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Rex Vs. Sadla and ors.

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Court : Allahabad

Decided On : Dec-05-1949

Reported in : AIR1950All418

Judge : Raghubar Dayal ; and V. Bhargava, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 109, 141, 142, 147, 299, 300, 302 and 304

Appeal No. : Criminal Appeal No. 716 of 1948

Appellant : Rex

Respondent : Sadla and ors.

Advocate for Def. : P.C. Chaturvedi, Adv.

Advocate for Pet/Ap. : H.L. Kapoor, Adv.

Judgement :

Raghubar Dayal, J.

1. Sadla alias Jai Mangal, Sheo Chand, Ram Sia and Sheo Bodhan appeal against their convictions for rioting and for committing the murder of Lunja alias Sheo Mohan at 9 A. M. on 23rd November 1947, in village Kuchauli, which is seven miles from police station Kamasin, district Banda, where the first information

report about the incident was lodged at 5-30 P. M. the same day.

2. The prosecution has succeeded in proving that, due to old enmity, the four appellants, along with Sheo Sampat, who died subsequently, attacked Lunja and Ajudhia when they were returning from the river Began after having a bath there. Sadla and Sheo Chand appellants came from the other direction. Lunja and Ajudhia left the passage and proceeded towards Lunja's threshing-floor. The other three appellants lay in ambush nearby and incited Sadla and Sheo Chand to beat Ajudhia and Lunja, saying that they also were coming to their help. Sadla and Sheo Chand then rushed towards Lunja and Ajudhia. Sadla aimed a lathi blow at Lunja, who avoided it and succeeded in striking a lathi at Sadla. Sadla fell down on receiving Lunja's lathi blow. Lunja then further struck him a few more lathi blows. Sadla did not take part in the incident any more, and it appears from the record that he did not do so because he was incapable of taking any active part on account of the injuries which he received at the hands of Lunja. The other appellants came up and beat Lunja with lathis and spear. Ram Sia appellant held the spear. When Ajudhia was being attacked he released Ram Sia and moved aside, saying that he had nothing to do with the quarrel between Lunja and the assailants. As a result of this incident, Lunja received as many as 29 injuries, including seven incised and three contused wounds on the head. He died instantaneously on the spot. These facts have been proved from the statements of Ajudhia, who was with Lunja and who also received an injury, and two other witnesses, namely, Sheo Naik and Indrapal, whom we believe.

3. The accused appellants denied the prosecution allegations, Sadla stated that Lunja, Ajudhia, Ram Autar, Sarju, Indraplal, Parbhu and Har Babu had surrounded him from four sides and beat him and that he himself plied lathis in self-defence. He alleged that Ajudhia bad a spear.

4. Sheo Chand stated that he was coming from the river along with Sadla, that they found Ajudhia and Lunja standing armed, that they left the way, but were surrounded by them and the other persons, that Ajudhia and Lunja first beat Sadla with lathis and spear respectively, that Sadla plied a lathi in self-defence and that he himself was beaten when he tried to intervene. He did not allege that he himself

used any lathi in self-defence The other appellants, namely, Sheo Bodhan and Ram Sia, alleged that they had been implicated through enmity.

5. The accused examined Mahabir, D. W. l, to prove their version of the incident. We are not satisfied with his statement and we consider the defence version to be improbable in view of the nature and number of injuries received by Lunja. There is no evidence on this record about the actual number of injuries and their nature which were received by Sadla. The Sub-Inspector just deposed that Sadla had serious injuries. It has already been indicated that, according to the prosecution, Lunja struck a few lathi blows at Sadla. They must have resulted in injuries to him. It has also been noted that those injuries made him incapable of taking any further part in this incident.

6. In the absence of any definite evidence about the injuries on Sadla, it cannot be said that the defence version is sufficient to explain the large number of injuries on Lunja. We, therefore, do not consider the defence evidence sufficient to rebut the prosecution case.

7. The main question in this case, which was considered at length, is with respect to the offences made out against the appellants. We have no doubt that these appellants and Sheo Sampat formed an unlawful assembly with the common object of beating Lunja, though they split themselves in two parties, which could be just for the purpose of trapping Lunja and not allowing him to escape. They further did commit the offence of rioting the moment Sadla attacked Lunja.

8. After Sadla fell down and became incapable of taking any further part in this incident, it is open to question whether Sadla can be said to have been a member of the unlawful assembly. If he cannot be said to have been a member ol the unlawful assembly, the result would be that the number of the assailants of Lunja after Sadla had fallen down would be reduced to four, the four being Sheo Chand, Ram Sia, Sheobodhan and Sheo Sampat. In view of the reported decisions of this Court we are not to take into consideration the other two alleged assailants, namely, Ram Chand and Sheo Sewak, who have been given the benefit of doubt by the learned Sessions Judge and acquitted. The question whether Sadla can be said to have been a member of the unlawful assembly after he had Sallen down

and been beaten depends on the determination of the fast whether he, who formed a member of the unlawful assembly from the beginning, had withdrawn himself from the unlawful assembly and had thus dissociated himself with any further membership. It does not solely depend on the fact that he became incapable of taking part in the attack. His withdrawal from the unlawful assembly could be either actual and voluntary, which would be if be removed himself from the assembly and went away, clearly indicating that he was averse to taking any further part in the incident. If a member of an unlawful assembly is not able to walk away like this and has perforce to remain on the spot either because he is so injured that he cannot remove himself or because he is held up by others, he may still continue to be a member of the unlawful assembly if he shares the common object of the assembly subsequent to his being made helpless in assaulting the victim. He can, however, in such a position disavow his share in the common object by expressions, leaving no doubt that he did not share the object any more. If he is also unable to express himself in this respect, it would be fair to presume that he was incapable of both taking part and of sharing the objects of the unlawful assembly and that he had withdrawn himself from the unlawful assembly. In this case Sadla was incapable of taking any further part. If he had been capable, there seems to be no reason why he would not have stood up and taken part in the assault. It is significant that when Ram Sia, who had been seized by Ajudhia after releasing Sheo Chand, asked his co-assailants to attack Ajudhia he did not ask Sadla to assault Ajudhia. Sadla being the first assailant and apparently the leader of the party should have ordinarily incited the others to rescue Ram Sia and to beat Ajudhia. His omission to do so indicates that he was in such a dazed condition of mind that he could not have even spoken. The evidence is not consistent about Sadla's ability to walk after his having received the various injuries. One witness just said that he was carried by other members of the party from the place of incident. Ajudhia stated that he walked himself. The Sub.Inspector deposed that Sadla had serious injuries and that he remained lying down when he examined him and, therefore, he could not say whether his leg was fractured or not. From the circumstances of the case it appears that Sadla was unable to move. It follows, therefore, that Sadla was unable to render any assistance to the assailants either by actually assaulting Luuja or by incitement.

He was unable to speak and so could not have expressed his dissociation with the common object of the actual assailants. His mere physical presence, therefore, can be taken to be no presence in the eye of law. He was, therefore, no more a member of the assembly of the assailants after he had fallen down injured.

9. So far as the appellants other than Sadla are concerned, it is clear that they had the common intention of beating Lunja and that they must be held responsible for the causing of the injuries which were inflicted on Lunja and which resulted in his death. Considering the nature of the injuries, they must be imputed the intention to cause such injuries as were likely to cause Lunja's death in the ordinary course of nature or at least the knowledge that their striking Lunja with lathis and spear was so imminently dangerous that it would, in all probability, lead to the death of Lunja. Sheo Chand, Bam Sia and Sheobodhan are, therefore, clearly guilty of the offence of murder under Section 302 read with Section 34, Penal Code.

10. The question now remains, what responsibility Sadla has with respect to the murder of Lunja. His responsibility would depend on the determination of the question as to what precise common intention can be imputed to him and his co-assailants prior to their actually assaulting Lunja. Five persons, four of whom were armed with lathis and one with a spear, intended to give a beating to Lunja. There can be no dispute about imputing such a common intention to them. When such a number of people, armed in this manner, attack any one they should be imputed the knowledge of the likelihood of causing the death of the person attacked by them so armed. It follows, therefore, that they should be imputed common intention of committing the offence of culpable homicide not amounting to murder.

11. Sadla is not responsible for the death of Lunja on account of his being a member of the unlawful assembly in view of what has been said above. He is responsible for causing the death of Lunja because he abetted its commission by aiding the other appellants and Sheo Sampat in committing it. He is, however, liable for the lesser offence because he aided them with the intention of committing the offence of culpable homicide and not with the intention of committing the offence of murder. It was not necessary in this case to determine the precise common intention of the other three appellants, as by virtue of Section

34, Penal Code, they were to be imputed the intention which could be presumed in the case of any one of them causing the entire number of injuries. Sadla is, therefore, guilty of the offence Under Section 304, Fart H, read with Section 109, Penal Code.

12. In view of the above, the appeal of Sheo Chand, Ham Sia and Sheobodban is dismissed. The appeal of Sadla is dismissed with respect to his conviction Under Section 147, Penal Code and is allowed with respect to his conviction Under Section 302 read with Section 149, Penal Code to this extent that the conviction is altered to Section 304, Part. II, read with Section 109, Penal Code, and that the sentence of transportation for life is altered to a sentence of five years' rigorous imprisonment.

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