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Court : Chennai

Decided On : Jan-30-1942

Reported in : AIR1942Mad446; (1942)1MLJ460

Appellant : Manakkal Kumaran and ors.

Judgement :

King, J.

1. The five appellants were involved in a case of rioting and murder at a village in the Calicut Taluk on the night of 31st March last. All of them were convicted of rioting, two of them being convicted under Section 148, Indian Penal Code, because of their possession of lethal weapons, and the first and second appellants were convicted of two murders committed by them in the course of the occurrence. The remaining appellants were also convicted on two counts of constructive liability for these murders.

2. The story of the occurrence is comparatively simple. A festival extending over several days was being celebrated at the temple where the occurrence took place and on 30th March, these appellants created a disturbance by going to that part of the pandal reserved for the womenfolk. They insulted them and began to annoy them by throwing discarded beedi ends at them. Several of the uralars or temple managers including the two murdered men, went and ejected them. There was no further trouble that night but the following night about ten o'clock the appellants

arrived at the temple and began to repeat their performance of the night before. On that occasion the prosecution witnesses who were ordered to eject them did not find the task so easy and there was a scuffle and blows were exchanged on both sides before they could be driven out. Several injuries were inflicted on the appellants and one of them received an incised wound twelve inches long across the back. About an hour later the appellants returned in order to have their revenge on the uralars for the rough treatment they had received. The first and second appellants were armed with a penknife and a dagger respectively and it was the prosecution case that the common object of the unlawful assembly thus formed was to kill the uralars, members of their families and their supporters. As they arrived at the scene they were heard shouting out that none of the uralars were to be left alive. All the appellants went directly to the place where the uralars were conducting the proceedings and the second accused immediately stabbed one Raman in the abdomen and the first accused stabbed Narayanan also in the abdomen, followed by another blow as soon as he sat down. The rest of the appellants used their hands in beating off the prosecution witnesses and all then bolted. Raman died almost immediately but Narayanan survived until 6th April. Early information was given at the police station half a mile away and before the learned Sessions Judge there was ample evidence identifying the first and second appellants as the authors of the fatal injuries on Narayanan and Raman respectively. The rest of the appellants were also well identified and in the result the first two appellants were convicted under Section 148, Indian Penal Code, while the remainder were convicted under Section 147, Indian Penal Code. The first appellant was convicted of the murder of Narayanan and the remainder of the accused were convicted of this murder by operation of Section 149, Indian Penal Code. The second appellant was convicted of the murder of Raman, while his companions were convicted under Section 149, Indian Penal Code. All the appellants were sentenced to transportation for life for the offences of murder while the convictions under Sections 147 and 148, Indian Penal Code, were followed by sentences of rigorous imprisonment for six months and one year respectively.

3. Mr. Rangaswami Aiyangar has strenuously argued that the evidence in the case is not reliable and that on account of several discrepancies in the stories told, the

witnesses cannot be believed regarding what took place. According to the case set out by the appellants before the Committing Magistrate and the learned Sessions Judge, the first and second appellants went to the temple at about 11 o'clock that night and shortly after getting there, the deceased Narayanan came and told them they were wanted by the uralars. The two of them went to see what was the matter and as soon as the uralars saw them, they attacked and beat them. The first appellant saw the second appellant being stabbed by the two deceased and he then took out a small penknife and began to brandish it in order to keep off his assailants. As is usually the case in pleas of this kind, the first appellant is unable to say whom he struck when he was waving his knife about in this way. The two of them then managed to escape. The second appellant supported his brother in this story while the third and fourth appellants claimed to have gone to the spot on seeing the second appellant being stabbed and to have received injuries in the ensuing fight. The fifth appellant denied all knowledge of the occurrence and claimed that he had been falsely implicated in the case because he refused to give evidence in support of the uralars. If the prosecution witnesses are prepared deliberately to swear away the lives of the five appellants, it necessarily follows that there must be some deep-rooted enmity to account for this but on turning to the statement of the first appellant before the Committing Magistrate, there is an admission which effectively disposes of this theory of enmity and ill-feeling on the part of the uralars. In answer to a specific question, the first appellant denied that there was any ill-feeling between him and the prosecution witnesses. He went on to refer to some slight trouble between Narayanan (P.W. 5) and the third appellant but this was so slight that it is no adequate explanation for giving evidence of this kind against the appellants.

4. In support of the argument, that the prosecution witnesses were the aggressors, considerable reliance has been placed on the injuries suffered by the appellants. The second appellant had an incised wound two inches long on the left arm and a much smaller one on the back of the right arm, but the injury which the prosecution witnesses have not satisfactorily explained was an incised wound twelve inches long and three quarters of an inch broad muscle deep across the back. None of the witnesses admit having caused this although there is no attempt to hide the fact that when the appellants had to be forcibly removed, the prosecution

witnesses pulled out of the ground some of the bamboos forming part of the pandal and used them somewhat freely in driving out the appellants. These bamboos were split and having been driven into the ground their ends must have been sharpened. The medical witness, P.W. 3, admitted that all the injuries on the second, third and fourth appellants could have been caused with split bamboos. Although none of the prosecution witnesses are willing to accept responsibility for this long wound on the back of the second appellant, we do not consider this is a sufficient reason for doubting the prosecution story. There is ample evidence of the appellants' visit the night before and their attempt to interfere with the womenfolk, and this renders probable the prosecution story that they became aggressive again the following night about the same time and began to interrupt the proceedings.

5. The prosecution story was supported by P.Ws. 10 to 18. Information was first given to the police by P.W. 10 shortly after midnight. The occurrence took place according to this report at 10-30 P.M., and having regard to the time probably occupied in giving first aid to the victims and recovering from the shock of the attack, there was no delay to be accounted for. The five appellants were clearly mentioned by name in this report, Ex.. N, and in referring to the incident the previous night, there was no attempt to conceal the fact that when the appellants made their second visit the next night, the prosecution witnesses came to blows with them. Within a few hours of the occurrence a dying declaration, Ex. B, was taken by the local Magistrate from the deceased Narayanan and because of his weak state, the Sub-Inspector of Police did not attempt to examine him himself. In this statement Narayanan* made a brief accusation that the first two appellants and three companions not mentioned by name had attacked him and that the first appellant stabbed him with a dagger. He also referred to the attack on his brothers and others and briefly mentioned his attempt to dissuade the appellants from interfering with the womenfolk as the cause of this attack. He made no attempt to separate the interference with the womenfolk from the attack an hour or so later and this has been relied upon by Mr. Ranga-swami Aiyangar as an important discrepancy in the evidence. We are unable to accept this as an adequate reason for rejecting the whole of this dying declaration. Although the deceased did not die for several days, he was then suffering from severe injuries and must have been in

considerable bodily pain, which probably explains why he confined himself to his own injuries without attempting to mention what happened to Raman or to describe in clear detail the chronological sequence of events. Admittedly several of the prosecution witnesses are temple uralars but we are unable to see how they can be described as interested witnesses merely because they were prepared to use defensive measures against rowdies and freely give evidence regarding the death of two of their companions. If this constitutes interest, then every witness who gives evidence against accused persons who commit crimes of violence either against him or in his presence must be described as an interested witness. The learned advocate for the appellants has drawn our attention to a number of minor discrepancies and inconsistencies in the evidence but they are insufficient to throw any real doubt on the prosecution story. In an occurrence of this kind where an attack is made by a number of persons without warning in a crowded place, the accounts given by the witnesses must necessarily vary in details and what may have been noticed by one may not have been seen by another. We can see no sufficient reason for disagreeing with the learned Sessions Judge in his acceptance of the prosecution evidence identifying the five appellants as having taken part in the attack and the first two appellants as the authors of the fatal injuries on the two victims. So far as the convictions of the latter for the two murders are concerned, there is no difficulty. Their convictions are Confirmed and their sentences; which are the minimum prescribed by law, are upheld.

6. The convictions of all the appellants under Sections 147 and 148, Indian Penal Code are also upheld and their sentences maintained.

7. It is regarding the application of Section 149, Indian Penal Code that we find ourselves unable to agree with the learned Judge. The prosecution evidence was that the five appellants came running towards their victims shouting out that none of the uralars were to be left alive and it was largely on the use of these words and the lethal weapons with the first two appellants that the common object of the unlawful assembly was held to be the murder of the uralars and their families. On examining the evidence of the prosecution witnesses who speak to the use of these threatening words, we find there is considerable ambiguity. P.Ws. 11 and 16 say that the threats were uttered by all the appellants but the rest of the eye

witnesses implicate only the first two appellants as having shouted out these ominous words. If the personal pronouns occurring in the relevant sentences have been correctly used, they can refer, according to the context, only to the first two appellants and not to the rest of the assailants. Boastful and threatening expressions of this kind are frequently used by villagers and we consider it doubtful whether the use of these threatening words by the first two appellants is sufficient evidence to show that the rest of the appellants shared a homicidal intention with them. There is no doubt the possession of the two weapons by the first two appellants to be considered. One of them is a dagger about the lethal nature of which there can be no doubt but the other is only a small penknife and we consider that in all the circumstances of the case, the evidence is insufficient to show that the common object of the appellants was murder. We consider their common object was only to cause hurt.

8. It is however argued by the learned Public Prosecutor that even though the common object of the unlawful assembly may not have been to commit murder as asserted in the charges but only to cause hurt, two persons were in fact murdered by two of the appellants in prosecution of that common object and therefore under the first clause of Section 149, Indian Penal Code, the remaining three appellants must also be found guilty of those murders. The crucial question which we have now to decide is whether the murders of Raman and Narayanan were committed 'in prosecution of the common object' of the unlawful assembly. The learned Public Prosecutor argues, very plausibly, that the injuries which caused the deaths of Raman and Narayanan were inflicted by the two appellants in prosecution of the common object and therefore that the murders were committed in such prosecution.

9. We feel, on general grounds, the greatest reluctance to accept any such interpretation, which involves the conviction of an offender for an offence which he neither committed himself, nor intended should be committed, nor even contemplated as likely to be committed by his associates. This, we feel, is contrary to all principles of criminal responsibility, and cannot have been the intention of the Legislature.

10. Nor do we think, if we confine ourselves to the first clause of Section 149, that the language used presents any difficulty. The plain literal meaning of 'in prosecution of' would seem to be 'in order to achieve or attain'. 'Prosecution' is derived from Latin, and the root meaning of the word is 'to follow'. When a person has already attained or caught up with his object and passes beyond it he can no longer be said to be pursuing or prosecuting it. We think that the actions of the two appellants cannot be considered as indivisible but must be analysed into two parts. In so far as they were prosecuting the common object of the assembly these appellants intended to cause hurt and did cause hurt to Raman and Narayanan. But they also intended to kill Raman and Narayanan or cause them such bodily injuries as would be sufficient to cause their deaths. In conceiving and carrying out that intention they were not acting in prosecution of the common object, but in prosecution of private objects of their own.

11. Difficulties however, undoubtedly arise from the fact that the phrase 'in prosecution of that object' occurs in the second clause of the section. It is not necessary for us in disposing of this appeal to find specifically whether appellants 3, 4 and 5 had or had not the knowledge required by that clause because, as the learned Public Prosecutor himself pointed out, they were not charged with having that knowledge, and had no direct opportunity therefore of establishing their want of it. All we need say now on this point is this--that if the word 'or' in Section 149 is given its literal meaning, and if the expression 'in prosecution of' in both clauses is given exactly the same interpretation, then it seems to us that the section is unintelligible. This was recognised nearly seventy years ago in *The Queen v. Sabid Ali* (1873) 20 W.R. C.R. 5. We do not find therefore that a consideration of the section as a whole presents any impediment to our holding that 'in prosecution of the common object' in the first clause must be strictly construed as equivalent to 'in order to attain the common object'.

12. There appear to be no reported authorities in favour of the proposition of the learned Public Prosecutor. He has however referred us to a recent decision of a Bench of this Court (in C.A. Nos. 283 and 376 of 1941) of which one of us was a member. It may perhaps be possible to read portions of that judgment as impliedly accepting the view which the learned Public Prosecutor is now pressing upon us,

but there is also the most definite finding in that judgment that the members of the unlawful assembly must have known that murder was likely. The accused in that case were convicted therefore by the application of the second clause of Section 149. The question of any antithesis between the two clauses was not raised, nor were the learned Judges considering facts in which knowledge of the likelihood of murder was absent. we do not consider therefore that the decision in C.A. Nos. 283 and 376 is binding upon us when considering the particular facts and circumstances of the present case.

13. There is, of course, no doubt that the first clause of Section 149 must be resorted to in this case to convict appellants 3, 4 and 5 of some offences. We hold however, for the reasons which we have given that the offences which appellants 1 and 2 committed in prosecution of the common object were not murder but hurt under Section 324. We find appellants 3, 4 and 5 guilty on both charges of offences under Section 324 read with Section 149 and sentence them each to rigorous imprisonment for eighteen months on each of the charges, these sentences to run concurrently with each other and concurrently with those imposed under Section 147.