

Silajit Mahto Vs. Emperor

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Court : Kolkata

Decided On : May-12-1909

Reported in : (1909)ILR36Cal865

Judge : Lawrence H. Jenkins, C.J. and ;Mookerjee, JJ.

Appellant : Silajit Mahto

Respondent : Emperor

Judgement :

Lawrence H. Jenkins C.J. and Mookerjee, JJ.

1. The six appellants before this Court have all been convicted under Section 147 of the Indian Penal Code. One of them, Silajit Mahto, has also been convicted under Section 304, and another, Sudhakar, has been convicted under Section 323. Silajit has been sentenced to rigorous imprisonment for five years, Sudhakar to rigorous imprisonment for two years, and the other four appellants to one year each.

2. There is no real dispute as to the facts. The learned Sessions Judge has found that the appellants were in possession of their land, and were engaged in cutting the paddy which they had grown. The complainant's party came and attempted to cut the paddy; there was a fight, the result of which was that one man was seriously wounded and subsequently died. The learned Sessions Judge has held

upon these facts that the accused are liable to be convicted under Section 147 of the Indian Penal Code, inasmuch as they were members of an unlawful assembly, the common object of which was to enforce a right to property.

3. It has been argued before us that the conviction under Section 147 cannot be sustained on two grounds: first, that the common object as stated in the charge has not been established: and, secondly, that upon the facts found there was no unlawful assembly. In our opinion, each of these contentions is well-founded. The common object, as stated in the charge, was to assault the complainant and his men who were cutting the paddy of their land and thereby forcibly to oust them from the land. The common object which has been established upon the evidence, according to the Sessions Judge, was to maintain possession of the land by the accused persons. It cannot be laid down as a general proposition of law that a conviction under Section 147 cannot be supported whenever the common object, as stated in the charge, is not precisely made out. The question in each individual case is whether the common object established agrees in essential particulars with the common object as stated in the charge. In the present case there can be no doubt that the common object, as stated in the charge, has not been substantially established. It may, however, be further pointed out that under Section 141, Sub-section (4) of the Indian Penal Code, which alone is supposed to have any application to the present case, an assembly is unlawful if the common object is shown to be to enforce any right or supposed right. Upon the facts which have been established, the common object here was not to enforce any right or supposed right. It was rather to maintain undisturbed the actual enjoyment of a right. If so, no question of unlawful assembly arises. Under these circumstances, we must hold that the conviction under Section 147 as regards all the appellants must be set aside.

4. As regards the second appellant, Sudhakar, he has been, as already stated, convicted also under Section 323. It is argued on his behalf that he is entitled to claim the benefit of the right of private defence. In our opinion this defence is made out. He appears upon the evidence to have caused simple hurt to one of the assailants. He belonged to a party which was attacked by the complainants while he was in peaceful possession of his land. Under these circumstances, it cannot

be said that he lost the right of private defence by causing simple hurt to one of his assailants. So far as Sudhakar is concerned, the conviction under Section 323 must also be set aside.

5. So far as the appellant Silajit is concerned, his case stands on a somewhat different footing. It has been contended on his behalf that he is entitled to the benefit of Section 103, Sub-section (4) of the Indian Penal Code. Unfortunately for him, however, the defence which he took in the Court below was that he was not present at the time of the occurrence. No evidence was, therefore, adduced on his behalf to establish the elements which must be proved before Section 103 can be made applicable. It is not shown that he was under any apprehension that death or grievous hurt would be the consequence if he did not exercise his right of private defence. In his case, therefore, the conviction under Section 304 must be maintained. As regards the sentence, however, we are of opinion that a 'sentence of five years' rigorous imprisonment is, in the circumstances of this case, too severe. He acted evidently upon grave provocation: he was in possession of the property, and he was attacked by a large number of armed people who tried to dispossess him and to carry away his crops. Under these circumstances, we reduce his sentence to two years' rigorous imprisonment. We acquit the other appellants and direct their release.