

Ramvir and ors. Vs. the State

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Court : Allahabad

Decided On : Jul-07-1953

Reported in : AIR1953All778

Judge : Asthana, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 149 and 323

Appeal No. : Criminal Appeal No. 1246 of 1950

Appellant : Ramvir and ors.

Respondent : The State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Majeed Uddin, Adv.

Disposition : Appeal dismissed

Judgement :

Asthana, J.

1. The appellant Ram Vir is the son of the appellant Rewa Ram. The appellant Sardar is the son of the appellant Sita Ram. They all along with one Lakhan have been convicted under Section 147, I. P. C. Except Lakhsn they have also been convicted under Section 323. I. P. C. Lakhan has been convicted under Section

325, I. P. C. He has been sentenced to six months' rigorous imprisonment under Section 147, I. P. C. and to two years' rigorous imprisonment under Section 325, I. P. C. and both the sentences have been made concurrent. The other four appellants have been sentenced to six months' rigorous imprisonment under Section 147, I. P. C. and to the same term under Section 323, I. P. C. and both the sentences have been made concurrent. Lakhan has filed his appeal from the jail and is unrepresented. The other four appellants are represented.

2. It appears that on the 11-1-1948 in the afternoon at about 3 p. m. there was a marpit at a place between the villages Sheikhpura and Siroli. The report of the occurrence was made by one Babu the same day at 4-30 p. m. at police station Dadon, tehsil Atrauli, district Aligarh and in this report all the accused were named. This report was made under Section 323, I. P. C. It was alleged in this report by Babu that he along with Bahori Lal of his village was going to Bihani fair to purchase cattle and as they reached the river near Sheikhpura the accused Sita Ram, Lakhan, Rewa Ram, Sardar, Talewar and Ram Vir. who were all Ahirs by caste and residents of the same village, met them armed with lathis, and Lakhan, Sita Ram, Rewa Ram and Talewar began to abuse them and plied lathis on Bahori. It is also mentioned in this report that there was a litigation between Bahori and the accused persons in connection with some land and on account of this litigation there was enmity between them and it was for this reason that they all beat Bahori with lathis.

3. The defence of the accused Sita Ram and Lakhan was that they themselves were beaten by Bahori and Babu alias Habbu, Shiam Lal son of Rupram and Birbal and nine other persons and robbed of their money. They too made a report about this occurrence. The defence of the other accused was that they had been falsely implicated in the case. They denied their presence on the spot or that they took any part in the beating of Bahori.

4. The medical evidence shows that Bahori was examined on the 12-1-1948 at about 7 in the morning and at the time of his examination it was found that he had ten injuries on his person, two of which were grievous and the rest were simple. It further appears from the medical evidence that all these injuries had been caused

by lathis. The evidence about the occurrence is of Bahori, Shiam Lal, Birbal, Babu & Ram Swarup. The evidence of Ram Swarup has not been, accepted by the lower court probably because he was not named in the first information report. The evidence of the remaining four witnesses, two of whom namely Shiam Lal and Birbal were mentioned in the first information report which was made soon after the occurrence was accepted by the lower court. Bahori is the person who was beaten and who received the injuries and Babu is the person who made the first information report. Nothing has been shown on behalf of the appellants why these four witnesses have falsely implicated them.

The occurrence took place in broad daylight and it is unlikely that the assailants were not seen and recognised. It also appears somewhat unlikely that if Bahori had really been beaten by someone else he would falsely implicate the accused and would leave out the real assailants. It is an admitted fact that there was litigation between Bahori and the accused and it is not unlikely that on account of this litigation they had a grudge against them and for that reason they beat them. The defence case that Sita Ram and Lakhan were beaten by Bahori and a number of other persons, does not appear to be true, because in that case it is very unlikely that Bahori would have received as many as ten injuries. There is nothing on the record to show that Lakhan or Sita Ram also received any injuries. In the circumstances, there does not appear any reason to disbelieve the evidence of the four eye-witnesses, namely, Bahori Shiam Lal, Birbal and Babu that the accused came armed with lathis and four of them, namely, Lakhan, Sita Ram, Rewa Ram and Talewar beat Bahori with lathis.

5. It has been argued on behalf of the accused Sardar and Ram Vir that from the first information report it appears that they did not take any part in the beating and in view of this fact their conviction under Section 323, I. P. C. was bad and could not be maintained. It is true that in the first information report they are not mentioned among the persons who really beat Bahori and inflicted injuries upon him. It, however, appears from the report as well as from the prosecution evidence that they were also among the persons who had come armed with lathis and were present at the place of occurrence. The mere fact that they did not take part in the beating, which was the object of the unlawful assembly, does not exonerate them

from the liability for the offence which was committed by some of the members of the unlawful assembly. They will be liable for the offence which was committed by one or more of the members of the assembly. In the circumstances, I am of opinion that their conviction under Section 323, I. P. C., is correct.

6. The appeal is, therefore, dismissed. As the appellants Nos. 1 to 4 are on bail they shall surrender to it and serve out their sentences.

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