the platform of Mahadev temple. All the accused started dragging Siddappa. He ran towards his house, informed his mother and wife and then ran to the house of the Police Patel, PW-4. The wife of the deceased, PW-5 rushed towards Mahadev temple and she saw the accused persons dragging the dead body towards Bhandar Kavthe Road. She begged

them not to do so, but they threatened to finish her off also. She returned to the Mahadev temple weeping. PW-4 accompanied PW-2 to Mahadev temple and found women-folk weeping and wailing. On the basis of the information received from PW-2, he prepared a report and sent it to the Police Station Mandrup. The police came to the village by about 4.00 p.m. Thereafter the investigation proceeded. It was found that the body of Siddappa had been burnt and only bones and ashes remained. Siddappa's gun which was half burnt was found near the ashes, so also his wrist watch. After completing the investigation, the police filed a charge-sheet against the nine accused.

3. The facts mentioned by us were substantially found by the High Court. Yet the High Court by a curious process of reasoning came to the conclusion that there was no unlawful assembly and that each of the accused persons was liable for his own individual act. The High Court thought that because the accused arrived on the scene at different times and at different stages of the assault, they could not be said to be animated by any common object. The reasoning appears to us to be totally fallacious. It is obvious from the evidence that the several accused persons were lying in wait at different places near the Mahadev temple and Maruti temple. They had apparently split themselves into smaller groups, so that they might not attract attention. It was not as if there was any appreciable interval of time between their joining each other in the attack. It was a continuous process without any noticeable time lag. First, according to the evidence, A-3 caught him from behind; immediately A-4, 5 and 8 joined him and dragged in the direction of Mahadev temple. They were joined by A-2, 6 and 7 also in dragging him towards Mahadev temple. A-1, who was already sitting near the Maruti temple, first took care of PW-3 and then joined the others in assaulting Siddappa. Even if there was any interval of time between the various stages of the attack in which the several accused joined and participated it was a clear case where all of them must be held to have been animated by a common object. There was a point of time in which all of them took part in the assault simultaneously and they also took away the body together. Even if they had come to the scene of offences separately and without any prior arrangement, on the facts of the case, clearly they had become members of an unlawful assembly when they joined together to assault the deceased. The common object could and did develop co-instanti. Unfortunately, the High Court has given a categorical finding that there was no common object and therefore, no unlawful assembly. The High Court has acquitted the accused of the charges under sees. 147, 148, 302 read with Section 149, 303 read with Section 149 and 307 read with Section 149. There is no appeal by the State and we have, therefore, to proceed on the basis that A-1 can only be convicted for the individual acts established against him.

4. PW-2 in his examination-in-chief, specified no particular act against A-1, but generally stated that A-1 to 4 and 6 to 9 assaulted Siddappa with axes and A-5 assaulted Siddappa with a stick covered with a wire. In his cross-examination, he attempted to improve on the version given by him by saying that A-1 gave an

axe blow on the neck and A-6 gave a blow on the back of the ear. But that is belied by the information which he gave to PW-4 which was to the effect that all the nine accused persons committed the murder of Siddappa and dragged away his dead body. No other detail was mentioned. PW-3 however stated that A-1 gave an axe blow on the face of Siddappa and a second axe blow on the neck of Siddappa. He also stated that A-6 and A-2 also gave axe blows to Siddappa. While the evidence of PW-3 can be accepted without any hesitation in regard to the attack on himself, we find it a little difficult to accept his evidence in regard to the acts attributed by him to the various accused in the assault on the deceased. It has to be remembered that he had himself been attacked by A-1 and he had fallen on the ground, in the ditch. Without the slightest doubt, he must have apprehended danger to his own life. In fact he says so, but states that he ran away, only after witnessing the entire incident. When he did run away, he left behind him his chappal, shawl and turban which were found lying on the spot, when the police came to the village. The circumstance that these articles were lying on the spot, indicates that he must have run away from the scene as soon as he was attacked. According to him, he fell down in the ditch, but sat up and witnessed the incident. It was then that he claims to have noticed the overt acts attributed to A-1 and 6. The assault on the deceased was by eight or nine persons, who had surrounded him. We doubt very much whether it was possible for PW-3 even if he had watched the incident sitting in the ditch, to have noticed which of the assailants gave which blow and on which part of the body of the deceased. We think that the witness is indulging in exaggeration when he claims to have noticed the particular acts attributed by him to A-1, 6 and 9 in the assault on the deceased. Apparently, the important members of the opposite party had been chosen and attributed overt acts. We are, therefore, unable to accept the prosecution case that it was A-1 that delivered a blow on the face and another blow on the neck of the deceased. All that may be safely said is that A-1 was one of the several assailants that attacked the deceased. If that be so, he must stand in the same position as the other accused. His conviction u/s 303 and the sentence of death have, therefore, to be set aside. Instead he is convicted u/s 324 and sentenced to suffer imprisonment for three months. The convictions for other offences and the sentence imposed in regard to them are confirmed. We wish to observe that the several accused in the case should consider themselves lucky in getting away with the charges under sec, 302 and 303 read with Section 149, as it appeared to us that it was a clear case where they were members of an unlawful assembly, whose common object was to commit murder.