2025 INSC 381

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.816 OF 2016

DHIRUBHAI BHAILALBHAI CHAUHAN & ANR. **...APPELLANT(S)**

VERSUS

STATE OF GUJARAT & ORS. **...RESPONDENT(S)**

WITH
CRL.A. NO.817 OF 2016

KIRITBHAI MANIBHAI PATEL & ORS. **...APPELLANT(S)**

VERSUS

THE STATE OF GUJARAT **...RESPONDENT(S)**

J U D G M E N T

MANOJ MISRA, J.

1. These two appeals impugn a common judgment and order of the High Court of Gujarat at Ahmedabad[1] dated

[1] The High Court

05.05.2016 passed in Criminal Appeal No.155 of 2016 (State of Gujarat v. Dhirubhai Bhailalbhai Chauhan & 18 others), whereby the High Court, though maintained the acquittal of 12 out of 19 accused who were put on trial, partly reversed the judgment and order of acquittal passed by the Trial Court in Sessions Trial No.119 of 2003 and thereby convicted the appellants for offences punishable under sections 143, 147, 153 (A), 295, 436 and 332 of the Indian Penal Code[2] and punished them with varied sentences, all to run concurrently, maximum being of one year.

Background facts

2. The prosecution case, founded on a first information report[3] lodged by PW-1, a policeman, is to the effect that on 28.02.2002, while the informant was patrolling with other police personnel, information was received at around 22:10 hours that a mob had surrounded a graveyard and a mosque at village Vadod; when the police party arrived at the spot and instructed the mob

[2] The IPC
[3] FIR

to disperse, the mob pelted stones causing damage to police vehicles as well as injury to police personnel; in consequence, police had to take recourse to release of tear gas shells and firing of gun shots, which resulted in a stampede like situation; in the melee, the police could apprehend 7 persons on the spot, namely, (1) Dhirubhai Bhailalbhai Chauhan, (2) Maheshbhai Bhailalbhai Chauhan, (3) Mukeshbhai Ambalal Patel, (4) Kiritbhai Manibhai Patel, (5) Ravjibhai Harmanbhai Patel, (6) Dipakkumar Bhopalbhai Negi and (7) Sanjaykumar Laxmansinh Mahida, all residents of village Vadod. Investigation resulted in a charge sheet against 19 persons including the ones who were arrested on the spot. Based on the chargesheet cognizance was taken, giving rise to Sessions Trial No.119/2003.

Trial Court Judgment

3. The Additional Sessions Judge to whom the matter was assigned by the Sessions Judge, conducted the trial and

by judgment and order dated 11.07.2005 acquitted all the 19 accused by giving them the benefit of doubt.

4. The key features of the case on which the Trial Court based its decision, inter alia, are:

   (i) The police witnesses were stereotypical in their deposition; they could not identify even a single accused; and in their cross-examination, they could not disclose as to which accused was caught by which policeman.

   (ii) PW-2, who deposed about participation by the accused in rioting, was confronted with omissions in his previous statement regarding (a) the place from where he witnessed the incident and (b) the presence of street-light, which helped him in identifying the accused.

   (iii) The investigating officer (PW-20), during his cross-examination, had stated that no damage was caused to the house of the eye-witness PW-2.

   Having regard to the above and the evidence on record as also that nothing was shown to have been recovered

from the accused at the time of their arrest, the trial court gave the accused the benefit of doubt.

High Court Judgment

5. The High Court while maintaining the acquittal of accused nos.8 to 19, who were neither named in the FIR nor arrested on the spot, in paragraphs 6.08, 6.09 and 6.10 of its judgment, observed:

> "6.08. Now, so far as the rest of the accused i.e. original accused Nos.8 to 19 are concerned, on re-appreciating the entire evidence on record, including deposition of the PW Nos.2 and 4, we are of the opinion that their presence at the time of commission of the offence cannot be said to have been proved by the prosecution beyond reasonable doubt by leading cogent evidence. In absence of any other corroborative evidence and solely relying upon deposition of PW Nos.2 and 4, it is not safe to convict the original accused Nos.8 to 19. Admittedly no identification parade of the original accused Nos.8 to 19 has been held and conducted. Their names have not been disclosed by the PW No.1 in the complaint. They were arrested subsequently by the investigating officer. Nothing is forthcoming on what basis and on the basis of what evidence gathered during the course of the investigation, original accused Nos.8 to 19 were arrested.
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> 6.09. PW No.2 has stated that he has given complaint before Vasad Police Station, however, investigating officer has denied having complaint given by the PW No.2 on the next day. He has admitted in the cross-examination that he was shown as witness in another case i.e., Sessions Case No.155 of 2002 with respect to similar incident, however, in that case, he has been declared hostile. In the present case, PW No.2 has identified some of the accused in the Court, however, which is after 2 years of the incident. He has stated that he had seen the incident and the accused persons from the terrace and in the street light. Considering the deposition of the PW No.2, we are of the opinion that in

> the mob of 1000 to 1500 persons, he could not have identified original accused Nos.8 to 19. Even his deposition is full of material contradictions. He has stated in his deposition that his statement was not recorded on 19/3/2002, however, investigating officer has categorically stated that his statement was recorded on 19/03/2002. Considering the deposition of the said PW No.2, we are of the opinion that it is not safe to rely on the deposition of the PW No.2 and convict the original accused Nos.8 to 19 relying on the deposition of PW No.2.
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> 6.10. Similarly, on re-appreciating the entire deposition of PW No.4 – Roshansha Bafatisha, we are of the opinion that he cannot be said to be eye witness to the incident and it is not safe to rely on his deposition and convict the original accused Nos.8 to 19 relying on the deposition of PW No.4. He has named some persons who were not even arraigned as accused. Under the circumstances and on appreciation of the entire evidence on record, we are of the opinion that the prosecution has failed to prove the presence of the original accused Nos.8 to 19 at the time commission of the offence and they being part of the mob and/or members of the unlawful assembly. Under the circumstances, the learned trial court has not committed any error in acquitting the original accused Nos.8 to 19."

6. However, in respect of accused nos. 1 to 5 and 7 (the appellants herein), the High Court observed that since they were arrested on the spot and were also named in the FIR, their presence at the scene of crime stood proved beyond reasonable doubt and since rioting and destruction of property has been proved, they being part of the unlawful assembly were liable to be convicted. To hold their presence at the spot, the High Court also

relied on a suggestion given by the defense counsel to the prosecution witnesses that the accused were caught while they were trying to douse the fire.

7. We have heard Mr. Alapati Sahithya Krishna for the appellants; Ms. Ruchi Kohli for the State; and have perused the record.

Submissions on behalf of the appellants

8. The learned counsel for the appellants submitted that the incident was an aftermath of events at Godhara. Admittedly, the rioting was on a public street of a village, where presence of villagers, such as the appellants, is natural and, therefore, on basis of their mere presence, without anything further, they cannot be held to be a part of the unlawful assembly. Otherwise, there is no reliable evidence attributing any overt act to the appellants to indicate that they were part of the unlawful assembly. Further, the only witness in that regard, namely, PW-2, was discarded not only by the Trial Court but also by the High Court. In these circumstances, there was no occasion for the High

Court to reverse the decision of the Trial Court. More so, when it was a judgment of acquittal.

Submissions on behalf of the State

9. Per contra, the learned counsel for the State submitted that in a case of rioting, it is extremely difficult to particularize as to which person did what. Therefore, if the presence of the accused at the scene of the crime, as part of the mob, is proved that alone is sufficient to record conviction. Since the High Court found the presence of the appellants duly proved, in absence of cogent explanation by the accused regarding their presence at the scene of crime, the order convicting them cannot be faulted.

Analysis

10. Before we set out to analyze the rival contentions, it would be useful to highlight certain proven facts which, in our view, have a material bearing on the decision of this case. These are:

(i) The riots in question took place in the night hours when there were no curfew orders. The rioting crowd was very large comprising of over one thousand people, as a result, the police had to resort to firing of gunshots to disperse the crowd, which resulted in a stampede like situation.

(ii) Out of that many people, only seven were named in the FIR being the ones who were arrested on the spot; and out of those seven, six were convicted by the High Court as one of them had died during trial.

(iii) Though the police allegedly arrested seven persons on the spot, no satisfactory evidence was led as regards (a) what those seven did before their arrest, (b) who arrested them and from where. This lacuna in the prosecution evidence was noticed by the Trial Court to acquit them.

(iv) There was no evidence that at the time of arrest the accused-appellants were carrying instruments of destruction, such as an iron rod, stone, petrol

or any inflammable substance, etc., having potential to cause damage to property or person.

(v) Except the statement of PW-2 and PW4, which was discarded by the High Court for cogent reasons, there is no specific evidence that the accused-appellants indulged in any act of incitement, mischief or violence.

(vi) All the accused-appellants are residents of the same village where the riots took place.

11. Cumulatively taken, the above facts would indicate that the rioting crowd was very large; by the time of the incident, curfew was not imposed in the area concerned, therefore movement of residents of that area was not prohibited, which means that they could venture out of their home to watch what was happening around; the police intervened during night hours and resorted to firing to disperse the crowd, which resulted in a stampede like situation. In that melee, 7 persons including the appellants were arrested and named in the FIR without ascribing any specific role to them. After

investigation, 12 more accused were added and, ultimately, 19 persons including the appellants were put on trial. The Trial Court found the prosecution evidence perfunctory and, therefore, acquitted all the accused. The High Court, on an appeal preferred by the State, reversed the trial court order in part and convicted the appellants as members of the unlawful assembly which indulged in rioting, etc. The High Court found appellants members of the unlawful assembly because their arrest on the spot confirmed their presence at the scene of the crime.

12. In that backdrop, the primary issue which arises for our consideration is whether the High Court was justified in reversing the judgment of acquittal passed by the Trial Court *qua* the appellants. To determine the above issue, the underlying legal question which falls for our consideration is whether in the facts of the case mere presence of the appellants at the scene of crime, without anything further, is sufficient to hold them members of the unlawful assembly.

13. In cases of group clashes where a large number of persons are involved, an onerous duty is cast upon the courts to ensure that no innocent bystander is convicted and deprived of his liberty. In such type of cases, the courts must be circumspect and reluctant to rely upon the testimony of witnesses who make general statements without specific reference to the accused, or the role played by him[4]. This is so, because very often, particularly when the scene of crime is a public place, out of curiosity, persons step out of their home to witness as to what is happening around. Such persons are no more than bystander though, to a witness, they may appear to be a part of the unlawful assembly. Thus, as a rule of caution and not a rule of law, where the evidence on record establishes the fact that a large number of persons were present, it may be safe to convict only those persons against whom overt act is alleged.[5] At times, in such cases, as a rule of caution and not a rule of law, the courts have adopted a plurality

[4] Busi Koteswara Rao & others v. State of Andhra Pradesh, (2012) 12 SCC 711, paragraph 11.
[5] Nagarjit Ahir v. State of Bihar, (2005) 10 SCC 369, paragraph 14.

test, that is, the conviction could be sustained only if it is supported by a certain number of witnesses who give a consistent account of the incident.[6]

14. There may, however, be a situation where a crowd of assailants, who are members of an unlawful assembly, proceeds to commit murder in pursuance of the common object of that assembly. In such a case, any person who is a member of that unlawful assembly is equally liable even though no specific overt act of assault is attributed to him. Otherwise also, where the assailants are large in number it may not be possible for witnesses to describe accurately the part played by each one of them. Besides, if a large crowd of persons armed with weapons assault the intended victims, it may not be necessary that all of them must take part in the actual assault.[7] Therefore, in a situation like this, what is important for the Court is to determine whether the accused put on trial was a part of the unlawful assembly or just a bystander. Such determination is inferential,

[6] Masalti v. State of U.P., AIR 1965 SC 202: 1964 SCC OnLine SC 30; followed in State of U.P. v. Dan Singh, (1997) 3 SCC 747
[7] Masalti v. State of U.P. (supra)

based on the proven facts of the case. Though it is not feasible to exhaustively lay down the list of circumstances from which an inference regarding the accused being part of the unlawful assembly be drawn, the Courts have generally held the accused vicariously liable, with the aid of Section 149 of the IPC, *inter alia*, (a) where he had proceeded to the scene of crime along with other members of the assembly carrying arms or instruments which could serve the object of the assembly; and (b) where he had participated in any manner in the events which serve the common object of the assembly.

15. In the instant case, the appellants were residents of the same village where riots broke out, therefore their presence at the spot is natural and by itself not incriminating. More so, because it is not the case of the prosecution that they came with arms or instruments of destruction. In these circumstances, their presence at the spot could be that of an innocent bystander who had a right to move freely in absence of prohibitory orders.

In such a situation, to sustain their conviction, the prosecution ought to have led some reliable evidence to demonstrate that they were a part of the unlawful assembly and not just spectator. Here no evidence has come on record to indicate that the appellants incited the mob, or they themselves acted in any manner indicative of them being a part of the unlawful assembly. The only evidence in that regard came from PW-2 and PW-4, but that has been discarded by the High Court for cogent reasons which need not be repeated here. In our view, therefore, on basis of their mere presence at the scene of crime, an inference could not have been drawn that the appellants were a part of the unlawful assembly.

16. The suggestion given by the defense counsel to the investigating officer, during cross-examination, that the accused were trying to douse the fire when they were apprehended, though might be useful to confirm their presence at the spot, cannot be used to infer that accused were a part of the unlawful assembly. This we

say so, because it does not rule out their presence as a bystander or a spectator. Besides that, in absence of any inculpatory role ascribed to the appellants, their arrest on the spot is not conclusive that they were a part of the unlawful assembly, particularly when neither instrument of destruction nor any inflammatory material was seized from them. Besides that, the police resorted to firing causing people to run helter skelter. In that melee, even an innocent person may be mistaken for a miscreant. Thus, appellants' arrest from the spot is not a guarantee of their culpability. In our view, therefore, mere presence of the appellants at the spot, or their arrest therefrom, was not sufficient to prove that they were a part of the unlawful assembly comprising of more than a thousand people. The view to the contrary taken by the High Court is completely unjustified. More so, while hearing an appeal against an order of acquittal.

17. For all the reasons above, we are of the view that the High Court erred in reversing the order of acquittal of the appellants.

18. The appeals are, therefore, allowed. The impugned judgment and order of the High Court is set aside, and the order of the Trial Court is restored. If the appellants are on bail, they need not surrender. Their bail bonds, if any, are discharged. Pending application(s), if any, stand disposed of.

.....**J.**
(Pamidighantam Sri Narasimha)

.....**J.**
(Manoj Misra)

New Delhi;
March 21, 2025