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Court : Allahabad

Decided On : Jan-18-1956

Reported in : 1957CriLJ270

Judge : Asthana, J.

Appellant : Ram Chandra

Respondent : The State

Judgement :

Asthana, J.

1. This is an appeal by one Ramchandra who has been convicted under Sections 304 find 324 of the Indian Penal Code by the learned Additional Sessions Judge of Budaun and has been sentenced to .seven years' R.I. under Section 304 & one year's R.I. under Section 324, I.P.C., the sentences to run concurrently.

2. It appears that there was a case under Section 107, Cr.P.C. between the accused Shiamlal, Mamlal and Ramchaudra on the one side and Chandrapal Singh, his father Khem Singh and his uncle Jiwan Singh on the other. On the 5th of June, 1953, the sar of Chandrapal Singh caught fire. He was informed by some persons that the accused Shiamlal had been seen running away from the side of the sar. Thereupon he, his father Bhikam Singh and his undo Jiwan Singh abused Shiamlal and his brother.

It is alleged by the prosecution that thereupon Shiamlal, Ramlal and Ramchandra came there, that Ramchandra was armed with a knife and the other two were armed with lathis, that Ramlal caught hold of Jiwan Singh and the accused Ramchandra stabbed him with the knife, that when Chandrapal ran to his help he too was assaulted and Ramchandra inflated injuries on him with a knife, Jiwan Singh and Chandrapal Singh shouted for help and thereupon several persons who were living in the neighbourhood came to their help and then the accused ran away, Chandrapal Singh and Jiwan Singh were then taken in a bullock-cart to the Police Station, Ujhani, which is at a distance of three miles from the place of occurrence and there Chandrapal Singh made a report against the accused Ramchandra, Ramlal and Shiamlal.

This report was registered under Sections 307/320 and 323, I.P.C. Jiwan Singh who was severely injured was removed to the hospital and he died there on the 8th June, 1953. Thereupon, the case under Section 107 was amended into one under Section 304, I.P.C. The accused Ramchandra and Shiamlal were arrested on the 5th June, 1953, and the accused Ramlal on the 4th July, 1953. They denied that they had inflicted the injuries on Chandrapal Singh or Jiwan Singh though they admitted that there was enmity between them on account of the case under Section 107, Cr.P.C. They pleaded alibi.

3. The charge which was framed by the learner Sessions Judge against the three accused was as follows:

(i) That you all in furtherance of your common intention on 5th June, 1953, near about 2 P.M. in village Hazratganj, Police Station Ujhani, district Budaun, committed murder of Jiwan Singh by intentionally inflicting injuries on his person with a knife causing his death and thereby committed an offence punishable under Section 302 read with Section 34, I.P.C.

(ii) That you Kainchandra on die said date, lime and place voluntarily caused injuries to Chandrapal; Singh who came to rescue Jiwan by knife, a sharp edged weapon and thereby committed an offence punishable under Section 324, I.P.C.

(iii) That you Shiamlal on the said date, time and place voluntarily caused simple hurt to Chandra-pal by a lathi and thereby committed an offence punishable under Section 323, I.P.C.

The learned Sessions Judge, after a consideration of the entire evidence, was not satisfied that any of the charges had been satisfactorily proved against the accused, Shiamlal and Ramlal. He, therefore, acquitted them.

4. As regards the accused Ramchandra he believed the prosecution evidence that he had inflicted the fatal injury on Jiwan Singh with a knife and that he had also caused simple injuries with the knife to Chandra Pal Singh when he went to the rescue of Jiwan Singh. He, therefore, convicted him under Sections 302 and 324, I.P.C.

5. It has been contended on behalf of the appellant that in view of the fact that there was no specific charge either under Section 302 or Section 304, I.P.C. against Ram Chandra he could not be convicted under Section 304, I.P.C. The question for consideration is whether in view of the fact that there was no specific charge either under Section 302 or Section 304, I.P.C. against Ram Chandra accused he could be convicted of the offence under Section 304, I.P.C., because of the charge under Section 302 read with Section 34, I.P.C. Learned Counsel for the appellant relied on a decision of the Supreme Court reported in Suraj Pal v. State of U.P. : 1955 CriLJ1004 . In this case the accused were charged under Sections 148, 302/149 and 307/149, I.P.C. They were convicted of these offences by the trial Court.

In appeal their conviction under Sections 148, 302/ 149 and 307/149, I.P.C. was set aside and instead one of the accused was convicted under Sections 302 and 307, I.P.C. There was an appeal against this decision to the Supreme Court and it was held that the appellant could not be convicted under Sections 302 and 307, I.P.C. in absence of a specific charge under these sections. The relevant portion of the judgment of their Lordships of the Supreme Court is as follows:

One important fact which emerges is that there have been no direct and individual charges against the appellant for the specific offences under Sections 307 and

302, I.P.C. The question that arises is whether without such direct charges the convictions and sentences for those offences can be maintained. It appears to us quite clear that a charge against a person as a member of an unlawful assembly in respect of an offered committed by one or other of the members of that assembly in prosecution of its common object, is a substantially different one from a charge against any individual for an offence directly committed by him while being a member of such assembly.

The liability of a person in respect of the latter is only for acts directly committed by him, while in respect of the former the liability is for acts which may have been done by any one of the other members of the assembly, provided that it was in prosecution of the common object of the assembly or was such as the members knew to be likely to be so committed. The charge under Section 149, I.P.C. puts the person on notice only of two alleged facts, namely, (1) that the offence was committed by one or other of the members of unlawful assembly of which he is one, and (2) (hat the offence was committed in prosecution of the common object, or is such that was known to be likely to be so committed.

6. It would appear from the above observation that the charge was not based upon the act committed by the accused himself but was based on the constructive liability on the ground that he happened to be a member of the unlawful assembly sonic? one member of which committed the unlawful, act and it is very doubtful if the principle laid down in a case under Section 149, I.P.C. will be applicable to a case under Section 34, I.P.C. Section 34 refers to cases in which several persons together intend to do an act; it does not refer to cases where several persons intend to do an act and some one or more of them do an entirely different act.

The basis of constructive guilt under Section 149 is mere membership of an unlawful assembly, whereas under Section 34 it is participation in some action with the common intention of committing a crime. In order to apply Section 34 the criminal act must have been done by all the accused in furtherance of their common intention, whereas for the application of Section 149 it is not necessary that all the accused must have committed the criminal act, In a case under Section 149 if the accused is a member of an unlawful assembly the common object of

which is to commit a certain crime, and that crime is committed by one or more of the members of that assembly, every person who happened to be a member of that assembly would be liable for that criminal act by virtue of his being a member of it, irrespective of the fact whether he actually committed the criminal act or not.

In view of the fact that there is a difference between the provisions of Sections 34 and 149, I.P.C., the decision in a case under Section 149, I.P.C. will not be applicable to a ease under Section 34, I.P.C. Section 34 clearly provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone.

7. In the present case the charge against the accused was that they had inflicted injuries on Jiwan Singh in furtherance of their common intention, and had thereby caused his death. Their liability was not based on the fact that they happened to be members of an unlawful assembly and because of it they were also liable for the murder of Jiwan Singh. The question whether On a charge of certain offences read with Section 34, I.P.C., the accused could be convicted of the substantive offences where the charge under Section 34, I.P.C., was not established, came up for decision before this Court in Om Prakash v. The State, Criminal Appeal No. 609 of 1955 which was decided by a Division Bench of this Court on the 20th October 1955 : : AIR1956 All241 .

The learned Judges who decided this case on a review of the entire case law on the subject came to the conclusion that where certain persons were charged of some offences with the aid of Section 34, I.P.C., any one of them who was found to have actually committed the offence could be convicted of it even if the offence against the other accused was not proved and Section 34 was not applicable. In view of this decision I am of opinion that there is no illegality in convicting the accused Ram Chandra of the offences under Sections 304 and 324, I.P.C., in spite of the fact that the charge against the other accused was not proved and Section 34 was not applicable.

8. Coming now to the merits of the case, I am of opinion that there is sufficient evidence on the record that it was Ram Chandra appellant who caused the death

of Jiwan Singh and injuries to Chandra-pal Singh with a knife. The evidence on this point is of Chandrapal Singh, Bhlkam Singh, Jwala Prasad alias Jwali, Raghubir Singh and Nawab Singh who are all eyewitnesses of the occurrence. Besides the evidence of these witnesses there is also the dying declaration of Jiwan Singh which was recorded by Sri K. M. Dayal, Judicial Officer, Budauu, on the 6th June, 1953, in the District Hospital, Budaun. This dying declaration is Ex. P. .13 and the accused Ram Chandra was specifically named in it as the person who had stabbed him with a knife.

9. After discussion of the evidence. His Lord-ship concluded : Considering the entire evidence on the record I am inclined to believe the prosecution evidence that Ram Chandra on being abused attacked Jiwan Singh and Chandrapal Singh with knife and inflicted several injuries on them and caused the death of Jiwan Singh. He has, therefore, been rightly convicted under Sections 304 and 324, I.P.C. As regards the sentence of 7 years' rigorous imprisonment under Section 304 and 1 year's rigorous imprisonment under Section 324, I.P.C., I do not think that it is severe.

10. The appeal is, therefore, dismissed and the conviction and sentence of the appellant are maintained.

11. In view of the question of law which is involved in this case and which is whether a person who is charged of a substantive offence with the aid of Section 34, I.P.C. can be convicted of the substantive offence in case Section 34 is not applicable, I certify this ease as a fit one for appeal to the Supreme Court.

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