

## Different proof for riot cases? Apex court split

Should the burden of proof be lower when judging a murder committed during a communal riot? That is the basic question raised as the Supreme Court is unable to decide whether to acquit or convict five people, with two judges in a bench reaching opposite verdicts.

The five were allegedly among those who attacked a Muslim family in Assam and killed three women during communal riots following the demolition of the Babri mosque in 1992.

On Dec 14, 1992, a group of 13 people attacked the house of Mohammed Taheruddin of Changmazi Patghar village of Nagaon district in Assam and hacked to death his wife Sahera Khatoon, 35, and daughters Bimala Khatoon, 3, and Hazra Khatoon, 7.

The rioters also grievously injured Taheruddin and his sons Hanif Ahmed, Zakir Hussain and Mohammed Mustafa Ahmed.

Of the 13 accused, the trial court subsequently convicted eight people, Kailash, Hari Singh, Gundul Ratan Das, Krishna Das, Harendra Sarkar, Rahna Gour and Budhu Gour and sentenced them with life in jail. On appeal, the Guahati High Court acquitted three of them.

A split verdict was delivered Friday by the bench of Justice S.B. Sinha and Justice H.S. Bedi on appeals by the remaining five. While one judge convicted them, the other has ordered their acquittal.

Owing to the judges' failure to reach a unanimous decision, the bench has decided to refer the matter to a larger three-judge bench headed by Chief Justice K.G. Balakrishnan.

The matter is likely to come up for hearing before the chief justice's bench later this week.

The split verdict has tied the apex court in a legal knot as to whether the judiciary should differentiate between crimes committed during normal times and those committed during communal riots. It has also raised the question of whether a less-exacting yardstick should be applied to evaluate the evidence while prosecuting people involved in riot cases.

Justice Bedi said this case 'raises an interesting question as to how evidence in cases involving multiple murders during communal riots has to be assessed'.

As per legal principles, a person cannot be convicted in criminal cases unless the evidence available against him proves his complicity in the crime 'beyond a shred of doubt'.

In his separate ruling, Justice Sinha has ordered the acquittal of the five accused, holding the evidence against them doubtful.

Sinha acquitted them saying: 'The accused are entitled to the benefit of doubt'.

However, Justice Bedi convicted the five, holding the evidence against them as largely credible and suggesting that the judiciary must apply a less-exacting yardstick to assess the evidence against a person accused of being involved in crimes during communal riots.

Justice Sinha disagreed with him, saying: 'Each accused person, even a terrorist, has his human right. He has to be tried in accordance with the law.'

Pointing out that applying lesser yardsticks to evaluate evidence against a riot accused would impair his fair trial, Justice Sinha said: 'Right to have fair trial is enshrined in article 21 of the Constitution. If an accused has a right of fair trial, his case must also be examined keeping in view the ordinary law of the land.'

According to Justice Bedi, investigative agencies generally happen to favour rioters, belonging to the majority community, and distort the evidence to ensure their acquittal.

To prove his charges, he cited the findings of more than a dozen judicial and administrative commissions, constituted to probe the violence and general lapse of police in investigation the criminal offences committed during the riots.

However, Justice Sinha rejected his argument for less stringent scrutiny of evidence, saying: 'It is one thing to convict an accused by applying the well-known principles of law, but it is another thing to say that although they cannot be held guilty on the basis of the materials on record, they must suffer punishment in view of the past experience.'

*Rana Ajit ( © IANS / India eNews)*