

THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.843 OF 2020
(Arising out of SLP (Crl.) No.7801 of 2015)

KAUSHAL VERMA & ORS. ...APPELLANTS
VERSUS
STATE OF CHHATTISGARH ...RESPONDENT

ORDER

Leave granted.

This appeal challenges the judgment and order dated 15.06.2015 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.698 of 2000.

In Sessions Trial No.359 of 1997, in the Court of 2nd Additional Sessions Judge, Baloda Bazaar-I, 17 persons were prosecuted for having committed the offences punishable under Sections 147, 148, 450, 307, 323, 302 read with 149 IPC. All the accused were convicted of said offences and were sentenced to various imprisonments including life imprisonment for the offence under Section 302 read with Section 149 IPC.

Being aggrieved, Criminal Appeal No.410 of 2000 and Criminal

Appeal No.698 of 2000 were preferred by the convicted accused before the High Court.

The High Court found that accused Birendra Kumar alias Tetku Verma was a juvenile on the date when the incident had occurred and as such he was given the appropriate benefit. Insofar as the remaining 16 convicted accused were concerned, their appeals were dismissed affirming the conviction and sentence imposed upon them by the Trial Court.

Thereafter, following Special Leave Petitions were filed by the convicted accused in this Court:-

- I. Special Leave Petition (Crl.) Nos.457-458 of 2016 was preferred by nine convicted accused. Out of these nine convicted accused, insofar as five accused were concerned, their petition was dismissed by this Court vide order dated 29.01.2016. Subsequently, the appeals of the remaining four accused were allowed by this Court vide order dated 15.03.2019 (in Criminal Appeal Nos.478-479 of 2019).
- II. In the meantime, SLP (Crl.) No.7801 of 2015 preferred by three accused, namely, Kaushal Verma, Gaya Ram Verma and Omkar Prasad was dismissed by this Court on 21.09.2015.

After the decision in Criminal Appeal Nos.478-479 of 2019, Review Petition (Crl.) Diary No.12093 of 2020 was preferred by said Kaushal Verma, Gaya Ram Verma and Omkar Prasad submitting *inter alia* that their case stood on the similar footing as that of other four accused whose appeals were allowed by this Court vide judgment and order dated 15.03.2019.

The Review Petition was, therefore, allowed and SLP (Crl.) No.7801 of 2015 was restored to the file.

It is in these circumstances that the present appeal arising out of SLP (Crl.) No.7801 of 2015 is now being considered.

We have heard Mr. Anshuman Shrivastava for the appellants and Mr. Sumeer Sodhi, learned Standing Counsel for the State.

A Note has been filed by Mr. Sumeer Sodhi to the following effect:-

**“CONVENIENCE NOTE ON BEHALF OF MR. SUMEER SODHI,
STANDING COUNSEL FOR THE STATE OF CHHATTISGARH**

Date of Incident	23.02.1997 at around 9-9:30 pm
F.I.R No.	32 of 1997 dated 26.02.1997 information received on 24.02.1997
Penal Sections	Sections 146, 148, 456, 307, 302 IPC
Complainant	PW-2 Netram
Convicted under	Sections 147,148,450,323,302 and 149 of IPC

DETAILS OF ACCUSED PERSONS:

1. Total No. of Accused persons as per F.I.R No. 32/1997 - 25-30
2. Total No. of Accused Convicted by Sessions Court – 17
3. Two appeals preferred by 17 convicted persons {Crl. App No. 410 and 698 of 2000} before the High Court.
4. High Court partly allowed appeal preferred by one convicted person *viz.* Birendra Kumar *alias* Teku Verma and held him to be a juvenile on the date of offence and rejected the appeals by the other 16 convicted persons.
5. Out of the remaining 16 convicted persons two SLPs were preferred by 12 convicted

persons:

(i) SLP No. 457-458/2016 by nine convicts (dismissed qua five convicts by way of order dated 29.01.2016 and allowed qua four convicts vide judgment dated 15.03.2019 in Cr. App. No. 478-79/2019)

- SLP No. 457-458/2016 preferred by 9 Accused:
 1. Kamta Prasad (Dismissed – conviction upheld)
 2. Shankar Lal Verma (Dismissed– conviction upheld)
 3. Bharat Lal Verma (Dismissed– conviction upheld)
 4. Dauwalal alias Ganesh Dewagan (Allowed – conviction set aside)
 5. Hari Lal Verma (Dismissed– conviction upheld)
 6. Vinod Verma (Dismissed– conviction upheld)
 7. Punit Ram Verma (Allowed – conviction set aside)
 8. Santosh Kumar Verma (Allowed – conviction set aside)
 9. Manohar Verma (Allowed – conviction set aside)

(ii) SLP Crl No. 7801/2015 preferred by three convicted persons (initially dismissed vide Order dated 21.09.2015) (Vide Order dated 02.11.2020 in Review Petition (Crl.)(Dy.) No. 12093/2020, present SLP has been restored)

- SLP Crl No. 7801/2015 preferred by 3 convicted persons–
 1. Kaushal Verma
 2. Gaya Ram Verma
 3. Omkar Prasad

6. This Court by way of judgement dated 15.03.2019 acquitted four convicts by giving them the benefit of doubt on the grounds: **[Para 11/ Page 28 of Review Petition]**

- PW-2 in his F.I.R did not name any of the Appellants whereas in his statement in Court, the names of Appellants occurred in his Testimony, however did not attribute any overt act.
- PW-3 did not name any of the Appellants.
- PW-4 did indicate some role, however the same has to be seen in light of the fact that he and his brother were hidden by PW-3 (their mother).

7. Thus the present Review Petition filed by Accused on the ground that they are on similar footings as that of the Accused acquitted in Crl. Appeal No. 478-479 of 2019.

8. However, the case of the Accused/Appellants different from that of those Acquitted in Crl. Appeal No. 478-479 of 2010 :

S. No	Names	Kaushal Verma	Omkar Prasad	Gayaram Verma
1.	F.I.R	✓ (Pg 7, 9 & 10 of Additional Doc. filed in I.A No. 112646/2020 Of R.P)	✓ (Pg 8 & 9 of Additional Doc. filed in I.A No. 112646/2020 Of R.P)	✓ (Pg 9 of Additional Doc. filed in I.A No. 112646/2020 Of R.P)
2.	PW-2 (Statement u/s 161 Crpc)	✓ (Pg 66 of SLP)	✓ (Pg 66 & 67 of SLP)	✓ (Pg 66 of SLP)
3.	PW -2 (Deposition)	✓ (Pg 80 Para 80 of SLP)	✓ (Pg 74, para 1 and Pg 80, para 4 of SLP)	✓ (Pg 74 para 1 and Pg 88 para 17)

4.	PW-3 (statement u/s 161 Crpc)	×	×	×
5.	PW-3 (Deposition)	✓ (Pg 92, para1,Pg 95, Para 4, Pg 97 para 5 of SLP)	×	×
6.	PW-4 (statement u/s 161 Crpc)	✓ (Pg 65 of SLP)	✓ (Pg 65 of SLP)	✓ (Pg 65 of SLP)
7.	PW-4 (Deposition)	✓ (Pg 100 para 1 of SLP)	✓ (Pg 100 para 1of SLP)	✓ (Pg 100 para 1 of SLP)

9. LEGAL SUBMISSIONS :

- Two essential ingredients of S.149 viz: 1) Commission of an offence by any member of an unlawful assembly and 2) such offence must have been committed in furtherance of the common object of that assembly or must be such as members of that assembly knew likely to be committed, once the two conditions fulfilled, every person who at the time of committing of an offence was a member of the assembly would be held guilty. **Para 9 & 10 of Lalji and Ors. Vs. State of U.P (1989) 1 SCC 437**

- In order to attract S.149, it must be shown that the incriminating act was done towards accomplishment of common object of unlawful assembly. If members of the assembly knew or were aware of the likelihood of a particular offence being committed in furtherance of a common object, they would be liable for the offence u/s 149 IPC – **Para 39-40 of Waman and Ors. Vs. State of Maharashtra (2011) 7 SCC 295”**

With the assistance of the learned counsel, we have gone through the record and are satisfied that the role attributed to the present appellants was not in any way different from that attributed to the other four acquitted accused.

We, therefore, see force in the submissions advanced on behalf of the appellants. While allowing this appeal, we set aside the conviction and sentence recorded against said Kaushal Verma, Gaya Ram Verma and Omkar Prasad and acquit them of the charges levelled against them. They be set at liberty unless their presence is required in connection with any other offence.

In the end, we must observe that the presentation made by Mr. Sumeer Sodhi in the Note extracted above is an illustration how a case can be presented on behalf of the State. We may suggest that said Note may be taken as the Standard Format by all the learned counsel appearing for various State Governments in this Court. The Registry may circulate copies of this Order to all the learned Standing Counsel for the States.

With the aforesaid observations, the appeal is allowed.

.....J.
[UDAY UMESH LALIT]

.....J.
[VINEET SARAN]

.....J.
[S. RAVINDRA BHAT]

NEW DELHI;
DECEMBER 08, 2020

ITEM NO.23 COURT NO.4 SECTION II-C
(HEARING THROUGH VIDEO CONFERENCING)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Cr1.) No.7801/2015

(Arising out of impugned final judgment and order dated 15-06-2015
in CRLA No.698/2000 passed by the High Court Of Chhatisgarh At
Bilaspur)

KAUSHAL VERMA & ORS. Petitioner(s)

VERSUS

STATE OF CHHATTISGARH Respondent(s)

Date : 08-12-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. Anshuman Shrivastava, Adv.
Mr. Abhijeet Shrivastava, Adv.
Mr. B. Ramana Murthy, AOR

For Respondent(s) Mr. Sumeer Sodhi, AOR
Ms. Riddhima Juneja, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed, in terms of the Signed Order.

Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(PRADEEP KUMAR)
BRANCH OFFICER

(Signed Order is placed on the File)