

In Re: Rama Boyan and ors.

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Court : Chennai

Decided On : Feb-02-1934

Reported in : 152Ind.Cas.554

Judge : Bardswell, J.

Appellant : In Re: Rama Boyan and ors.

Judgement :

Bardswell, J.

1. Originally six persons were accused in this case of whom the first four are now the appellants. The first accused was charged with culpable homicide not amounting to murder and all the accused were charged with rioting armed with deadly weapons and with culpable homicide not amounting to murder under Section 304 read with Section 149, Indian Penal Code. The learned Sessions Judge acquitted the 5th and 6th accused holding that there was no unlawful assembly of five or more persons and finding that there was no rioting. The 1st accused was convicted of the main charge under Section 304, Indian Penal Code, and the 2nd, 3rd and 4th accused were convicted under Section 304 read with Section 34, Indian Penal Code.

2. It is contended for the 2nd, 3rd and 4th appellants that their conviction under Section 304 read with Section 34, Indian Penal Code, is illegal, the contention being that they were charged with a constructive offence and have been found

guilty of a substantive offence and the decision of Jackson, J., in *In re: Rami Reddi* (1930) Cas Cri. . 207 Mad. as to the illegality of a conviction in such circumstances for a substantive offence has been quoted. But this decision does not apply, because, in my view, the conviction under Section 34, Indian Penal Code, does not imply that each of the persons convicted thereunder has been guilty of a substantive offence. This has been brought out in *Bhondur Das v Emperor* : AIR1929 Pat11 with reference to the judgment of Lord Sumner in *Barendra Kumar Ghose v. Emperor* . Conversely we have it in *Theethumalal Goundar v. Emperor* 82 Ind. Cas. 465 : 47 M 746. 47 MLJ 221 : 20 LW 261 : 35 MLT 21 : AIR 1925 Mad. 1 : 25 Cr. LJ 1297 (FB) that when a person is charged with being a member of an unlawful assembly one of the members of which caused grievous hurt in pursuance of the common object, there is no necessary implication that that particular member is not himself. The charge in this case with reference to Sections 304 and 149 runs that:

at the same time and place, and in course of the same transaction, while you all were members of the aforesaid unlawful assembly, one or more of you severely beat the said Palani Boyan in prosecution of the aforesaid common object.

3. The very charge suggests that one or more of the accused persons took an active part though it has not specified which of the accused did so. It has been held in *Emperor v. Ranchhod Seersang* 87 Ind. Cas. 600 : 49 B 84 : 26 Bom. LR 954 AIR 1924 Bom. 502 : 26 Cri. LJ 1000 that when a charge is made of an offence with reference to Section 149 it will not be illegal to convict the accused of that offence read with Section 34 if no prejudice is occasioned to the accused persons in their defence. I cannot see that any prejudice in this case was caused to the appellants in their defence. The charge has made it perfectly clear what case it was they had to meet. It plainly set out that they were associated together with a common intention to cause hurt. As to what they did in pursuance of the common intention is a point to which I shall come later. I shall first, however, deal with the point that has been taken as to the facts with reference to the convictions of the 2nd and 3rd appellants. It has been argued that there is some doubt as to the guilt of these two appellants with reference to certain statements made to the Police by P. Ws. No. 7 and 9. Prosecution Witness No. 7 stated that immediately

after the 1st accused beat the deceased, accused Nos. 2 to 6 also came there and that accused No. 4 gave the deceased a blow with a lathi and the witness ran away and did not know what transpired afterwards. Prosecution Witness No. 9 stated that accused Nos. 2 and 4 also beat him and that she did not see others beating but they were also standing there. I do not see anything in either of these statements to show that 2nd and 3rd accused did not, according to these witnesses, take part in the beating. All that I get from them is that P.W. No. 7 did not witness the whole transaction and that P.W. No. 9 only observed the beating by certain persons. Their previous statements, of course, throw doubts on the evidence of these two witnesses when they say that accused Nos 2 and 3 also took part in the beating but, apart from them there is a large body of witnesses who speak to the fact that they too took part in the beating of the deceased. Among these witnesses are P. Ws. Nos. 4 and 8 who are mentioned in the complaint that was made with reasonable promptitude in which the names of all the accused appear. I do not think that there is any reason to doubt that all the four appellants took part in the occurrence. It remains, however, to see of what offences they have become guilty in consequence of such participation. As to the 1st appellant, it is perfectly clear that he was guilty Of the offence of which he was convicted. But in the case of the other appellants I do not think on the evidence that they can be found guilty of culpable homicide even by the application of Section 34. The death of the deceased was due to two injuries to his head which according to the medical evidence should have been given by two separate blows. But the evidence for the prosecution shows that both the blows were administered by the 1st accused and that before the general fighting and even before the other appellants appeared on the scene. The blows administered by the other appellants were with sticks and none of them caused any very serious injury and so the convictions of these appellants Nos. 2, 3 and 4 should, in my mind, be only under Section 323 read with Section 34. Such convictions are, I take it, correct in view of what I have stated above.

4. In the result the conviction and sentence of the 1st appellant are upheld and his appeal is dismissed. The convictions of the other three appellants are altered to convictions under Section 323 read with Section 34, Indian Penal Code, and their sentences are reduced to six months' rigorous imprisonment each.

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