

Makka and ors. Vs. the State

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Court : Allahabad

Decided On : Feb-27-1951

Reported in : AIR1952All435

Judge : Misra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 37 and 325

Appeal No. : Criminal Revn. No. 178 of 1950

Appellant : Makka and ors.

Respondent : The State

Advocate for Def. : J.S. Trivedi, Asst. Government Adv.

Advocate for Pet/Ap. : R.F. Bahadurji, Adv.;S.L. Suri and ;Shankar Sharma, Adv.

Judgement :

ORDER

Misra, J.

1. The applicants Makka, Ram Charan, Chunni and Chinta were convicted by a learned Special magistrate, 1st Class of Sitapur of offences under Sections 147, 323/149 and 325/149, Penal Code. Each of them was sentenced to six months

rigorous imprisonment under the first count, to a fine of rs. 20 under the second count or to two weeks rigorous imprisonment in default and on the third count to 9 months rigorous imprisonment and a fine of rs. 10 with one week's rigorous imprisonment in default. Seven others were also challaned by the police and were sentenced by the learned Magistrate in like manner but they were acquitted in appeal by the learned sessions Judge. The conviction of the applicants under Sections 323 and 325 was maintained. The learned judge, however, reduced the sentences under Section 325 to six months rigorous imprisonment and a fine of Rs. 10 with a provision for one week's further rigorous imprisonment in default of payment of fine. He maintained the sentence under Section 323, Penal code. There was a finding of acquittal so far as the charge under section 147 was concerned and in maintaining the conviction of the applicants under Sections 323 and 325, the learned Judge applied the provisions of Section 37, Penal Code. The following facts were found proved against them :

(1) That at about mid-day on 8th September 1949, Niaz Ali was repairing his cattle trough in front of his house when MAKKA, Ram Charan, Chunni and Chinta appeared on the scene armed with lathis.

(2) That the applicants tried to prevent Niaz Ali from repairing the cattle trough and their efforts in that direction resulted in an altercation and exchange of abuse.

(3) That Makka Ram Charan, Chunni and Chinta thereupon beat Niaz Ali with lathis and on the latter's alarm, his brother Bashir rushed up to the place to protect him and was also injured, and

(4) That the applicants left the place on the arrival of the villagers.

2. The defence alleged enmity with the zamindar of the village and with the witnesses. Makka is a member of the village panchayat and his case was that Niaz Ali was encroaching upon a publicway and the village panchayat had ordered that he should be prevented from doing so. He said further that in trying to prevent Niaz Ali from making the encroachment the latter and his brother Bashir attacked him, that Ram Charan and Chinta who came to rescue him on his alarm also received injuries. This version of the occurrence (sic) was sought to be supported

by the evidence of one Paras Ram Singh but his testimony was rejected by the courts below. The learned Sessions Judge found that the evidence produced by the prosecution was sufficient to prove the altercation and the attack by the applicants the remaining seven accused persons very doubtful. He further found that Makka, Ram charan, Chunni and Chinta and similar motive for attacking Niaz Ali but since similar intention is not the same as common intention within the meaning of section 34, Penal Code, he came to the conclusion that the conviction of the applicants could not be founded on the basis of Sections 34 but section 37 would apply since the accused behaved in the same way and their outward conduct showed co-operation in the commission of the offence.

3. The view taken by the learned Sessions Judge in respect of the application of Section 37 Penal Code, is challenged on behalf of the applicants and in my opinion rightly section 37, provides that when a series of acts are done which together result in some thing which is an offence, the doing of any one of them with the intention of co-operating in the commission of that offence makes each of the doers liable to be punished for the result. The distinction between Section 34 and Section 37 is obvious: the former requires common intention for a criminal act which is done by a number of persons in order that they should become liable as if the act was done by each of them while the latter deals with the intentional co-operation in the offence which has resulted from several acts, each of which standing by itself is not the offence with which the accused are charged. In the present case, the applicants were charged with the offence of causing simple and grievous hurt by use of lathis and it is not possible to say that there were several acts which resulted in the offence of causing grievous or simple injuries. The use of s 37, therefore, in convicting the applicants was misconceived. It is clear however that the case falls under Section 34 for there is doubt that there was a common intention amongst the applicants to commit a crime punishable under the Penal Code. That intention is disclosed by the fact that the applicants went up to Niaz Ali fully armed with lethal weapons like lathis and were determined to enforce their will by their use. As held by a Full bench of this Court in *State v. Saidu* A.I.R. (38) 1951 AIL. 21 (F.B.) it is not necessary in order that Section 34 should apply that the common intention should have been to cause the particular result which came about in committing a crime and it is possible to convict a person

of an offence if the Court comes to the conclusion that each person who took part in committing the crime had preconcerted intention to commit it. If a person, therefore is attacked by less than five persons and grievous hurt is caused all of them can be convicted under Section 325 with the aid of Section 34 irrespective of the consideration as to which of them caused grievous hurt. The medical evidence in the case before me shows that Niaz Ali had two injuries: [After giving a description of the injuries the judgment proceeds:]

4. On the evidence which has been believed by the lower appellate Court, I have no hesitation in holding that the applicants have been rightly convicted. At the same time I do not take a very grave view of the case for it is apparent that Makka and the others were trying to enforce some sort of a public right though they did it in a manner which was wholly unwarranted. The injuries indicate that the attack was not intended to produce grave results. The applicants have already served terms of imprisonment for a period of one month and in some cases a few days longer. They have also paid the fines. In my opinion the imprisonment already undergone is sufficient to meet the ends of justice. While therefore maintaining the conviction, I reduce the sentence of imprisonment under Section 325 from six months to the period already undergone. In other respects the sentences are maintained. The applicants are on bail. They need not surrender to their bail bonds which will be discharged.

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