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Court : Allahabad

Decided On : Dec-19-1958

Reported in : AIR1959All690; 1959CriLJ1258

Judge : A.P. Srivastava and ;S.K. Verma, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 97, 99, 149 and 302

Appeal No. : Criminal Appeal No. 1010 of 1956

Appellant : Hukum Singh and ors.

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : P.C. Chaturvedi, Adv.

Disposition : Appeal dismissed

Judgement :

Verma, J.

1. Hukum Singh, Surajbhan, Sher Jang, Bhartu and Ram Chandra have filed this appeal against their conviction and the sentences awarded to them by the learned Sessions Judge of Saharanpur. All the five of them have been convicted under Section 302 read with Section 149. Indian Penal Code, and have been sentenced

to imprisonment for life. They all have also been convicted under Section 323 read with Section 149, Indian Penal Code and have been sentenced to rigorous imprisonment for one year. Ram Chandra has been further convicted under Section 148, Indian Penal Code, and sentenced to one year's rigorous imprisonment whereas the remaining four appellants, namely Hukum Singh, Suraj Bhan, Sher Jang and Bhartu, have been convicted under Section 147, Indian Penal Code, and have been sentenced to six months rigorous imprisonment. The learned Sessions Judge has directed the sentences to run concurrently.

2. The charge against the appellants was that they on 12-12-1954 at about 9 A.M. in the wheat and gram field of Harphool in village Kurali, policestation Rampur, district Saharanpur, committed rioting and in pursuance of the common object of the assembly, which was to take their bullock-carts forcibly through a number of fields including the field of Harphool committed the murder of Harphool and caused simple injuries to Lal Singh, Tara and Peeru. Ram Chandra appellant had also been charged under Section 148, Indian Penal Code, for having been armed with a deadly weapon, namely kulhari. The other appellants were charged under Section 147, Indian Penal Code as they are said to have been armed with lathis. The appellants are Raiputs and are inter-related.

3. In order to understand the prosecution case it is necessary to give very briefly the topography of the place of occurrence. Surajbhan appellant had a sugar cane field in Sona Arjunpur measuring about ten bighas. To the east of the sugar cane field of Surajbhan there are a number of fields belonging to Sainis and, after about ten or eleven fields lies the field of Harphool (deceased). On the extreme east adjoining this field there is a public thoroughfare which is described by the witnesses as a 'Gohar'. According to the evidence led by the prosecution, there were crops such as peas, sugar cane and gram in all these fields.

4. The prosecution case was that on the date of the occurrence in the morning the six appellants and one Surta (who died before the trial commenced) cut a portion of their sugar cane, loaded the same in two bullock carts and drove them towards the east through the fields of the various Sainis and reached the wheat and gram field of Harphool, the Settlement number of which is 360. Harphool protested

against the conduct of the appellants on the ground that the crops in his field would be damaged by the carts. The accused, however, insisted on taking the carts through the field of Harphool. A verbal altercation ensued in the course of which the appellants launched an attack on Harphool.

Lal Singh, a brother of Harphool and Tara a son of Harphool, happened to be smoking outside their cattle-shed to the south of the field of Harphool at a distance of about sixty paces. They heard the noise and saw Harphool being beaten. They also picked up their lathis and ran to the spot to the rescue of Harphool. Peeru also happened to be working in a field at a short distance and he also arrived there. Tara, Lal Singh and Peeru tried to save Harphool and they were also attacked by the appellants. Lal Singh and Tara wielded their lathis in self-defence and Peeru also picked a wooden piece, which happened to be lying there, and used the same in self-defence.

Ram Chandra gave a kulhari blow to Harphool who fell down unconscious. A large number of villagers arrived and the fight ended. The prosecution allegation, further, was that the appellants also declared that as the Station Officer of police station Rampur (within the circle of which village Kurali lies) belonged to their community, they were not worried in the least about what they had done. As the result of this declaration made by the appellants Lal Singh did not go to the police station Rampur but took Harphool to Saharanpur and got him admitted into the Sadar Hospital there. Harphool remained unconscious until his death which took place at 7-30 a.m. on 13-12-1954. Injuries of Lal Singh, Tara and Peeru were also examined at the Sadar Hospital.

On the death of his father Lal Singh went to the kotwali police station and wanted to lodge a report there. His report was, however, not taken down there and he was asked to get directions from the Superintendent of Police, as Kurali was not within the circle of police station kotwali. Lal Singh thereupon had an application prepared and took the same to the residence of the Superintendent of Police of Saharanpur. On the latter's assurance that the matter would be enquired into Lal Singh and others returned to Kurali on 14-12-1954.

5. It appears that a report (Ex. P-12) had also been lodged at police station Rampur by Hukum Singh appellant on 12-12-1954 at 11 o'clock against Harphool, Lal Singh. Tara, Peeru and four other persons under Ss. 147, 323 and 324, Indian Penal Code. This report (Ex. P-12) contains, the defence version in which the allegation was that Hukum Singh and others were lawfully taking the carts through the fields without any damage being done to the crops standing therein and that they had been attacked by Harphool and others with lathis and phaliya.

6. The police officers of Rampur police station proceeded to village Kurali to investigate the casts on the report (Ex. P-12) lodged by Hukum Singh appellant and, on their return from Saharanpur, Lal Singh and others met these police officers in village Kurali. On 15-12-1954 Lal Singh was given a copy of a report (Ex. P-14) alleged to have been lodged on his behalf by one Bulla. As Lal Singh had not lodged any report and as the version contained in the report (Ex. P-14) was not his version, he again proceeded to Saharanpur and made a written application to the Superintendent of Police against the conduct of the police officers of police station Rampur. Lal Singh, subsequently filed a complaint on 3-1-1955. (The judgment then discussed the evidence in Paras 7-11 and proceeded):

12. The learned Sessions Judge on a consideration of the oral as well as the documentary evidence on the record came to the conclusion that there was no rasta for the passage of bullock carts through the fields of the Sainis, including the field of Harphool, that the appellants had no right to take the carts through these fields in which there were standing crops, that their act was an unlawful one that they were the aggressors and that Harphool and the others, who came to his help, had every right to protest and to strike the appellants in the exercise of their right of private defence of property.

13. Sri P. C. Chaturvedi, the learned counsel for the appellants, has contended that there was a rasta through these fields for the passage of bullock carts, and, alternatively, even if there was so passage, the damage done by the bullock carts must have been a trifling one and that Harphool and others had no right to protest or to strike the persons accompanying the carts. It appears perfectly clear to us that there was no rasta through the fields for the bullock carts and the finding of

the learned trial Judge on this point is correct. Apart from the oral evidence produced by the prosecution, the existence of a pushta on the east of Harphool's field and the documentary evidence on the record negative the existence of any rasta.

The Settlement map of 1324 Fasli (Ex. P-16) and the Khasra of 1362 Fasli (Ex. P-15) make it clear that there was no rasta through these fields: The existence of a rasta through a number of fields is extremely improbable, as every cultivator tries to utilise every inch of his land for the purpose of cultivation. Keeping in view the time of the year it is obvious that there must have been crops in all these fields. If there was no right of way through Harphool's field and his crop wan standing in it he had every right to object to the appellants' taking the loaded carts through the field. Their act definitely amounted to criminal trespass and mischief and, regardless of the amount of loss that was likely to be caused, Harphool had a right to defend hisproperty and to prevent the appellants from causing loss to him.

14. The finding that the appellants were the aggressors and launched the attack first also appears to be quite justified.

15. The statements of the prosecution witnesses are clear and consistent and they fully support the prosecution version of the case. We should like to point out that Kantu (P. W. 7), is a completely independent witness and nothing has been elicited in his cross-examination to cast the slightest doubt on his veracity. As regards the defence witnesses, the learned Sessions Judge has rightly discarded their statements as unreliable. They are in some way or the other connected with Suraj Bhan appellant and their version is a most improbable one. We find ourselves in complete agreement with the reasons given by the learned Sessions Judge for accepting the prosecution evidence and for rejecting the evidence produced by the defence.

It is thus clear that the act of the appellants in taking the two bullock carts loaded with sugar cane across a large number of fields, thereby causing damage to the crops standing in those fields, was a high handed one. The Sainis other than Harphool acquiesced in this high handed act on the part of the appellants, who are Rajputs, but Harphool protested with fatal consequences to himself. We should

like to point out that the appellants could have taken a much shorter route for reaching the public thoroughfare or Gohar to the North.

There are only three or four fields in between the field of Suraj Bhan appellant and the public thoroughfare to the north. These fields, however, belong to Rajputs, The appellants would have caused far less damage if they had taken the northern route, but the damage would have been to the crops of Surajbhan himself or to those of Bhartu Rajput. The appellants, apparently thought that they could, with impunity, drive their carts through no less than about a dozen fields belonging to Sainis.

16. Some arguments have also been addressed to us on the basis of the larger number of injuries sustained by the persons on the side of the appellants. The number of injuries is not always a safe criterion for determining the question of aggression. On the prosecution evidence and probabilities, Harphool and others had a right of private defence of property and the appellants had no such right. It also appears to us that the appellants resented the resistance offered to them when they had practically reached their destination and that the assault must have been launched by them to overcome the obstacle in their way. One of the appellants, namely Ram Chander had a kulhari which he wielded with fatal results. Harphool and others, therefore, also had the right of private defence of person, and, if, in the course of the exercise of that right, they inflicted a larger number of injuries on the appellants, the latter can derive no advantage from this circumstance.

17. The learned counsel for the appellants has next contended that the kulhari blow given to Harphool was the isolated act of Ram Chander appellant that the common object of the assembly could not have been to cause the death of Harphool, that the appellants other than Ram Chander could not have known that death was likely to be caused and that therefore the conviction of the appellants other than Ram Chander for the offence under Section 302 read with Section 149, Indian Penal Code, was not justified. He has relied upon the Queen v. Sahid Ali, 20 Suth W.R. Cr. 5, and the Decision of a Division Bench of this Court in Criminal AppealNo. 687 of 1958 Charan Singh v. The State, D/-2-7-1958 : (AIR 1959 All

255).

In the former case there was dispute in respect of a plot of land between Fukeer Buksh and Sabid Ali. This dispute led to a riot in the course of which Tureeboollah one of the party of the accused, fired a gun and killed Samed Ali. On the facts and the evidence led in the case it was held (Ainslie, J., dissenting) that Tureeboollah's act was his isolated act and that the others could not be held liable by invoking the aid of Section 149, Indian Penal Code. The findings recorded by the majority of the learned Judges in this case were that the use the gun, to begin with, was unintended, that the sudden resistance offered prompted Turocboollah to fire the gun and that the other accused did not know it to be likely that the offence of murder would be committed in the prosecution of the common object of the assembly.

In Charan Singh's case Cri. Appeal No. 687 of 1958 : (AIR 1959 All 255) the accused who were Thakurs, were annoyed because one Munshi, who was a Dhanuk, had quarrelled with one of them. They went to the house of Munshi and enquired where Munshi was. Munshi was not in the house but his brother Gulzari was at home. He told the accused that Munshi was not at home. The accused thereupon abused Gulzari. Gulzari protested. This protest was resented by the accused and, one of them, namely, Charan Singh gave a single spear thrust to Gulzari which caused his death. The other accused caused injuries to four other persons.

A Bench of this Court of which one of us was a member, on a consideration of the evidence, held that the common object of the assembly was not to cause the death of Gulzari but only to chastise Munshi (in fact, this had been conceded by the State), that the accused had no intention, orginally, to use their spears, that on being told by Gulzari that Munshi was not there Charan Singh suddenly took into his head to spear Gulzari, that this conduct of Charan Singh could not have been in the contemplation of the other accused and that, therefore, they could not have known that death was likely to be caused. It is obvious that the decision of Charan Singh's case Cri. Appeal No. 687 of 1958: (AIR 1959 All 255) was based on the facts as established by the evidence on the record of that case.

18. Each case must necessarily be decided on the facts that can be found on the evidence led in the case. If the facts established by the evidence led in the case show that the common object of the assembly was to commit murder, it would be a simple master and, obviously, Section 149, Indian Penal Code, would apply and every member of the assembly would be liable for the killing. The difficulty, however, arises when the common object of the assembly is not murder but some other unlawful object, and death is caused in the course of the achievement of that object. The question that arises, in such a case is whether the evidence discloses that in achieving the common object, which was not the commission of murder, the members of the assembly were determined to go to any length, even to the length of committing murder. If the answer to this question is in the affirmative, the commission of murder must be deemed to have been included within the common object of the assembly. On the other hand, if the answer to the question is in the negative, and yet, on the sudden coming into existence of an unexpected situation death is caused by the isolated act of one of the members of the assembly, that member alone will be liable for the killing, and the aid of Section 149, Indian Penal Code, cannot, in such a case, be invoked to fasten liabilityfor the murder on the other members of the assembly.

19. It appears to us that the two decisions relied upon by the learned counsel for the appellants are clearly distinguishable. In both the decisions the evidence disclosed that murder was not the common object of the assembly and secondly that the appellants other than the person who inflicted a single injury resulting in death could not have known that death was likely to be caused in pursuance of the common object of the assembly.

20. Now, what are the facts in the present case? The appellants along with one or two persons loaded their carts with sugar-cane and proceeded to drive the same through a number of fields with standing crops in them quite unlawfully. Ram Chandra armed himself with a Kulhari and the others armed themselves with lathis. They passed through a number of fields and reached the field of Harphool. When protest was made by Harphool they attacked him simultaneously. Ram Chander with his kulhari and the others with their lathis inflicting as many as seven injuries on the person of Harphool.

Harphool died as the result of the fracture of the skull bones and injuries to the brain. It is note-worthy that Harphool not only had an incised wound on the head, which must have been the result of a kulhari blow by Ram Chander but also a contused wound, 2 3/4'x1/4' bone deep on the head which must have been the result of a lathi blow by one of the appellants other than Ram Chander. When others came to the rescue of Harphool they were also beaten. On these facts the following conclusions appear perfectly clear to us :

(1) The appellants decided upon the doing of an unlawful act, viz. to force their way through the fields including that of Harphool to the Gohar.

(2) They armed themselves fully prepared to meet any resistance that might be offered to them and to overcome the same by the use of their weapons and, if necessary, to cause death.

(3) They actually caused, death in order to accomplish their purpose which was the common object of them all.

(4) Each one of them must have known that death was likely to be caused in pursuance of that common object.

(5) Harphool did not the as the result of an accidental isolated act of one of the appellants, but as a result of the concerted and the simultaneous attack upon him by all the appellants.

21. In view of the facts, upon the evidence on the record, found by us and the irresistible inferences that, in our opinion, follow from these facts, the two decisions relied upon by the learned counsel for the appellants can be of no avail to them. The conviction of the appellants under Section 302 read with Section 149, Indian Penal Code, is therefore, perfectly correct and must be maintained. The sentences awarded to them for this offence are already the lesser of the two sentences prescribed by the law. There is no room for interference with these sentences.

Their conviction under Section 323 read with Section 149, Indian Penal Code for causing simple injuries to Lal Singh, Tara and Peeru is also correct and must be

upheld. The sentences awarded to the appellants for this offence also do not call for any interference. As Ram Chander was armed with a kulhari, his conviction under Section 148, Indian Penal Code, and the sentence awarded to him by the learned trial Judge are obviously correct and must be up-held and so also the conviction and the sentences of the appellants, other than Ram Chander, for the offence under Section 147, Indian Penal Code.

22. In the result, this appeal is dismissed,those of the appellants who are on bail must surrender and serve out the sentences imposed on them.

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