

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.795 OF 2019
(Arising out of S.L.P.(Cr1.) No.2180 of 2019)**

Ganeshan

Appellant(s)

Versus

State (Delhi Administration)

Respondent(s)

W I T H

**CRIMINAL APPEAL NOS.796-798 OF 2019
(Arising out of S.L.P.(Cr1.) Nos.3643-3645 of 2019)**

**CRIMINAL APPEAL NO.799 OF 2019
(Arising out of S.L.P.(Cr1.) No.3646 of 2019)**

**CRIMINAL APPEAL NO.800 OF 2019
(Arising out of S.L.P.(Cr1.) No.3755 of 2019)**

&

**CRIMINAL APPEAL NO.801 OF 2019
(Arising out of S.L.P.(Cr1.) No.4130 of 2019
@ Diary No.13435/2019)**

O R D E R

Leave granted.

Twenty-three appeals were disposed of by the High Court of Delhi by the impugned order dated 28th November, 2018, affirming conviction of the accused-appellants under Sections 147, 188 and 436 of the Indian Penal Code (IPC).

They have been sentenced to undergo rigorous imprisonment for five years.

We have perused the materials on record and heard learned counsel for the contesting parties.

In a nutshell, the Court is required to consider the evidence of Rijju Singh (PW-2), Pat Ram (PW-5), Shoorvir Singh Tyagi (PW-7) and Manphool Singh (PW-8) on whose testimonies the prosecution seeks to bring home the charges levelled against the accused-appellants.

PW-2, who was examined by the prosecution as an independent eyewitness, did not recognize or identify any of the accused-appellants, though he claimed to be a resident of the area and also a victim of the arson, rioting, etc. that had taken place.

PW-5, a Head Constable, was patrolling the area with PW-8, another police official. His evidence is that he had taken the rukka to the police station for registration of the FIR. PW-5 testimony that prior to the preparation of *rukka* 107 persons had been arrested allegedly for rioting cannot be treated as an evidence to establish that those arrested had indulged in any rioting or were members of the unlawful

assembly. He was not a witness who had seen the unlawful assembly indulging in violence and rioting etc.

PW-7, S.H.O. of the jurisdictional police station as per his own admission, had not left the police station and had not seen the accused-appellants committing any offence being a member of the unlawful assembly. PW-7 was placed under suspension on the night of 2nd and 3rd November, 1984 on accusation of his active or otherwise complicity in offences under Sections 217 and 211 IPC in FIR No.425 of 1984. PW-7 was not an eyewitness and has not deposed having seen any of the accused-appellants being a part of the unlawful assembly.

PW-8 who was with PW-5 on the date of incident, has deposed that initially sufficient force was not available to control the situation. PW-8 claimed that he had reached Block No.32 around 6:30 p.m. by which time the Police Control Room Van had already arrived at that spot. He did not see any violence actually taking place and was not an eyewitness to the members of the unlawful assembly participating and indulging in rioting, arson, etc.

Learned counsel for the State has tried to rely on the principle of "mechanical test" as laid down by this Court in Masalti vs. State of U.P. (1964) 8 SCR 133 and relied on

the following paragraph;

"That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think that any grievance can be made by the appellants against the adoption of this test."

Having regard to the observations made we fail to see how the said decision or the principle of law dealt with therein, can come to the assistance of the prosecution. To be held guilty under Section 149 IPC, the accused should be a member of the assembly at the time when the offence was committed. The provision does not require individual acts to be established and implicates even those present in person who knew that the offence was likely to be committed, mere passive witnesses and those present as a matter of curiosity without intending to entertain the common objective are not guilty. In Masalti (supra), it was observed that when the size of the assembly is large, many persons would be witnesses to the incident and, therefore the mechanical test

should be applied to rule out punishment of innocent or those arrested by emphasizing on identification of persons who had shared the common object. Therefore, the courts normally consider prudent to insist on at least two if not three reliable witnesses who vouch and identify that the accused was a member of the assembly that had indulged in rioting, arson, looting etc. In the present case even if we give a feeble credence to the inconclusive and vague assertion of PW-8 there is absence of any such identification by a second person. This aspect has been unfortunately overlooked for convicting the appellants.

Having considered the matter, we unhesitatingly take the view that what can be said to be established by the prosecution against the accused-appellants at the utmost and at best is that they were arrested, but that by itself will not make the accused-appellants liable for the offences alleged. The present one really is a case of no evidence and, therefore, we will have no good ground to sustain the order of the High Court which is hereby set aside. The accused-appellants are acquitted of the charges levelled against them and will be set at liberty forthwith unless their custody is required in connection with any other case.

The appeals are, accordingly, allowed.

.....CJI.
[Ranjan Gogoi]

.....J.
[Deepak Gupta]

.....J.
[Sanjiv Khanna]

New Delhi
April 30, 2019.

ITEM NO.7

COURT NO.1

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s). 2180/2019

(Arising out of impugned final judgment and order dated 28-11-2018 in CRLA No. 190/1996 passed by the High Court Of Delhi At New Delhi)

GANESHAN

Petitioner(s)

VERSUS

STATE (DELHI ADMINISTRATION)

Respondent(s)

(With appln.(s) for exemption from filing c/c of the impugned judgment and permission to file additional documents/facts/Annexures)

WITH S.L.P.(CrI) No.3755/2019 (II-C)

(With appln.(s) for exemption from filing c/c of the impugned judgment and grant of bail)

S.L.P.(CrI) Nos.3643-3645/2019 (II-C)

(With appln.(s) for exemption from filing c/c of the impugned judgment)

S.L.P.(CrI) No.3646/2019 (II-C)

(With appln.(s) for exemption from filing c/c of the impugned judgment)

Diary No.13435/2019 (II-C)

(With appln.(s) for c/delay in filing SLP, exemption from filing c/c of the impugned judgment and interim relief)

Date : 30-04-2019 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. R. Basant, Sr. Adv.
Mr. B. Ragunath, Adv.
Mr. Vijay Kumar, AOR

SLP(CrI.) 3755/19 Mr. Varinder Kumar Sharma, AOR
 Mr. Mohd. Shahid Hussain, Adv.
 Mr. Shikhil Suri, Adv.
 Mr. Shiv Kumar Suri, Adv.

SLP(CrI.) 3643-45/19 Mr. Anish Shreshta, Adv.
 Mr. Sudhir Kumar, Adv.
 Mr. Feeroz, Adv.
 Mr. Wangdi, Adv.
 Mr. Raj Gunjen, Adv.
 Ms. Meenakshi, Adv.
 Mr. Pankaj Kumar Singh, Adv.
 Mr. Firoz Khan, Adv.
 Mr. Raj Singh Rana, AOR

SLP(CrI.) 3646/19 Mr. Ram Naresh Yadav, AOR
 Mr. Mohit Kumar Singh, Adv.

D.13435/19 Mr. A. Karthik, AOR
 Ms. Kajal Bhatia, Adv.
 Mr. Badusha Sulaiman, Adv.

For Respondent(s) Ms. Pinky Anand, ASG
 Ms. Aishwarya Bhati, Sr. Adv.
 Ms. Rashmi Malhotra, Adv.
 Mr. B. V. Balaram Das, AOR

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

Delay condoned.

Leave granted.

The appeals are allowed in terms of the signed
order.

Pending application(s), if any, stand disposed of.

(Chetan Kumar)
A.R. -cum-P.S.

(Anand Prakash)
Court Master

(Signed order is placed on the file)