**Maiku and ors. Vs. the State**

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**SooperKanoon Citation** : sooperkanoon.com/477029

**Court** : Allahabad

**Decided On :** Aug-19-1952

**Reported in** : AIR1953All749

**Judge** : Brij Mohan Lall, J.

**Acts** : Indian Penal Code (IPC), 1860 - Sections 71, 141, 146, 349, 435 and 436

**Appeal No.** : Criminal Appeal No. 523 of 1950

**Appellant** : Maiku and ors.

**Respondent** : The State

**Advocate for Def.** : H.N. Seth, Adv.

**Advocate for Pet/Ap.** : C.S. Saran and ;Vishwa Mitra, Advs.

**Disposition** : Appeal dismissed

**Judgement** :

**Brij Mohan Lall, J.**

1. This is an appeal by six per-sons, viz., Maiku, Pusa, Mata Din, Sobha Ram, Nand Kishore and Hari Shankar, who have Keen convicted by the learned Additional Sessions Judge of Farrukhabad under Sections 147 and 428/149, Penal Code. Under the former section every one of them has been sentenced to

undergo one year's rigorous imprisonment and under the latter to undergo three months' rigorous imprisonment. The sentences are to run concurrently.

2. Mata Din (appellant 3) is a Patwari, while Nand Kishore (appellant 5) is his brother. Sobha Ram and Hari Shankar (appellants 4 and 6 respectively) are their nephews. All of them are Brahmins. The remaining two appellants are Chamars by caste.

3. The prosecution case is that the appellants along with a large number of persons who are said to have numbered one thousand approximately, formed an unlawful assembly and that, in prosecution of the common object of the said assembly, they cut Pokhpal's crop and also pulled down the chhappar of one Genda Chamar, burnt the chhappar and certain skins of dead carcasses which Genda had stored in his house. It may be pointed out at this stage that Mahtab Singh zamindar is said to have been interested in getting Pokhpal's crop cut. The charge levelled against the appellants was confined to their activities against Genda only. The cutting of Pokhpal's crop was not the subject matter of charge because it appears that Mahtab had obtained through Court possession over Pokhpal's land together with the standing crop and therefore his act in cutting that crop was not supposed to be illegal. Anything done to Pokhpal's crop is, therefore, to be ignored for the purposes of the present litigation.

4. The learned Additional Sessions Judge held that the appellants and other members of the unlawful assembly did pull down Genda's chhappar, set fire to it and also burnt the hides which were stored in his house. But Strangely enough he came to the conclusion that since the chhappar was not set fire to while it was still standing on the poles, no offence under Section 435 or Section 436, Penal Code had been made out. He was of the opinion that if a chhappar was pulled down and then set fire to, it was an offence punishable under Section 426, Penal Code, but if it was set fire to while it was still resting on poles, the offence would be punishable under Section 435 or Section 436, Penal Code. In my opinion, there is no justification for drawing this distinction. Arson does not cease to be arson if the chhappar is first pulled down and then set fire to. It makes no difference whether the chhappar is lighted while it is still resting on poles or it is set fire to after being

pulled down to the ground.

5. It appears that Genda is in the army and, after discharge, he assumed some importance in his village. His opponent was one Rajendra Singh Ahir. Both of them were rival candidates in the Panchayat elections. Rajendra Singh's party became successful. Genda sent a petition to the District Magistrate, It is alleged that Mata Din Patwari wanted him to withdraw the petition which Genda did not do. Thus there was tension between the two parties. It is also pointed out that the Chamars, under the leadership of Genda, refused to do 'begar' on the occasion of Holi. Mata Din ordered that no Chamar would be permitted to throw Akhat in the Holi bonfire. This direction issued by Mata Din was disobeyed by the Chamars to the great annoyance of Mata Din. The latter is said to have held out a threat to Genda and his companions. One day before the occurrence Genda sent a telegram to the Superintendent of Police, Farrukhabad, informing him that Mata Din and his companions were threatening to loot his property. This threat came out true and the incident took place on the day following the despatch of the telegram.

6. The participation of the appellants in the said assembly has not been seriously disputed before me. It is Droved beyond doubt by the depositions of Genda (P. W. 2). Jwala (P. W. 5), Kunwar Bahadur (P. W. 6), Ajrail Singh (P. W. 7) and Natthu (P. W. 10) that the appellants were members of the unlawful assembly. I see no reason to disbelieve these witnesses.

7. Since the object of the assembly was to loot Genda's house and to cause damage to his property the assembly certainly amounted to an unlawful assembly.

8. The learned counsel for the appellants has argued two point's of law. In the first place, it is contended by him that since no injury was caused to any person, the offence of rioting was hot made out. Rioting is defined in Section 146, Penal Code as follows:

'Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.'

It is clear from the aforesaid definition that to constitute rioting, there should be the use of either 'force' or 'violence'. Force is defined in Section 349, Penal Code as follows:

'A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing, or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described: First--by his own bodily power, Secondly--by disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person. Thirdly, by inducing any animal to move, to change its motion, or to cease to move.'

It is apparent from this definition that force must necessarily be used against a human being and not against an inanimate object. If any motion, change of motion, or cessation of motion is caused to any property without affecting a human being, there is no 'force' within the meaning of the term as used in Section 349, Penal Code.

9. But the word 'violence' is not necessarily confined to violence used against a human being. The term 'violence' has not been defined in the Indian Penal Code and must therefore be given its ordinary dictionary meaning. If damage is caused by an unlawful assembly to any property without any harm being caused to any person, it can legitimately be argued that violence has been used. Reference may, in this connection, be made to the case of -- 'Samarud-din v. Emperor', 40 Cal 367 at pp. 373-374 (A) where it was held that:

'In the second place, it is argued that the learned Judge's explanation of Section 147, Penal Code is faulty, and that 'violence' cannot mean violence against inanimate objects. No authority has been cited for such a proposition, and we see no reason for restricting the meaning of the word 'violence' in the manner stated. It

could hardly be said that, if an unlawful assembly came together for the purpose say, of pulling down a man's house, and they proceeded to carry out the object, they could not be said to have used 'violence'.'

10. This view was followed in -- 'In re Marimuthu Naidu AIR 1923 Mad 606 (B). In that case a toddy shop was pulled down and damage was caused to toddy trees but no human being was injured. It was held that there was violence within the meaning of the term as used in Section 146, Penal Code and that the persons guilty of causing violence could be convicted under Section 147, Penal Code.

11. With the above decisions I respectfully agree. It will therefore follow that in pulling down the chhappar, and setting fire to it and to hides, the members of the unlawful assembly did use 'violence' within the meaning of the term as used in Section 146, Penal Code and were consequently guilty of rioting under Section 147. Penal Code.

12. It is next argued that the only act proved against the appellants was participation in the unlawful assembly and for that single act they could not be convicted, on the one hand, under Section 147, Penal Code and, on the other, tinder Section 426/149, Penal Code. The very basis of this argument does not appear to be correct because there is enough evidence on the record to prove individual acts of violence by the appellants.

13. (After referring to the evidence his Lordship proceeded): It is thus obvious that individual acts are proved against the appellants and they can be found guilty of mischief because of their individual acts and they can be held guilty of rioting because the unlawful assembly of which they were the members had been guilty of committing the acts of violence. Therefore there is no legal bar to their conviction under both sections.

14. It may also be pointed out that Section 71. Penal Code on which reliance could possibly be placed prohibits punishment for, and not conviction under, two offences. And since the sentences have been made to run concurrently, there is no double punishment in this case either.

15. The appellants examined witnesses in defence. Some of them proved enmity between the appellants' party and the Ahir group. Others attempted to prove that Genda had no house. This version has been disbelieved by the learned Additional Sessions Judge, and his finding on this point has not been challenged before me. The burnt chhappar and the house were seen by the Sub-Inspector who reached the place of occurrence shortly after the incident. Needless to say that the defence evidence is worthless.

16. I am, therefore, of the opinion that the guilt has been brought home to the appellants and there is no force in this appeal.

17. The sentences are, by no means, severe. I see no reason to reduce them.

18. The appeal is dismissed. The appellantsare on bail. They shall surrender themselvesat once and undergo the rest of the imprisonment.