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Court : Madhya Pradesh

Decided On : Oct-10-1950

Reported in : 1951CriLJ507

Judge : Shinde and ;Dixit, JJ.

Appellant : Sardar Singh and ors.

Respondent : State

Judgement :

Shinde, J.

1. These two appeals arise out of the judgment & order of the Ses. J. Guna. The facts of this case are as follows. Randhirsingh, his four sons Sardaraingh, Lalsaheb, Kaptan singh, Badalsingh & Mulla & Diwansingh, who is absconding, were on inimical terms with the Congress Committee in the village of Barodia. On 16-6-1948, ToranBingh deceased, Aman, Shamlal & Bhawarlal went to Pachhar to institute proceedings for taking security to keep the peace from the accused. On the morning of 17-6-1948 Aman, Shamlal, Bhawarlal, Diwansingh & Raiselal were standing on the Chabutra where Congress flag was flying. Suddenly Toransingh came to the spot in a frightened condition & told them that the accused were pursuing him to beat him. In the meantime, Diwansingh, Sardarsingh, Lalsaheb, Badalsingh & Kaptansingh and Mulla came to the spot & Diwansingh fired his gun & shot Toransingh dead. After this at Lalsaheb's instance Sardarsingh took aim at

Shamlal & fired hie gun but missed him. Aman, Shamlal etc. who were standing ran away. Lalsaheb gave a sword blow to Raisalal, who was running away. The blow only caused a slight abrasion on the shoulder. A report was lodged at the police station Pachhar. Alter investigation the police challaned the accused under Section 292 read with Section 135, Gwalior Penal Code. The committing Mag. framed a charge against Lalsaheb, Sardarsingh, Kaptansingh, Badalaingh & Mulla under Sections 148, 302 & 307, Penal Code, & against Randhirsingh under a 109, Penal Coda. The learned Sea. J. convicted Sardarsingh under Section 148 & sentenced him to one year's R. I, & also convicted him under Section 307, I. P.C. & sentenced him to three years R. I. He convicted Lalsaheb under Section 148, Penal Code, & sentenced him to one year's E. I. & also under Section 334 & sentenced him to three months' R, I. He also ordered in the case of both the accused that both the sentences were to run concurrently. He convicted Kaptansingh & Badalsingh & Mulla only under Section 148, Penal Code & sentenced them to three months' R. I. All the five accused were acquitted of the other offences with which they were charged. He a so acquitted Randhirsingh. Against this order Sardarsingh, Lalsabeb, Kaptansingh, Badalsingh & Mulla have filed an appeal in this Ct. which is Cr. App. no. 25 of 1950, The state has also filed an appeal against Sardargingh, Lalsaheb, Kaptansingh. Badalsingh & Mulla to set aside the order of acquittal.

2. From the facts stated above, it is clear that Sardar Singh was convicted under Section 307, Penal Code, for his individual act of firing a gun at Shamlal. The Ses. J. also convicted Lalsaheb under Section 324, I. P.C. for his individual act of giving a blow to Raiselal, As already stated all the accused except Randhir Singh were charged with offences under Ss 302 & 307 read with Section 148, I. P.C. It is difficult to see why they were charged with an offence under Section 148. Section 148 is only an aggravated from (sic) rioting & is applicable only to those persons, who being armed with a deadly weapon or any thing which used as a weapon, is likely to cause death, participate in rioting it appears from the evidence on record that Sar arsingh had a gun & Lalsaheb had a sword, But all the others has only lathis. It does not appear from the judgment of the learned Sea, J. that Kaptansingh, Badalsingh & Mulla had such Lathis which, used as a weapon of Hence, were likely to cause death. The charge mentions three offences under

Sections 148, 302 & 307 against all the five applts. In other words, the committing Mag. sought to impose constructive liability for the acts committed by Diwansingh, Sardarsingh & Lalsaheb. If that be the case, the proper section to apply was Sections 149, 302 and 307. But that section has not been applied. The charge states that the accused applts. participated in an unlawful assembly. If that was the case, then the accused should have been charged with an offence under Section 142, I. P.C. The charge also fails to mention what the common object of the assembly was. Curiously enough the Ses. J. also does not give a clear finding with regard to the common object. As the charge did not specify the common object the parties might have been misled in producing the evidence. This defect in the charge, in my judgment, vitiates the trial. Section 537, Cr. P.C., no doubt lays down that error or omission in the charge cannot vitiate the trial unless it occasions a failure of justice. A charge which does not mention the common object & fixes liability of the accused under wrong section is bound to mislead the accused in their defence. Vide, Poresh Nath v. Emperor, 33 Cal. 295: (2 Cr. L.J. 516); Sabir v. Queen Empress, as Cal. 276.

3. The learned Sea. J. has convicted Sardarsingh under Section 307, I. P.C., & Lalsaheb under Section 324, I. P.C. for their individual acts. This is also illegal. Both these accused were charged under Sections 302, 307 read with Section 148, I. P.C. In other words, they were charged with the said offences not for their own individual acts but for the acts done by others. The liability imposed on them was constructive. In these circumstances they cannot be convicted for their individual acts under Sections 307 & 324, I.P.C., because they are not charged with these offences & they are not minors to or included in a charge under Section 148/307 & 148/303, I. P.C.: Vide Panahu Das v. Emperor, 34 Cal. 698: (5 Cr. L. J 427) and Dasarath Mandal v. Emperor, 34 Cal. 325: (5 Cr. L.J. 424) & Bijo Gope v. Emperor A.I.R. (32) 1940 pat. 376: (47 Cr. L.J.691).

4. For the reasons given above, we are of the opinion that it is a fit case for retrial under Section 232, Cr. P.C. We, therefore, allow the appeal of the accused & set aside the order of conviction & sentence passed by the learned Ses. J. We also allow the appeal of the State & set aside the order of acquittal of Sardar singh, Lalsaheb, Kaptansingh, Badalsingh & Mulla & direct that the Sea J. should alter

the charge suitably in the light of Sections 233 & 239, Cr. P.C. & following the provisions of Section 231, Cr. P.C., try the case according to law.

5. Dixit J.-I agree that considering the evidence on the record & the charge framed against the applt. that Sardarsingh, Lalsaheb, Kaptansingh, Badalsingh, & Mulla should be retried for the offence under Section 148, I. P.C. & for offences under Ss 302 & 307 read with Section 149,1. P.C. The committing Mag. framed a single charge against all the applta, under Sections 148, 302 & 307,1. P.C. & on this charge the applts. were tried by the Ses. J. Guna. This charge is defective for more than one reason. Apart from the fact that separate charges should have been framed against each of the accused, the common object of the unlawful assembly should have been specifically stated in the charge & it should have been made dear therein whether the accused persons were being made liable constructively or individually for the offences under Sections 302 & 307. The charge omits to mention the common object & although it purports to make the applt3. constructively liable for offences under Sections 302 & 307, it does not at all contain any particulars to show whether this constructive liability was being fastened on them, under Section 34, I. P.C., or under Section 149, I. P.C. The failure of the learned Ses. J. to notice these defects before the commencement of the trial has led him to arrive at the inconsistent finding of convicting the above named applts., under Section 148, I. P.C. & acquitting them of the offences said to have been committed in prosecution of the common object of the assembly on the ground that the common object to commit murder is not proved. The learned Ses. J. should have also noted the fact that the applts. Sardarsingh & Lal Saheb could not be held guilty for their individual acts under Sections 307, 324. I. P.C. when they were not so charged & sought to be made liable for their individual acts. If it was doubtful whether any of the applts. was liable for any offence constructively or individually he should! have been charged for that offence firstly constructively & in the alternative individually. The conviction & sentences imposed on the applts. Sardarsingh, Lalsaheb Kaptansingh, Badalaingh, & Mulla must, therefore, be quashed & the Ses. J must retry them after suitably framing charges in the light of these defeats & bearing in mind the provisions of Section 231, Cr. P.C.

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