

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1301 OF 2019

RISHIRAJ @ TUTUL MUKHARJEE & ANR. ..Appellants

VERSUS

STATE OF CHHATTISGARH ..Respondent

WITH

CRIMINAL APPEAL NO.1302 OF 2019

HANI @ KOUSTUBH SAMDARIYA ..Appellant

VERSUS

STATE OF CHHATTISGARH ..Respondent

AND

CRIMINAL APPEAL NO.1303 OF 2019

VIJAY @ HALLO JAISWAL & ANR. ..Appellants

VERSUS

STATE OF CHHATTISGARH & ANR. ..Respondents

J U D G M E N T

Uday Umesh Lalit, J.

1. These appeals by special leave, at the instance of accused, named; (1) Rishiraj @ Tutul Mukharjee, (2) Samrat @ Laltu Mukharjee, (3) Vijay @

Hallo Jaiswal, (4) Ajay @ Chhotu @ Jijji Jaiswal and (5) Hani @ Koustubh Samadriya, challenge the common judgment and order dated 10.08.2018 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal Nos.452, 492, 522 and 538 of 2012.

2. The present proceedings arise out of the registration of crime pursuant to First Information Report No.187 of 2010 dated 09.06.2010, lodged with Torwa Police Station, District Bilaspur, Chhattisgarh, in respect of offences punishable under Sections 148, 148, 149, 302 of the Indian Penal Code, 1860 (“IPC”, for short) read with Sections 25 and 27 of the Arms Act, 1959 (“Arms Act”, for short). The Report made by one Jugal Kishore @ Gappu (subsequently examined as PW-12 in the trial) was to the following effect:

“I reside in the aforementioned address. I run Smoker Club in front of Geeta Hotel. On 08.06.2010, at night, I was in Surya Hotel and at that time at 12:06 in the night I got phone call from Gudda Sonkar, he said, “come immediately to Hotel Intercity.” I alongwith my friend Alok Singh reached Hotel Intercity in 5 -7 minutes in a Scorpio car and saw that outside the hotel bar at car parking Jai Jaiswal along-with his friends Manoj Agrawal, Hallo Jaiswal, Jijji @ Chotu Jaiswal, Rishi Mukherjee, Samrat Mukherjee and Hani Samdariya and with 2-3 other, whom I do not know, were standing surrounding Gudda Sonkar and his Jija Nanka Ghore and all were having altercation with Gudda Sonkar and in the meantime, Vijay @ Hallo with their friends started pushing Gudda Sonkar and Nanka Ghore, at that time Manoj Agrawal, who was standing near, said to Jai @ Gudda Jaiswal that you people cannot kill him, give me pistol, I will kill this ... (Expression used, is not reproduced), saying so he snatched pistol from the hand of Jai Jaiswal and caused a gun-shot injury on the face (cheek) of Gudda Sonkar, as a result, Gudda fell on the ground. Thereafter, Jai Jaiswal snatched that pistol from the hand of Manoj Agrawal and caused two gunshot injury on the chest of Nanka Ghore, who has come to intervene in the matter, as a result of which Nanka fell on the ground. People started

running here and there. Then, people standing near there started shouting, “ Gudda Sonkar is still alive, kill him”, on which, Jai Jaiswal after putting his leg on the chest of Gudda Sonkar caused a gunshot injury on his chest. In this way, with preplanned manner, Jai Jaiswal along-with his companions(friends) has killed Gudda and Nanka by firing 546 gunshot; and in this way, Vijay @ Hallo Jaiswal fled away driving his white Endeavour car bearing No.CG 10 F – 4499 and Jai Jaiswal fled away driving his white Ritz car bearing no. CG 10 FA 4499 with their friends. They all were armed with weapons. Jai @ Gudda Jaiswal has pistol, Vijay @ Hallo Jaiswal has 315 bore rifle, Ajay Jaiswal @ Jijji @ Chotu has .22 bore rifle, Rishi Mukherjee has 12 bore rifle and Hani Samdariya has 12 bore rifle. Alok Singh, Lallan, Mangal Singh, Bashir, Naim Memon, Praveen Keshri, Vinay Ghore and employees of Hotel Intercity have seen the incident. Gudda Sonkar was taken to CIMS Hospital in Scorpio and Nanka was taken to Apollo Hospital in police jeep, where both were declared dead by the doctor. I have seen the incident closely with my friend Alok Singh. I hid behind the car with my friends otherwise they would have also killed me.”

3. In the consequential investigation undertaken, following items were seized from the place of occurrence: -

“Blood-Stained Cement Brick.

5 Blank Cartridges of 7.65 MM Pistol, which bears the following KP 7.65 MM.

2 Mobile Phones of Nokia Company having SIM Cards.

1 White Maruti Suzuki Ritz bearing No. CG10H-7

1 Maroon Honda Activa bearing No. CG 10 EH 5326.”

4. The post-mortem on the body of deceased Gudda Sonkar was conducted by Dr. Chaturbhuj Mishra, (subsequently examined as PW-9 in the trial) who in Post-Mortem Report Ex.P/24 noticed following ante mortem injuries:

“(i) an entry wound with inverted margins 0.8 cm x 1 cm elliptical in shape 7 cm away from left nipples directed downwards medially towards sternum.

(ii) two parallel abrasions marks over left side of chest about 4 cm long and 3 cm long respectively, about 9 cm above nipple.

(iii) an entry wound over left cheek circular shape 0.8 cm x 0.8 cm tattooing present around it size approx. 8 cm x 6 cm, margins are inverted.

(iv) contusion mark below right eye on right cheek 0.5 x 0.6 cm.

(v) another contusion over nostrils right side 0.2 x 0.2 cm, bleeding from nose present.

(vi) abrasion mark over back near 7-8 inter-vertebral space in inter scapular region over left side about 1.5 cm x 1 cm.”

Dr. Chaturbhuj Mishra also noticed fracture of mandible bone and that a bullet was stuck in the 6th cervical spine. In his opinion, the cause of death was due to multiple gunshot injuries resulting in damage to internal vital organs and hemorrhagic shock. However, the final opinion was deferred till the receipt of biochemical analysis report and ballistic expert opinion. The nature of death was opined to be homicidal.

5. On the same day, Dr. Chaturbhuj Mishra conducted post-mortem on the body of deceased Nanka Ghore and the Post Mortem report Ex.P/25 noticed following ante-mortem injuries:

“(i) an entry wound on left side of neck elliptical in shape 0.9 x 1 cm margins inverted and tattooing of skin.

(ii) an exit wound on right side of neck with inverted margins size 1.3 cm x 1 cm.

(iii) one entry wound over sternum at level of lower end of areola.

(iv) second entry wound over sternum level 7½ cm below 1st injury.

(v) 3 ECG ports attached to chest, one on left side and two on right side.

(vi) two exit wounds on back over right subscapular region one on 7th and one on 8th inter-vertebral level, each of 0.9 x 0.9 cm size.

(vii) bullet was present just below (beneath) 2nd exit wound at level of 8th inter-vertebral space, bullet has become flat and dorsal pointed flattened.”

In the opinion of Dr. Chaturbhuj Mishra, the cause of death was due to multiple gunshot injuries resulting in damage to internal vital organs *i.e.* liver, right lung and great vessels of neck, and hemorrhage (massive internal). However, the exact cause of death was to be ascertained after receipt of histopathological, biochemical and ballistic expert reports. The nature of death was opined to be homicidal.

6. The recoveries of certain fire-arms as dealt with by the High Court in paragraph 6 of its judgment were:

“06. Memorandum of accused No.1 Jai @ Gudda (Ex.P/12) recorded on 9.6.2010 led to seizure of one pistol of 7.66 MM in which UNIQUE MQD/51 CQL-7.065 MM has been written, bearing body No.5323404, one magazine containing five live cartridges of 7.65 MM pistol and one white coloured Maruti Suzuki Car (Ritz) bearing registration No.CG 10-FA 4499 vide Ex.P/13. On the memorandum of accused No.7 Hani (Ex.P/25, which appears to have been wrongly marked), one 12 bore pistol bearing body No.MPABR/I-159/52-ZI having two round live cartridges in its barrel and two other live cartridges were seized vide Ex.P/26.

It is relevant to note here that this weapon was registered in

the name of father of accused No.7, which is clear from Ex.P/5 and admittedly, no fire was made from this weapon in the crime in question.

From accused No.2 one 315 bore rifle bearing body No.MPRGH11/107/6/1967 with magazine having five live cartridges, one empty cartridge in the barrel and one white coloured Ford Company Endeavour car bearing registration No.CG 10F-4499 were seized.

As per Ex.P/5, it is not in dispute that accused No.2 had the licence to hold the above weapon.

From the possession of accused No.3 Rishiraj, one 12 bore double barrel rifle of Royals Arms & Company, bearing No.9895A/2-Y2002, was seized vide Ex.P/15. As per Ex.P/5, this is also a licensed weapon in the name of accused No.3.

From accused No.6, Ajay @ Chhotu, one .22 rifle bearing body No.
CAL22LONG/RIFLE/0147064JGANSCHITZGMBHWAFFEN
ABRIK/UIM/D/GERMANY, having a magazine containing three live cartridges were seized vide Ex.P/14. As per Ex.P/5, the said weapon was licensed in the name of accused No.6.”

7. Upon completion of investigation, seven persons, namely, Jai @ Gudda Jaiswal s/o. Late Bajrant Pasad Jaiswal, Vijay @ Hallo Jaiswal s/o. Late Bajrant Prasad Jaiswal, Rishiraj @ Tutlu Mukherji s/o. Ashok Mukherji, Samrat @ Laltu Mukherji s/o. Ashok Mukherjee, Manoj Aggarwal s/o. Shankar Lal Aggarwal, Ajay @ Chhoti @ Jijji Jaiswal, and, Honey @ Kaustubh Samdariya s/o. Dr. N.K. Samdariya, were sent up to face trial in Sessions Trial No.169 of 2010 in the Court of Sessions Judge, Bilaspur, Chhattisgarh for having committed the offences stated above.

8. According to the prosecution, only one weapon, namely, pistol recovered

from accused No.1 Jai @ Gudda vide Ex.P/12 was used in the commission of murders of Gudda Sonkar and Nanka Ghore. In order to prove its case, the prosecution mainly relied upon the eye-witness account through PW1, PW2, PW4 and PW12. As regards the incident and the role played by the concerned accused, following statements made by the concerned witnesses are material:

“PW1 – Lallan Dhole son of Shri Niranjana Dhole.

2. Gudda Sonkar and Nanaka were also standing there. There had been abusive talk between accused persons, Gudda Sonkar and Nanaka. I and my friend were standing there and seeing them. I saw that Gudda Sonkar was talking on mobile phone. After ten minutes of this continuing argument, Gappu Sonkar and Alok had also come there. The exchange of abusive language had increased when they came there. Thereafter accused Gudda and Jai had picked up pistol. During this time, exchange of abusive language between them continued. Thereafter accused Manoj also came there in between. Accused Manoj took away pistol from accused Jai and Gudda and had opened the fire. Accused Manoj opened fire on deceased Gudda Sonkar. Accused Jai taken pistol from accused Manoj and opened fire upon Nanaka. Gudda Sonkar and Nanaka had fallen on earth on being hit by the gun shot. Again accused Jai @ Gudda opened one bullet shot on the chest of deceased Gudda Sonkar. Both the deceased persons were shot with two gunshots each. After opening this gun shot on them, accused persons boarded their vehicle and had run away from the spot.”

PW2 – Ram Narayan son of Late Shri Anand Kumar

“1. I know accused persons. Both have died on 8.6.2010. In the fateful night of incident around 10.30 pm in the night, I along with Praveen Kesari, Prashant Gulahare and Ravish Narsingh had visited Hotel Intercity for having our dinner. When we came out of the hotel after we had our dinner, there was quarrel going on in the parking. This quarrel was going on between Gudda @ Jai, Hallo @ Vijay, Hanny Samadariya, Rishi Mukherjee, Samrat Mukherjee, Manoj Aggarwal, Jijji @ Ajay and between deceased persons. Accused persons had encircled the deceased persons from all around and they were using abusive languages. Deceased Gudda Sonkar had also abused the accused persons. Accused Jai then took out his pistol from his pocket and put it on

Gudda Sonkar and started abusing him. In the same time accused Manoj came from behind and snatched the gun from Jai and opened fire on deceased Gudda. Again, accused Jai took the gun from accused Manoj back and he opened two fires on deceased Nanaka who was trying to interfere in between. In the meantime other accused persons started saying loudly that Gudda is alive. Accused Jai while putting his leg on the chest of deceased Gudda and opened a fire on him again while abusing him 'Sale Sonkar'. Thereafter they flew away from the spot through their vehicles.

2. First fire was shot at his cheek on deceased Gudda. Accused Manoj was having gun like weapon at the time of incident. Rishi was in possession of revolver type weapon. Both the injured persons were lying on the spot. They were dead. Police had recorded my statement.”

PW4 – Praveen Kesari son of Shri Gaya Prasad Kesari

“1. I know deceased persons. Both these persons have died on 8.6.2010. Both these persons had died in the Hotel Intercity in the night around 11.30 to 12.30 am in the night. I was there, for my dinner in the Hotel Intercity along with Ram Narayan, Prashant Gulahare and Ravish Narsingh were also there. When we reached parking for taking our vehicles, quarrel between accused Gudda Jaiswal, Manoj, Hanny, Hallo, Samrat, Vijay, Ajay @ Jijji, Laltu and Gudda Sonakar and Nanaka. Both the sides were abusing each other and argument in this way was going on. We were seeing the argument while standing there. During the course of argument, accused persons, 'gherowed' Gudda Sonkar and Nanka. Accused Jai while abusing him took out his pistol and pointed it towards Gudda Sonkar. During course of argument, accused Manoj snatched the pistol from accused Jai and shot it upon the deceased Gudda Sonkar. This gunshot was inflicted upon face of Gudda Sonkar. Thereafter accused Jai took away the pistol from accused Manoj and in the meantime Nanka brother-in-law of Gudda Sonkar came there for interfering. On this accused Jai hit upon him two bullets shot. Nanka suffered two gunshots at his chest and in the mid of stomach. Both the injured persons had fallen on earth.

2. After both were fell down, accused persons cried with each other that Gudda is alive. Kill him. Then accused Jai put his leg upon the Gudda's chest and had opened one fire on his chest and which was inflicted upon his chest. After this incident, accused persons ran away in three-four vehicles. There were weapons in the hands of accused persons which were the guns. After this incident police had interrogated me. Police had also recorded my

statement.”

PW12 – Jugal Kishore @ Gappu son of Shri Kaushal Kishor

“1. I identify the accused persons who is present in the court. Deceased Gudda Sonkar and Nanka were also known to me. Incident is of 8.6.2010. It was time of around 12 am in the night. Incident had taken place in the Intercity Hotel. I was there in Hotel Surya along with Alok Singh Thakur. When Gudda Sonkar had called me on my mobile and had informed me that there is quarrel going on with him. Therefore, I should go there. I and my friend went to the Hotel Intercity. When I reached Hotel Intercity, I saw that quarrel between accused persons and Gudda Sonkar was going on. This quarrel was going on outside bar. I saw that fighting is also with accused Jai and Manoj. They were saying ‘kill them, kill them’.

3. I had reported the incident in the police station Torwa. Report is Ex P-33 which bears my signature at point A to A. I had also given death information of both. My information was recorded which is Ex P-34 and 35. Which bears my signature at point A to A. police had recorded my statement.”

9. After considering the material on record, the Trial Court by its judgment and order dated 30.04.2012, convicted and sentenced accused Jai @ Gudda and Manoj Aggarwal under Sections 147, 148, 302, 302/149 IPC and Sections 25 & 27 of the Arms Act; accused Vijay @ Hallo, Ajay @ Chhotu, Hani, Samrat and Rishiraj were convicted under Sections 147, 148, 302/149 of IPC; Vijay @ Hallo, Ajay @ Chhotu, Hani & Rishiraj were also convicted under Section 25 of the Arms Act; while accused Samrat @ Laltu Mukherji was acquitted of the charges under Section 25 of the Arms Act. The substantive sentence imposed for the offences punishable under Sections 302 and Section 302 read with 149 of the IPC was life imprisonment on both counts with other term sentences for other offences, which need not be stated here in detail.

10. All the convicted accused preferred Criminal Appeal Nos.452, 492, 522 and 538 of 2012 in the High Court, which were dealt with by the judgment presently under challenge. After considering the entirety of the matter, the High Court observed:

“41. In the case in hand, from the un rebutted evidence of the eyewitnesses (PWs-1, 2, 4 & 12) it is apparent that all the accused persons were standing surrounding the deceased persons and during the course of altercation between the two groups, accused/appellant Jai pointed pistol at deceased Gudda Sonkar, which was subsequently snatched by accused/appellant Manoj who caused gunshot injury to Gudda Sonkar and thereafter with the same weapon, accused/appellant Jai caused gunshot injury to Nanka who came to the rescue of Gudda Sonkar. All these witnesses have further stated that thereafter, the other accused persons exhorted that Gudda Sonkar is alive, shoot him. Thus, from their conduct during the course of incident it is evident that they were well aware of the act likely to be committed by the said assembly. Furthermore, there is no evidence that the other accused persons in any manner tried to pacify the dispute or prevent accused Jai and Manoj from firing. Thus, in light of the aforesaid principles of law as to the scope of Section 149 of IPC, from the evidence of the eyewitnesses coupled with the conduct of these accused persons, it is clear that all the accused persons had a common object of committing murder of the deceased persons.”

11. Thus, affirming the view taken by the Trial Court, the High Court dismissed the appeals.

12. All seven convicted accused preferred Special Leave Petitions in this Court, which were dealt with by this Court in its order dated 27.08.2019. No case was found to have been made out in respect of principal accused Manoj Aggrawal and Jai @ Gudda Jaiswal [petitioners in SLP (Crl.) Diary No.11603

of 2019], and their Special Leave Petitions were rejected at the admission stage, while Special Leave to Appeal was granted in favour of the other accused, namely, Rishiraj @ Tutul Mukharjee and Samrat @ Laltu Mukharjee [appellant in Criminal Appeal No.1301 of 2019]; Vijay @ Hallo Jaiswal and Ajay @ Chhotu @ Jijji Jaiswal [Criminal Appeal No.1303 of 2019]; and, Hani @ Koustubh Samdariya [Criminal Appeal No.1302 of 2019].

13. In these appeals, we have heard Mr. Siddharth Luthra, learned Senior Advocate for the appellants and Mr. Saurabh Roy, learned Advocate for the respondents.

14. It is submitted by Mr. Luthra, learned Senior Advocate that:

(i) Going by the narration of all the prosecution witnesses, the principal role in the crime was attributed to Manoj Aggarwal and Jai @ Gudda Jaiswal, whose challenge was rejected at the admission stage itself.

(ii) In so far as the appellants before this Court are concerned, at best, the role attributed to them was being part of the group which was having an oral altercation.

(iii) There was no commonality in action so as to hold the appellants before this Court guilty with the aid of vicarious liability under Section 149 of the IPC.

On the other hand, it is submitted by Mr. Roy, learned Advocate that the evidence indicates complete participation of the appellants in the crime and as

such they cannot escape the liability under Section 302 read with 149 of the IPC.

15. The presence of the appellants stands established all through, which was referred to in the First Information Report and in the evidence of all the concerned eye-witnesses.

The question that now arises is about the participation of these appellants in the crime.

As stated by the eye-witnesses, these appellants were taking part in the initial scuffle and Gudda Sonkar and Nanka Ghore were being pushed by all the accused. While this scuffle was going on, a firearm was taken out by accused Jai @ Gudda Jaiswal. The evidence further discloses that this firearm was snatched by Manoj Aggarwal, who fired at Gudda Sonkar. Thereafter, the weapon was snatched back by accused Jai @ Gudda Jaiswal and he fired upon Nanka Ghore. As a result of the gunshot injury received by him, Gudda Sonkar had fallen down but was still alive. What is material is the exhortation attributed to the appellants who were shouting that Gudda Sonkar was alive and that he be killed. The second shot was then fired at Gudda Sonkar.

16. The presence of the witnesses was established. The eye-witness account shows participation of the appellants in the initial scuffle in which the deceased were pushed as well as in the exhortation as stated above. The evidence unfolded through the eye-witness account about the exhortation by

the appellants was consistent and cogent. Nothing effective could be drawn from the cross-examination of the witnesses. Thus, it can certainly be said that the participation of the appellants was not just as bystanders or only in the oral altercation or scuffle. There was not even a suggestion that after the first shot was fired, any of the appellants backtracked or wanted to dissociate himself from what was unfolding.

Their participation was full and effective and as such the appellants cannot escape the vicarious liability. They were thus rightly convicted under Section 302 read with 149 of the IPC.

17. In the premises, we affirm the view taken by the Courts below and dismiss these criminal appeals.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi,
May 20, 2022.