

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1954 OF 2012**

**HAALESH @ HALESHI
@ KURUBARA HALESHI**

...APPELLANT(S)

VERSUS

STATE OF KARNATAKA

...RESPONDENT(S)

WITH

**CRIMINAL APPEAL NO. 1955 OF 2012 and
CRIMINAL APPEAL NO. 1303 OF 2014**

J U D G M E N T

PANKAJ MITHAL, J.

1. Learned counsel for the parties were heard.
2. In Sessions Case No. 25 of 2000 out of the nine accused, seven accused persons (A-1 to A-7) were convicted for various offences and were sentenced to undergo imprisonment for different

period with a maximum of life imprisonment for an offence under Section 302 in aid with Section 149 IPC and remaining two accused persons i.e. (A-8 and A-9) were acquitted.

- 3.** Accused Nos. 1, 2 and 3 accepted the judgment of the Trial Court and did not file any appeal against it. Accused Nos. 4, 5 and 6 together filed a Criminal Appeal No. 219 of 2007 before the High Court whereas accused No. 7 filed a separate Criminal Appeal No. 229 of 2007. The High Court by a common judgment passed in both the appeals upheld the conviction and sentence awarded to all of them i.e. A-4, A-5, A-6 and A-7 and dismissed the appeals.
- 4.** It is against the aforesaid conviction and sentence that the accused A-7 has preferred Criminal Appeal No. 1954 of 2012 before this Court. Accused Nos. A-4 and A-5 together have preferred Criminal Appeal No. 1955 of 2012 whereas accused No. A-6 has preferred Criminal Appeal No. 1303 of 2014. All three appeals were clubbed and heard together. They are being disposed of by this common judgment.

5. Brief facts giving rise to the above trial are that: that there was a bitter dispute between the deceased Shivanna and his real brother Ramanna (A-9) with regard to property in connection to which there was a civil suit between the parties which was decreed in favour of the deceased and the decree was under execution.
6. It is alleged that all the accused persons on 25.09.1999 at around 9:15 am unlawfully assembled in front of the house of deceased with the common object to kill the deceased Shivanna and his family members. All of them armed with deadly weapons mainly choppers thereafter trespassed into the house of deceased Shivanna. Accused A-1 to A-3 caught hold of deceased Shivanna and assaulted him with choppers; accused A-4 and A-5 caught hold of his wife Savithramma and assaulted her with choppers; accused A-6 and A-7 assaulted Girija, the daughter of deceased Shivanna with choppers and whereas accused A-8 and A-9 stood at the door of the house keeping a watch and instigating the other accused to kill the deceased Shivanna and his family members. The deceased Shivanna upon sustaining

injuries died whereas his wife and daughter who had sustained grievous injuries survived.

- 7.** After the case was committed to the Sessions Court, the prosecution examined as many as 33 witnesses and produced Exhibits P-1 to P-63 and M.Os. 1 to 34. The defence got marked Exhibits D-1 and D-2 but chose not to lead any evidence in defence. On the basis of the evidence adduced, the Trial Court convicted A-1 to A-7 and sentenced them to undergo maximum imprisonment for life with fine. Accused Nos. 8 and 9 who were not assigned any role of assault and were alleged to be standing on the door of the house of the deceased were acquitted. The conviction, as stated earlier, was upheld by the High Court.
- 8.** Now, in these appeals before us we are concerned with the conviction and sentence of the appellants A-4, A-5, A-6 and A-7 only.
- 9.** It is not in dispute that the deceased Shivanna had instituted a civil suit against his brother Ramana (A-9) in the Court of Additional Munsif, Bhadravathi for partition and separate possession of his half share in all the properties described in

the plaint and for cancellation of relinquishment deed dated 7.6.1969 alleged to have been executed by him in favour of A-9. The said suit, on contest by A-9, was decreed *vide* judgment, order and decree dated 16.8.1995 (Exhibits P-45 and P-46). The said judgment and decree was affirmed in a regular appeal (as per Exhibit P-53) and was also upheld by the High Court in second appeal. The deceased Shivanna in the year 1999 initiated proceedings for preparation of the final decree wherein the executing court directed the revenue authorities to effect partition in terms of Section 54 of CPC. The Revenue Officers initiated the work of survey and measurement. It was in annoyance with the above litigation that A-9 and his family members decided to do away with Shivanna and his family members for which they took help of their friends A-4, A-5 (who were known for their antisocial activities and were on Police record as “rowdies”) and A-7. Thus, there was a clear motive on the part of the accused especially A-9 to kill the deceased Shivanna and his family members.

- 10.** It is pertinent to note that A-9, Ramana himself had not participated in the assault and remained standing on the door

of the house of the deceased along with A-8. He was acquitted along with A-8 by the Trial Court. A-1, A-2, A-3, A-6 and A-8 are the sons of A-9 whereas A-4, A-5 and A-7 are not his family members but friends whose help was taken by A-9 to kill the deceased and his family members.

- 11.** The conviction was based primarily upon the ocular evidence of two injured eyewitnesses PW-3 and PW-4 who were none other than the wife and daughter of the deceased, present in the house. The other daughter of the deceased Shivanna, PW-7 (Rukmini) corroborated the evidence of PW-3 and PW-4. The informant (PW-1) is the son in law (husband of one of the daughters) of the deceased Shivanna but his evidence is not very material. Dr. Umadevi, PW-18, who conducted the postmortem proved the report of the injuries found on the body of the deceased Shivanna.
- 12.** The first contention of the counsel appearing for the appellants is that according to the case of the prosecution itself, A-1 to A-3 alone assaulted the deceased Shivanna and, therefore, the other accused persons cannot be convicted for an offence under

Section 302 IPC. It is further submitted that the appellants are not guilty of unlawful assembly and, therefore, Section 149 IPC could not have been invoked in the present case. The argument was opposed from the side of the defence on the ground that all the accused persons have unlawfully assembled with clear intention to eliminate the entire family of the deceased Shivanna. Therefore, even if any of them had not been assigned the specific role of assaulting the deceased Shivanna, they all would be guilty for an offence of murder and are liable to be convicted for life imprisonment.

- 13.** It is true that according to the prosecution and the evidence on record only A-1 to A-3 had caught hold of the deceased Shivanna and had assaulted him with choppers. No other accused person is alleged to have assaulted him, though, some of them had caught hold of the wife and daughter of the deceased and had assaulted them with choppers causing grievous injuries. Nonetheless, the evidence on record clearly proves that all the accused persons have initially assembled in front of the house of the deceased Shivanna; first two of them arrived and later the rest of them came in auto rikshaw. They

armed themselves with weapons especially choppers and thereafter trespassed into the house of the deceased Shivanna. They all indulged in assaulting one or the other members of his family with the weapons in their hand except for A-8 and A-9 who remained standing at the door of the house.

- 14.** PW-3, the wife of the deceased Shivanna who herself was grievously injured in the incident has categorically stated that there was a bitter feud between her husband and his elder brother (A-9) with regard to the family property as there was no partition and her husband had initiated proceedings in civil court for its partition. She is the second wife of the deceased Shivanna and that she was living with her husband and one of the daughters, Girija, who was unmarried, together in the house where the incident took place. The day before the incident i.e. on 24.09.1999 at about 10 p.m., A-6 had come and declared that each one of us would be chopped off and left after extending the said threat. The whole family was so afraid that on the said night they took shelter in the house of their son in law Chandrashekhar (PW-1). She and her daughter, Girija, returned to their house next day at about 6 a.m. and her husband came

back around 7.30 a.m. It is stated that thereafter they had breakfast when at about 8.30 a.m., A-8 and A-9 came and stood nearby to their house. In the meantime, A-1 to A-7 came in an autorikshaw. One of them, A-2 was armed with chopper. The others went to the nearby tailoring shop and from behind the board of the shop took out weapons i.e. choppers to arm themselves. They all entered their house with the said weapons. A-1 to A-3 caught hold of the deceased Shivanna and assaulted him with choppers. A-4 and A-5 caught hold of her, assaulted her and dragged her. Similarly, A-6 and A-7 assaulted her daughter, Girija, with choppers and then dragged her.

- 15.** The daughter of the deceased (PW-4) who was present in the house and was also injured, in her statement repeated the same story and apparently there is no contradiction between the statements of PW-3 and PW-4.
- 16.** PW-3 and PW-4 are the eyewitnesses who were present at the scene of incident and were grievously injured. On being assaulted, they became unconscious and gained consciousness only on reaching hospital. Their testimony in the background of

the case is the best evidence. No doubt, they are members of the family and may be interested persons but their testimony cannot be discarded simply for the reason that they are family members in the scenario of the case that the incident took place inside the house of the deceased Shivanna, where there could not have been any other eyewitnesses other than the family members. The evidence of the aforesaid two eyewitnesses could not be shaken in the cross-examination. Thus, we do not find any illegality on part of the courts below in holding the appellants guilty and to convict them.

- 17.** There is a clear evidence of PW-3 and PW-4 that, in the first instance, a day earlier, a threat was extended to them and then in a planned manner on the next morning initially A-8 and A-9 had come and stood near their house. Thereafter, the other accused came in an autorikshaw and after alighting from it collected weapons from behind the board of a tailor shop and assembled in front of their house. They together armed with weapons (choppers), entered their house and A-8 and A-9 stood on the door of the house instigating others to kill. This evidence is sufficient in itself to establish that they had assembled in

front of the house of the deceased Shivanna sharing a common intention of doing an unlawful act of eliminating the family of the deceased Shivanna.

18. In the light of the above evidence and in the absence of any defence evidence, it is amply clear that all the accused persons unlawfully assembled in front of the house of the deceased Shivanna and armed themselves with deadly weapons attracting the provisions of Section 149 IPC.

19. Section 149 IPC reads as under:

“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.”

20. A plain reading of the above provision abundantly makes clear that an overt act of some of the accused persons of an unlawful assembly with the common object to kill the deceased Shivanna and to cause grievous hurt to the other family members is

enough to rope in all of them for an offence under Section 302 IPC in aid with Section 149 IPC.

- 21.** The second contention advanced on behalf of the appellants that the medical evidence or the medical report on record does not substantiate the stand taken by the prosecution has no merit at all for the simple reason that the doctor (PW-18) who conducted the postmortem had proved the injuries. However, she suggested the possibility of use of different weapons in causing those injuries. Undoubtedly, only one kind of weapon i.e. chopper was used in committing the crime and, therefore, the evidence of the doctor may not be matching with that of the prosecution, but again, the ocular evidence of PW-3 and PW-4 is sufficient enough to prove that only chopper was used as a weapon of crime. In the light of the said evidence of the two eyewitnesses, the suggestion or opinion of the doctor cannot prevail as the opinion based upon probability is a weak evidence in comparison to the ocular evidence of eyewitnesses. Moreover, even the said doctor herself in the end had suggested that all the wounds could have been caused by the same kind of weapons. Therefore, this submission also lacks merit.

- 22.** It goes without saying that this Court in exercise of its appellate jurisdiction is always slow in interfering with the concurrent findings of the courts below recorded on the basis of the evidence until and unless such findings are shown to be perverse. In the case at hand, no perversity of any kind has been pointed out in the findings returned by the two courts below. We are ourselves satisfied upon consideration of the entire material evidence on record that none of the findings are in any manner perverse, thus, leaving no scope for this Court to disturb the findings or the judgments and orders of the courts below.
- 23.** In view of the aforesaid facts and circumstances, we do not find any error or illegality in the judgments and orders of the two courts below.
- 24.** Accordingly, all three appeals are dismissed as without substance.

25. The appellants are on bail, their bail bonds are cancelled and they are directed to surrender forthwith to serve the remaining sentence.

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

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

NEW DELHI;
FEBRUARY 2, 2024.