

Baby John Vs. State

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Court : Kerala

Decided On : Sep-28-1951

Reported in : 1953CriLJ1273

Judge : Kunhi Raman, C.J. and; Subramonia Iyer, J.

Appellant : Baby John

Respondent : State

Judgement :

Kunhi Raman, C.J.

1. (Crl. Appeal No. 14/1950) The 1st accused is the appellant in this case. The learned total Judge has convicted him under Section 135 of the Travancore P.C. for being a member of the unlawful assembly and sentenced him to pay a fine of Rs. 100/- and in default of payment of fine he has been directed to undergo-simple imprisonment for three months. He has also been convicted for abetment of the offences under Sections 307, 324, 333 and 427 and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 300/- and in default of payment of fine, he is to undergo simple Imprisonment for six months. He has also been convicted under Section 509(1). We have stated earlier in the course of this judgment in connected criminal appeals that this conviction cannot stand since there is no complaint presented by an aggrieved person as required by law. There cannot be any doubt that he was a member of the unlawful assembly. The learned

trial Judge finds that he was really the ring-leader being the President of the Chavara Mineral Workers' Union, on 12th Edavaom 1124 on which day the unlawful assembly was formed and the rioting took place. On the previous day, Srikantan Nair who was the General Secretary of the Kerala Socialist Party was arrested at Quilon. This created a commotion in Chavara where the office of the 1st accused was located. He 'summoned four leading members of his party nib or about 3.30 a.m. on 12th Edavom 1124 in the Union Office and gave directions as to what should be done as a result of the arrest and incarceration of Srikantan Nair. Early in the morning of the 12th Edavam outside the Union Office there was a large gathering of Mineral workers assembled in response to the wishes expressed by this accused. A procession started from there as a Jatha which was to march on to Quilon, defying the ban contained in the proclamation issued by the District Magistrate of Quilon. There is evidence to show that at the meeting outside the Union Office, near what is described as the T.M.C. Dump fresh instructions were given by the 1st accused who repeated the substance of what he had told the leaders of the party at the meeting inside the premises of the Union at 3.30 a.m. on the same day. He was a member of the Jatha until it reached Sankaramangalam junction. Until then there was no untoward incident. They were marching along shouting slogans deprecating the arrest and incarceration of Srikantan Nair and doing no positive acts except what some of the witnesses have spoken to as compulsory measure taken by some members of the assembly in seeing that the shop keepers in the locality all closed their shops. We are however not dealing specifically with the aspect of their activities because there is no complaint presented by the shop-keepers about the offence under Section 509(1) of the Travancore P.C. It was after the Jatha had passed Sankaramangalam Junction that the processionists reached the spot at which P.W. 5 the Inspector of Police (Mr. Hassan) accosted them and there it was for the first time that acts of brutal violence were done by a number of members of the assembly. The finding of the learned trial Judge is that for these acts of violence done by the members of the assembly at the spot where they attacked P.W. 5 the Inspector the 1st accused must be held liable as an abettor. The learned Counsel for the 1st accused appellant argues that there is nothing to show that he was aware of the ban on processions and meetings contained in the proclamation promulgated by

the District Magistrate, Quilon, and that there is nothing to make the 1st accused liable for abetment of the acts of violence done at the spot where P.W. 5 was brutally assaulted.

2. The learned trial Judge has considered the evidence on this point and he has observed in this judgment that it has been amply established that the whole idea of the procession that day was first accused's conception. The evidence of P.Ws. 75, 78 and 43 when read together shown that 'the 1st accused had first called up leading members of the Union at the Union Office and formulated the plans, that at his Instance the labourers were collected at the T.M.C. Dump subsequently that morning that he had addressed them as to the line of action to be followed and that under his lead (among that of others) the labourers had set out for Kozhithottam. The unlawful assembly was formed there....'

The main evidence regarding the utterances of the 1st accused at the conference held in the premises of the Union at 3.30 a.m. is furnished by the depositions of P.Ws. 52 and 75. P.W. 52 who is the owner of the premises where the Union Office is, had occasion to proceed by the side of the office of the Union in response to an urgent call from a sick relation of his. When he was passing that way, he noticed P.W. 52 standing outside the verandah of the Union premises and the 1st accused and others holding a conference in-side the room. Out of inquisitiveness he also listened in to find out what they were talking about. P.W. 52 is alleged not to be on friendly terms with the 1st accused and the officials of the Union because he had started proceedings for recovery of possession of the premises from the Union when the latter did not accede to his request. As a result, there were criminal prosecutions launched by the parties against each other. The learned trial Judge has applied his mind to this aspect of the case and he has observed that in view of the evidence about the enmity that prevailed between P.W. 52 and the 1st accused, he would have hesitated to accept the uncorroborated testimony of P.W. 52 but in his judgment there was corroboration of the material particulars furnished by the evidence of P.Ws. 75, 53 and 78. The evidence of P.W. 52 can be said to be very damning so far as the 1st accused is concerned. He stated that he saw the 1st accused talking to the other leading members of the Union whom he had summoned to the premises of the Union at

3.30 a.m., and he informed them about the arrest of Srikantan Nair, impressed upon them that it was necessary that they should openly express their protest and indignation at the arrest of their leader and that the following morning they must lead a Jatha or procession (the literal translation of the Malayalam expression used would be 'tumultuous procession') from the vicinity of the Union office right up to Quilon where Srikantan Nair was incarcerated in jail. According to P.W. 52, the 1st accused told the audience that there was a ban imposed by the District Magistrate of Quilon in the proclamation published by him the previous evening, that the ban should be defied and in defiance a procession should move right up to Quilon, that the members of the procession should not retrace their steps or withdraw even if resisted by the army or the police. The evidence of other witnesses is not so very direct and specific. They also speak to the fact that the purport of the exhortation of the 1st accused was that the procession should be taken from the office of the Union up to Quilon, defying the ban imposed upon such procession by the District Magistrate and in spite of opposition by the authorities. The case for the Prosecution is that in using these expressions, the 1st accused was instigating his audience to commit acts of aggression.

3. In interpreting the meaning of the word 'Instigate' in the case that is reported in - Emperor v. Amruddin Salebhoy Tyabjee AIR 1923 Bom 44 (2) (A), the learned Chief Justice Macleod C.J. in the course of his judgment quotes an extract from Russel on Crimes where the word 'instigation' is explained. The learned Judge quotes the following passage:

A person is said to instigate another to an act when he actively suggests or stimulates him to the act by any means or language direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. (at page 46 of the report).

Applying the meaning of the word 'instigate' as explained in Russel on Crimes, it is not necessary that express and direct words should be used to indicate what exactly should be done by the persons to whom directions are given by a person in the position of the 1st accused. In the evidence in this case of P.Ws. 75, 43 and 78 who have spoken to the idea conveyed in the directions given by the 1st

accused to his audience, there is sufficient material for drawing the inference that there was instigation on the part of the 1st accused to the members of the procession and to the leaders of the procession that they must resist any opposition that may be offered by the Police or by the Army and see that the procession goes from the point where it was to start and reaches Quilon. When there was a prohibitory order issued by the District Magistrate, Quilon it is reasonable to presume that the 1st accused would have realized that so long as law and order were maintained in the State, the authorities concerned would not permit the ban to be ignored and processions taken which were expressly prohibited by the District Magistrate. It is easy to infer that the meaning conveyed by the exhortation made by the 1st accused was that there must be force used for resisting any obstacles placed in their way by the Police or by the Army. In other words, he was instigating the assembly to use force if they found that there was opposition to their progress towards Quilon. The definition of 'abetment' contained in Section 97, Travancore P.C (corresponding to Section 107, I.P.C.) lays down that there are three ways in which a person may become liable as abettor. These are:

(1) By instigation (2) By engaging in any conspiracy for doing an unlawful act and an act or illegal omission takes place in pursuance of that conspiracy and (3) intentionally aids, the doing of an act, which may be either by an act or illegal omission.

4. We are here concerned with abetment by Instigation and the wording of the definition has to be carefully noted. It says : 'A person abets the doing of a thing, who instigates any person to do that thing'. Considering this definition strictly, the instigation must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. In the present case there is no evidence to support a finding that the throwing of stones at P.W. 5 and other members of the Police party at the point at which the unlawful assembly launched a Joint attack upon the Police was specifically instigated by the 1st accused. Therefore, the finding that the 1st accused is liable for abetment of all the acts of violence or of the individual acts of violence done by the unlawful

assembly at the place at which the Police Inspector (P.W. 5) was brutally assaulted by the members of the mob, cannot be upheld. But there is sufficient evidence to support a finding that as active suggestion of resistance by violence was made and the members and leaders, of the unlawful assembly were called upon to Indulge in such violence at the stage at which the 1st accused made his exhortation to his followers. If that conclusion is established by the evidence in this case (and we have doubt that the evidence is sufficient for establishing this) then the result is the 1st accused has become liable for abetment of the offence of rioting under Sections 138 and 139, Travancore P.C. According to B. 138:

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

According to Section 139:

Whoever is guilty of rioting shall be punished with Imprisonment of either description for a term which may extend to two years, or with fine or with both.

In the present case, the common object of the assembly was to march in a Jatha or procession from the office of the Union from the vicinity of which the procession started, and proceed without stopping up to Quilon breaking the conditions imposed upon the residents of the locality in the proclamation that was promulgated by the District Magistrate, Quilon. The abetment of which the 1st accused is guilty consisted in his instigating the members of the unlawful assembly to use force or violence for overcoming any resistance offered by the Army or by the Police with the object of making them break up and desist. This is a natural inference that can be gathered from the evidence of the witnesses who have been believed by the learned trial Judge. The offence committed by the 1st accused is therefore abetment by instigation of rioting. Since there is no specific punishment provided for such abetment according to the Travancore Penal Code, the punishment under Section 139 for the offence of rioting can be awarded to the abettor. In these circumstances We set aside the conviction for abetment of the offence under Sections 307, 324, 332, 333 and 427 and find that What has been made out in the evidence called for the prosecution is abetment of the offence of

rioting and not abetment of the specific acts of violence which were actually done by the members of the unlawful assembly when they become liable for rioting at the point at which P.W. 5 was brutally assaulted. There cannot be any doubt that he did walk with the members of the assembly after it had become an unlawful assembly up to Sankaramangalam junction and he has incurred liability for the offence. We also find that he has become liable for abetting the offence of rioting. He is accordingly convicted for this offence 99/39 and we direct that he shall undergo a sentence of rigorous imprisonment for one year and pay a fine of Rs 300 (three hundred rupees). In default of payment of fine, he shall undergo rigorous imprisonment for a further period of three months. In view of this punishment, it is unnecessary to impose a separate sentence for having joined the unlawful assembly and for having taken part in that unlawful assembly at the commencement of the procession until the procession reached Sankaramangalam junction. The appeal is allowed to this extent. Cancel bail bonds.