

In Re: Ranga and ors.

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Court : Karnataka

Decided On : Oct-06-1953

Reported in : 1954CriLJ632

Judge : Venkata Ramaiya and ;Mallappa, JJ.

Appellant : In Re: Ranga and ors.

Advocate for Pet/Ap. : Sri. Krishnamurthy

Judgement :

Venkata Ramaiya, J.

1. The appellants who are 9 in number are involved in a case of rioting and murder. All of them have been convicted under Section 302 read with Section 34 or 149, I. P. C. for the murder of one Puttaranga Naika and sentenced to transportation for life and also of an offence under Section 147, I. P. C. and sentenced to rigorous imprisonment for a period of two years with a direction that the sentences should run concurrently. Appellants 1, 2 and 3 have been in addition convicted under Section 148 and sentenced to undergo rigorous imprisonment for three years the said sentence being directed to run concurrently with the other sentences imposed upon them.

All these offences are found to have been committed on 27-2-1951 in a village called Honganur in Chamarajanagar Taluk, when what was apparently a boyish

prank or innocent mischief of two boys, sons of accused 4 and 9, in causing water used for washing a buffalo in a pond to fall on the members of the pariwar community, who had gone there to bring water for household use, led to an outburst of animosity on the part of the appellants and others of their community against the Pariwars of the village. The immediate reaction to the prank was a rebuke by the person who had come to fetch water. The boys went home and brought their fathers and their companions who chastised the Pariwars for having rebuked the boys and were about to punish them severely. Thereupon some of the leading members of the Pariwar community arrived and remonstrated with the appellants and others who had accompanied them not to mind the affair seriously. The appellants and others with them seemed to be pacified but shortly after the Pariwars returned home, stones were pelted pell-mell, one Puttaranga Naika a Pariwar while returning home in a cart carrying fuel, was waylaid and done to death and another Pariwar by name Kadagara Naika was also later on killed.

2. Of the persons against' whom a charge-sheet was placed for the commission of several offences connected with this incident three were discharged and the rest have been acquitted of the offence relating to death of Kadagara Naika by the learned Sessions Judge, but convicted of other offences as mentioned above. The incident relating to the exchange of words between the boys washing the buffaloes and the Pariwars taking water for use at home happened at what is called Kuppe Halla and the pelting of the stones was in the village. P. Ws. 16 and 17 are the persons who took objection to the water being thrown by the sons of A-4 and A-9 and there is no reason to distrust their testimony. This is referred to in the F. I. R., Exhibit P-19, sent by the Patel on the same day. The Patel is a Mahammadan and Exhibit P-23 the mahazar shows that a number of stones were found lying scattered near the school. The evidence of P. Ws. 16 and 17 further shows that after the two boys reported the incident to their kinsmen some of those who arrived were armed with cutting instruments and uttered threats of injury to P. Ws. 16 and 17 and others connected with them in retaliation for the wrongs done by Pariwars. Such display of hostility on the part of appellants is not surprising as their disposition towards Pariwars of the village was by no means friendly and they with others of their group were smarting with bitterness and sense of frustration on account of a decree for conduct of processions through Pariwar locality not being

effective and the case for murder of a member of their community having ended in acquittal. The appellants, as members of a community larger in number than the Pariwars desirous of emphasising their strength and spirit steered it as an opportunity to fall on Pariwars.

3. The first victim to this frenzy was one Puttaranga Naika a Pariwar who left his house on the morning of 27-2-1951 to bring fuel but did not return at all. His brother and his father besides a neighbour have testified to the bullocks being yoked to the cart in the morning and his having started in a cart driven by a servant P. W. 31. Exhibit P-29 is the mahazar prepared at the spot where the wood was cut. While the cart was approaching the village it was stopped; Puttaranga Naika was dragged and mercilessly killed on the spot by some of the appellants. The attack by the appellants on Puttaranga Naika is spoken to by P. W. 31 and this is the only evidence about it.

4. Sri Krishnamurthy the learned Counsel for the appellants contended that the witness cannot be relied upon & at all events his evidence is insufficient for a conviction of murder. The adequacy of evidence to prove the case against anyone has to be determined on the peculiar circumstances of the situation in which the crime was committed and in the absence of any rule requiring a particular number of witnesses to testify to the acts imputed to the accused, the conviction cannot be assailed only because it is based on the evidence of a single witness. What is necessary in such a case is that the evidence should be subject to strict scrutiny. Considering the place and time of the assault, the manner in which appellants, like hunters in quest of a prey, lay in wait outside the village to pounce upon any Pariwar, P. W. 31's evidence cannot suffer from absence of another eye-witness. The spot of assault was not within the village but a furlong or two away from it and the attack may not have taken place or may have been prevented if there were persons nearby to intervene.

P. W. 31 states that while the cart was proceeding towards the village he saw the appellants standing under a tamarind tree, that A-1, 2 and 3 had deadly weapons such as chopper, dagger or spear in their hands, that suddenly accused 8 came forward, dragged Puttaranga Naika down, A-1 and A-3 thereupon hit him with the

axe and. spear on the face and abdomen causing instantaneous death and that A-4, 8 and 9 incited others to cut him down. P. W. 30 says that the occurrence was reported by P. W. 31 to him within a few minutes after this and there is mention of this in Ex. P-19 the F. I. R.

The learned Judge has accepted the evidence as true and I see no reason to take a different -view. Accused 2 is said to have chased the witness for some distance and there is other evidence to show that all the accused ran after other Pariwars. As a matter of fact, another Pariwar Kadagara Naika was later on found lying dead. The accused have been acquitted of the charge of murder of this Kadagara Naika but this does not affect the conviction for being members of an unlawful assembly and for accused 1, 2 and 3 being armed as such members with lethal weapons and for A-1 and A-3 causing death of Puttaranga Naika. There is no reason to interfere with . the conviction of the accused for the offence under Section 147 or with the conviction of accused 1 to 3 of the offence under Section 148 or the sentences passed with respect to these.

5. The conviction of the accused under Section 302: read with Section 34 or 149 raises some difficulty. It is argued that having regard to the fact that the common object mentioned in the charge is only assault and that according to the evidence only A-1 and A-3 hit Puttaranga Naika, the other accused cannot be held to be guilty of murder. In support of this - 'In re Manakkal Kumaran' AIR, 1942 Mad 446 (A), has been cited. That was a similar case of rioting in which there were two murders and convictions were also similar. The learned Judges taking into account that Section 149 consists of two parts one relating to the commission of the offence in prosecution of the common object of an unlawful assembly and another to the knowledge that it is likely to be committed in prosecution of that object held that the later provision in the section cannot be resorted to for convicting all the members of the unlawful assembly of murder unless such was the common object.

6. Section 149 states:

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of the assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who

at the time of the committing of that offence is a member of the same assembly is guilty of that offence.

It is more on the applicability of this section than of Section 34 that the correctness of the conviction of persons who are not the assailants depends. Section 34 cannot be invoked as it has been held to refer to cases in which several persons intend to do an act and some do that act and not to cases where several persons intend to do an act and some one or more of them do an entirely different act. Section 149 may be applicable to cases to which Section 34 does not apply. See - *Aniruddha' Mana v. Emperor* : AIR1925 Cal913 . The essential condition for the operation of either section is that the intention in one case and object in the other should be common and if the act is in excess of or beyond the intention or object of the members, they cannot be constructively liable for it. The common object specified in the charges is 'assaulting the Pariwars' and the words cannot be understood as denoting murder though assault may sometimes prove fatal. The latter part of Section 149 imputing knowledge of the offence likely to be committed is not referred to in the charge and what is alleged is that in prosecution of the common object the accused did commit murder by intentionally causing the death of Puttaranga Naika, a Pariwar.

7. In - '*AIR 1942 Mad 446 (A)*', the conviction of members of the unlawful assembly who did not themselves cause death was set aside although common object was mentioned in the charge to be murder as it was found from the evidence that the common object was to cause hurt. There is less justification in this case for the conviction of all the members of the unlawful assembly for murder as it is not alleged in the charges that murder was the common object and the evidence does not establish this. Accused 5, 6 and 7 by joining others and by reason of their being found to be near them cannot be deemed to have intended to kill Puttaranga Naika when they carried no weapons with them.

8. Even for a conviction under Section 147, I. P. C., it must be remembered that mere presence of a person along with members of an unlawful assembly is not sufficient to support a finding that he had the common object of the unlawful assembly. There must be other evidence direct or circumstantial to justify a finding

that he had the common object. In this case the appellants were found in more than one place showing a hostile attitude to Pariwars and in fact there is evidence to show that all the appellants chased Kadigara Naika another Pariwar who was later on found murdered. The object which may be Imputed to them in the circumstances of the case can be nothing more than causing hurt. The act of accused 8 in pulling him out of the cart cannot necessarily be anything more, than that of accused 5, 6 and 7. Accused 4 and 9 are said to have only uttered abusive words and incited others to attack. The convictions of accused 1 and 3 and sentences passed on them according to the judgment of the lower Court are confirmed and the appeal is dismissed as regards these. The conviction of the other accused under Section 147, I. P. C. is confirmed. The conviction of these under Section 302 read with Section 149 or 34, I. P. C. is modified by convicting them of offences under Section 324 read with Section 149, I. P. C. The sentences for these are limited to the period of imprisonment already undergone. Except for this modification the appeal is dismissed. Accused 4 to 9 will be released forthwith.