

Pedda and ors. Vs. the State of Mysore

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Court : Karnataka

Decided On : Aug-29-1952

Reported in : AIR1953Kant41; AIR1953Mys41; ILR1953KAR69; (1954)32MysLJ83

Judge : Venkata Ramaiya and ;Balakrishnaiya, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 141, 142, 146, 148, 149, 302 and 323; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154 and 288; Opium Act

Appeal No. : Criminal Appeal Nos. 17 and 57 of 1951-52

Appellant : Pedda and ors.

Respondent : The State of Mysore

Advocate for Def. : A.R. Somnath Iyer, Adv. General, ;B.S. Puttasiddiah, Adv. in Cr. A. No. 57 of 1951-52 and ;V. Krishnamurthy, Adv.

Advocate for Pet/Ap. : B.S. Puttasiddiah, Adv. in Cr. A. No. 17 of 1951-52

Judgement :

1. The appellants, who were accused 1 to 7 in the lower Court, have been convicted of rioting and sentenced to three years rigorous imprisonment and some of them to further imprisonment for other offences found to be committed by them.

Of the six charges framed in the case, No. 1 relates to rioting, No. 2 to the murder alleged to have been committed by Accused 2, 3, & 11, the third to an offence under Section 302/149, I. P. C. by accused 1 to 7, 9 and 10, as members of the unlawful assembly, in pursuance of the common object of which accused 2, 8 and 11 murdered Basavanna Gowda. The other charges relate to the individual acts committed by some of the accused, it is rather surprising that although the charges as framed by the Magistrate are said to have been amended before the trial, there is no mention of the date in any of the charges on which any of the offences is alleged to have been committed. The omission is not material as it was well understood to be 23-9-1950 when the election to the village Panchayath was concluded by the Amildar of Harihar in Hindaskalte a village about 12 miles from Harihar. The election was over by 5 P. M. and at about 5-45 P. M. in the outskirts of the village at a distance of about 3 furlongs from the place where the election was held, one Basavanna Gowda of about 30 years of age was brutally assaulted on the road between Malebannur and Nandagudi and as a result of the multiple injuries including the fracture of the skull caused to him he expired before reaching the hospital at Malebannur. Besides Basavanna Gowda, his brother P. W. 1 and two others, P. Ws. 3 and 12, who accompanied him, were also injured at the time. Accused 5 was charged under Section 323. for causing hurt to P. W. 1 and similarly accused 1, 8 and 4 for causing hurt to P. W. 2. Accused 1, 8 to 7, 9 and 10 were also charged with having caused hurt to Basavanna Gowda. Of the 12 accused against whom the charge-sheet was placed, accused 13 was discharged in the Court of the Committing Magistrate. The learned Sessions Judge held that none of the accused was guilty of murder directly or constructively and acquitted accused 8 to 11 completely. The correctness of the conviction of accused 1 to 7 under Section 143 and accused 1 to 5 of other offences in addition is questioned in the appeal filed by them. The Government have also preferred an appeal seeking conviction of the appellants as well as accused 8 to 11 for the offence under Section 302/149, I. P. C.

2. There is undisputed evidence that Basavanna Gowda, a resident of Hallihalu village was in Hindaskatte in the afternoon of 23-9-1950 and while returning to his village with his brother and two others they were attacked at about 6 P. M. on the road by a number of persons and violently beaten with, stones, sticks etc, that

almost immediately the defender and four Constables arrived at the spot, that the Amildar too went there a few minutes later and observed Basavaana Gowda lying in a precarious condition, speechless surrounded by a large crowd, and that Basavamm Gowda and P. Ws. 1 and 2 were removed to the hospital at Malebannur for treatment but Easavanna Gowda was dead before any treatment could be given.

3. The material evidence on the side of the prosecution to show that the accused were perpetrators of or participants in the crime is that of P. Ws. 1, 2 and 12, eye-witnesses to the attack from the beginning and that of P. W. 11, the dalledar and the Constables P. Ws. 13, 17, 18 and 19 who proceeded to the spot after hearing the cry of alarm or distress. Of these, the statement Of P. W. 12 has to be discounted as his presence at the time of the assault is open to doubt in view of the police witnesses saying that they saw him and his denial of having seen them. P. W. 2 admittedly is a member of a faction opposed to that of the accused and a competitor with some of the accused for the election to the village Pan-chayath. On the first day of his examination in Court he stated : 'I do not know who ell hit and how..... I do not know with what weapons'. His deposition in the Magistrate's Court was then tendered as evidence under Section 288. On the next day, his entire deposition was marked as an exhibit without drawing the attention ot the witness to portion or portions therein the prosecution wanted to make use of & without eliciting from the witness whether those statements were correct or not. In -- 'Tara Singh v. The State', 1951 SCJ 518 and --'Bhagwan Singh v. State of Punjab', 1952 SCJ 284, Section 288, Criminal P. C. has been considered to provide for statements in the committing Court being used for purpose of corroboration or contradiction at the trial. Neither on the first day when P. W. 2 was deemed to be contradicting the earlier statement nor on the second day when it was found to be not so was he reminded or questioned at all about anything said by him before the Magistrate. The learned Judge has not applied his mind to see whether there is need to resort to Section 288 and in any case the propriety of the deposition as a whole being marked an exhibit. As this has not influenced the decision in the case and the case was argued on either side without reference to it, it is not necessary to discuss the force of the objection raised by Sri Krishnamurthy to the order made for allowing it.

4. To sustain a charge of rioting, the prosecution has to establish that there was an unlawful assembly, that force or violence was employed and that an offence was committed. A mere assembly or gathering of persons is not unlawful though some of its members may employ force to commit an offence, as it may well be that the presence of some at the time was accidental or may be due to curiosity as mere spectators. Some may have been there as passers-by or passive bystanders. Section 141 requires that there should be a common object which can be brought within the purview of one or the other heads mentioned therein and Section 142 expressly states that a person to be a member of an unlawful assembly should be aware of facts which rendered the assembly unlawful and that he should intentionally join the assembly or continue in it. From the mere fact of all or some of the accused being found at the scene of the occurrence at the time when Basavanna Gowda was injured, it cannot be inferred that they were members of an unlawful assembly. Nor is it reasonable to assume from the acts themselves that the persons present had a common object to commit them and these were committed in pursuance of a common object. As observed by Wallace J. in -- 'Ganapathi Sanua v. Emperor ', MR 1923 Mad 369(2)

'in order to find what was the common object of an unlawful assembly at the beginning, it is not a legitimate method merely to take all the actual offences committed by it in the course of the riot, and to infer that all these were originally part of its common object but must, normally be based on more evidence than the mere acts themselves.'

The common object-set out in the charge is the murder of Basavanna Gowda. It has been stated in the judgment that the attack was not preconcerted and there was no arrangement by accused to meet at the spot to murder Basavanna Gowda. If so, they cannot have been members of an unlawful assembly as no other object is suggested. It was argued by the learned Advocate-General that the view of the learned Judge is wrong as he has held that the accused were members of an unlawful assembly, and from the nature of the injuries caused and the death following it, the object must be presumed to be the murder of the deceased. Existence of a common unlawful object is a requisite for an unlawful assembly under the Code and unless there is a proof of an agreement amongst persons to

do anything or a plan to carry out a design, and if this is not possible, unless it is shown that an inference in support of it can reasonably be drawn from the relations, acts and conduct of the parties, persons cannot be constructively made liable for other's acts.

5. The first thing to be inquired into is whether there was any motive, purpose or cause for the accused to combine and deliberate upon an organised determined beating to Basavanna Gowda. The resolute and cruel manner of the beating suggests that the assailants must have had serious ground to cherish hostility towards him,

6. Of the 11 accused in the case only three seem to have had cause for being aggrieved with the deceased, accused 1 & 2 on account of a case under the Opium Act said to have been instituted, against them at his instance and accused 8 owing to a land dispute. (Their Lordships then discussed the evidence and proceeded as under:) Whatever may be its value to prove individual acts of accused, it can have little weight to make out common object. What operated as the proximate and substantial cause for the assault and the persons concerned in it are not free from doubt. The charge of rioting must, therefore, be taken to be not satisfactorily substantiated.

7-9. It remains only to see whether the accused can be convicted for any acts individually committed by them. For the purpose of determining as to who the actual assailants were, the learned Judge has mainly relied upon Ex. p-25-the first report of the occurrence by the defender P. W. 11 and the absence of any reference therein to accused 3 to 11 seems to be the strong reason for their acquittal. The learned Advocate-General argued that this is not a correct way of dealing with the case and there is some force in it. The earliest or first information of the occurrence is highly useful for the purpose of corroborating or contradicting the prosecution version but cannot by itself be substantive evidence, or made the basis for a conviction or an acquittal. It is therefore necessary to see whether apart from Ex. p-25 there is sufficient evidence on record to disturb the acquittal of accused 8 to 11. (Their Lordships then considered the evidence & proceeded as follows:) The appeal filed by the Government is dismissed and the appeal filed by

accused is allowed to this extent that convictions under Section 148, I. P. C. are set aside. It therefore-follows that besides A-8 to A-11, A-6 and A-7 are-also entitled to complete acquittal as that is the-only offence of which A-6 and A-7 are convicted.

(Best of the judgment is not material for the-purpose of reporting.)

10. order accordingly.

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