

Sadho and ors. Vs. Emperor

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Court : Allahabad

Decided On : Apr-10-1934

Reported in : AIR1934All881; 152Ind.Cas.108

Appellant : Sadho and ors.

Respondent : Emperor

Judgement :

Bajpai, J.

1. This appeal arises out of sessions trial No. 18 of 1933, in which there were twelve persons accused of riot and another man by the name of Sarju Ahir who died in the course of the riot. This appeal is connected with Criminal Appeal Not 971 of 1933, which arises out of sessions trial No. 17 of 1933, in which there were 11 persons accused of riot and one other man by the name of Bhaglur who died in the course of the riot. The trials were conducted in the Court below by the consent of the parties as practically a joint trial and a consolidated judgment was delivered by the learned Sessions Judge. It has been argued by appellants in both the cases that the procedure adopted by the learned Sessions Judge of looking at the evidence in both cases together has prejudiced the accused, but I find that this procedure was adopted at the instance of the accused themselves and the learned Judge has not dealt with the cases in a manner which would suggest that the accused were prejudiced in any way. I also propose to deliver a consolidated

judgment.

2. It was argued on behalf of the appellants in both cases that although there are more than five accused in each case, but the prosecution in both cases names specific accused and does not say that there were others as well. It must therefore be taken that 12 persons by name were implicated in sessions trial No. 17, and 13 persons by name were implicated in sessions trial No. 18 and it is not the case of anybody that there were more persons who were not recognized or identified in this riot. It is then argued that only three men have been convicted in each of the cases and it might be taken that one dead man was further involved in the riot in each case. The position therefore is that as a result of the decision by the Court below it can be said with certainty that there were only four men on each side and as such an offence under Section 147, Penal Code, is not made out because the requisite number of five persons is not to be found in the cases. In support of this contention reliance is placed upon the case of *King v. Plummer* (1902) 2 K.B. 339, and passages at pp. 345 and 349, have been specially brought to my notice. This was a case in which the accused were being tried on a charge of conspiracy and although there were quite a number of accused in the case, but one of them pleaded guilty at a late stage in the case whereas the others were acquitted, it was held that the man who pleaded guilty could not be convicted because conspiracy requires more than one man and the acquittal of the others amounts to a finding that there was no conspiracy. It was held that:

If two persons are tried together upon a charge of conspiring with one another, and one is acquitted by the jury and the other convicted, the conviction cannot stand, although it is perfectly dear that the verdict of acquittal may have been obtained simply upon the ground that there was a failure of evidence to establish the charge against the person who was acquitted.

3. This case to my mind is clearly distinguishable because the case of a conspiracy requires to some extent a clear mention of the conspirators and if on the paucity of evidence an acquittal follows regarding the rest of the accused it is not possible to convict a single man on a charge of conspiracy. In the present case however the judgment of the Court below satisfies me that he was of the opinion

that more than five men undoubtedly took part in the riot. The three men who have been convicted on each side, and the two dead men also took part in the riot and the feeling of the learned Judge was that some of the others who were named in the cases were also involved in the offence, but as is very common in these cases some innocent persons might have been roped in, the learned Judge adopted certain sure tests for convicting the appellants. He however was undoubtedly of the opinion that more than five persons were involved on each side. I am therefore of the opinion that there is no force in the plea that an offence under Section 147, Penal Code, is not made out. Dalip Singh, J., in *Rahman v. Emperor* 1926 Lah. 521, held that:

When five persons are charged for forming an unlawful assembly and four of them are acquitted as their presence at the place of offence was not satisfactorily proved, the conviction of one only under Section 147 is not illegal.

4. If the finding of the learned Judge is that more than five persons on each side took part in the riot the mere fact that on the evidence he is not able to convict five persons would not result in the acquittal of the convicted persons also under Section 147, Penal Code. The finding in the present case undoubtedly is that there were more than five persons on each side.

5. One man died on either side and if the accused can be convicted under Section 147, Penal Code, they can also be convicted under Section 304 read with Section 149 unless anyone of them can show that he had not the common object of the assembly in prosecution of which death took place. I have perused the evidence in the cases and I find that the common object of the assembly at the stage when beating commenced was unlawful and every member who stayed on and who helped the course of the riot must be deemed to have the knowledge that death might ensue in prosecution of the common object of the assembly. With this premise I start to consider the cases of the individual accused in the two cases. The learned Judge of the Court below has adopted a very fair test in the matter. It is that he has convicted persons who had injuries on their persona that being a sure guide that they took part in the fight. In Criminal Appeal No. 971 of 1933, Matru, Paltu and Adit had injuries on their persons. It is not possible) therefore to

argue on their behalf that they were not present at the time of the riot. The course which the riot was taking should have convinced them that death of some one might result and they, I think have been rightly convicted under Sections 147 and 304 read with Section 149, Penal Code. In Criminal Appeal No. 964 of 1933, Sadho and Ram Baran had injuries. Ram Baran was the young man on account of whom this unfortunate incident took place and on the evidence he is said to have been present throughout. Sadho also on the evidence was present at the time and taking a more or less prominent part in the affair. These two persons have been rightly convicted. The case of Sri however is slightly different. There cannot be the slightest doubt that he convened a panchayat on 12th April 1933, when the riot took place. This panchayat was convened in order to settle a dispute that had arisen on 10th April 1933, when Ram Baran and certain other young men were playing cards. The panchas were of the opinion that by-gones should be treated as by-gones and the matter should be amicably settled, but some refractory persons in the assembly were of a different opinion. The panchas saw that trouble was brewing and they therefore tried to leave the place. The weight of evidence is that Sri also thinking that discretion was the better part of valour went inside his house. There is some evidence that Sri also took part in the fight, but the learned Judge does not seem to rely specially upon that piece of evidence. He has taken the admission of Sri as to his presence in the be-ginning of the fight as a clinching circumstance in order to convict Sri. He has not definitely held that Sri did not go in. side the house although he is of the opinion that the Brahmin witnesses are trying to shield him unjustly. Be that as it may, the weight of evidence is undoubtedly to the effect that Sri went inside the house and he cannot therefore be held responsible for the occurrence that took place in his absence. I am of the opinion that he is entitled to an acquittal.

6. For the reasons given above I dismiss the appeals of Sadho and Ram Baran, maintain their convictions and sentences and direct that they must surrender to their bail. I allow the appeal of Sri, acquit him of the offences with which he was charged and direct that he need not surrender to his bail. His bail bonds are cancelled.

