SUPREME COURT OF INDIA

Gajanand

VS.

State of U.P.

Crl.A.No.20 of 1952

(Mehr Chand Mahajan, C.J.I., Vivian Bose and Ghulam Hasan, JJ.)

15.03.1954

JUDGEMENT

GHULAM HASAN, J. :

1. These appeals filed by special leave granted on different dates arise out of two separate judgments passed by the Allahabad High Court on March 20, 1950. They relate to an occurrence of riot which took place at Manikarnika Ghat, Banaras, on December 9, 1947, at about 1 P. M. They have been heard together and will be disposed of by a common judgment.

2. The plan prepared in the case shows that Manikarnika Ghat has a tank known as the Manikarnika Kund. To the south of the Kund is a narrow lane about 7 feet wide and towards further south is a stone platform called 'Takhat Hazara'. To the east of Takhat Hazara is the Takhat of Gajanand. Towards the east of Gajanand's Takhat is the Sindia Ghat and on the west of Takhat Hazara is a stone-paved platform and to the west of this platform there is a place called "Charan Paduka". To the south of the platform there is Chunawali-Marhi where Anjaninandan's Takhats are kept. To the west of Takhat Hazara there is a place called dasgatra where Daswan ceremonies are usually held.

3. There are two rival group of Pandas at the Ghat, one led by Anjaninandan and the other by Gajanand. The Pandas, as is well-known, minister to the needs of pilgrims visiting Banaras. It is common ground that there is a long-standing enmity between the rival groups of Anjaninandan and Gajanand. It is also not disputed that a riot took place on December 9, 1947, at about 1 P.M. at Manikarnika Ghat. In the riot Gajanand's group lost one of their number called- Sukkhu and the party as a whole received as many as 31 injuries including the four injuries on the deceased Sukkhu which consisted of incised, contused and lacerated wounds and abrasions.

The injuries received by Anjaninandan group were less numerous and less dangerous; altogether his party received ten injuries. Both sides were admittedly armed with sharp edged weapons. Two reports were made. One was made at 1 P.M. by Chammar, a servant of Gajanand, at Police Station Chowk, 2 furlongs away from the scene of occurrence and the other was made by Raghunath Dube at 1-30 P.M. on behalf of the rival group. The reports gave conflicting versions of the occurrence. One version was that when the Daswan ceremony of Pandit Raghunath Sharma was being performed at Chuna-wali-Marhi and the persons attending it were having their heads shaved, fifteen or sixteen persons, including Gajanand, came up and started attacking the party of Anjaninandan.

The contrary version was that Gajanand with his servants was busy performing the Puja for a

pilgrim from Nepal when Anjaninandan came up with his men armed with gandasa, spears and lathis. Anjaninandan demanded his 1/4th share of the offering which Gajanand refused. This infuriated him and he abused Gajanand and ordered his men to attack. Gajanand's men in warding off the blow struck in self-defence. Both sides received various injuries during the riot, Sukkhu having lost his life. Fifteen persons of Gajanand's group and twelve of Anjaninandan's including the two leaders, were sent up to stand their trial for offences under section 147, sections 325/149, 324/149 and 323/149, I.P.C.

Against the latter group there was the additional charge under section 302//149, I.P.C. for the murder of Sukkhu. There were two separate trials. The learned Sessions Judge convicted five of Anjaninandan's group and sentenced them to various terms of imprisonment. He also convicted them under Section 302/149, I.P.C. and sentenced each of them to transportation for life but as in the opinion of the Sessions Judge Lalji had caused the fatal injury to Sukkhu with a gandasa, he passed a capital sentence against him. In the cross case all the accused were acquitted on the finding that the prosecution story was inherently improbable and unworthy of acceptance.

The five persons convicted on the side of Anjaninandan appealed to the High Court, while the Government filed an appeal against the order of acquittal. The High Court acquitted Lalji and another by giving them the benefit of doubt but maintained the conviction and sentence of the other accused under the various charges. In the appeal filed by the State four persons Gajanand, Dasu, Bathe, and Chammar were convicted. They were sentenced under section147, I.P.C. to two years' R.I. and under section 324/149 and 323/149, I.P.C. to three years' R.I. each, the sentences to run concurrently. Both parties obtained special leave.

4. We take up the appeal of Gajanand and others first. The High Court after consideration of the evidence and the circumstances of the case recorded the finding that the incident occurred at the time when the Nepali pilgrim was being entertained by Gajanand and that the immediate cause of the riot was the dispute raised by Anjaninandan that he was entitled to a share of the offerings made by him. The High Court further found that the version of Anjaninandan's party that Gajanand's party attacked him and his party at Chunawali-Marhi where the Daswan Ceremony was being performed was incredible. On the contrary it was established to their satisfaction that the fight took place in the narrow path or lane as stated by Gajanand's group.

In coming to his conclusion the learned Judges were influenced, not unnaturally, by the existence of blood marks in the narrow path and their complete absence at Chunawali-Marhi. After having recorded these findings the High Court went on to observe

"It seems the dispute arose between Raghunath Dube and Gajanand's men who were on the takhat, while Gajanand was at the Ghat below; and in view of the longstanding enmity between the two groups, it provided them with an opportunity to fight, upon which they were predetermined. Gajanand's men moved from their place, that is from near Gajanand's takhat and the complainant's party moved from the place where the Daswan ceremony was being performed. Both the parties had armed themselves with deadly weapons and fought. None could be said to have acted in self defence."

5. Mr. Sethi on behalf of the appellants contends that this observation is inconsistent with the previous finding and the High Court made out a new case in appeal which was neither set up by the other side nor found by the Sessions Judge. If the story that Gajanand accompanied by 14 persons, went from his Takhat to launch an attack on Anjaninandan's group at Chuna-wali-Marhi is found to

be untrue and rejected, and the contrary version that the fight took place at the narrow path is accepted, it follows as a necessary consequence that Anjaninandan's party were the aggressors and Gajanand's party acted in self-defence.

The observations of the High Court that Gajanand's men moved from their place, that is from near Gajanand's takhat and that the other side having similarly moved from the place where the Dasawan ceremony was being performed in order to have a free fight, is based upon mere conjecture and has no admissible evidence to support it. A free fight according to Harrison J. in --- 'Ahmad Sher v. Emperor', AIR 1931 Lah 513 (A), is

"When both sides mean to fight from the start, go out to fight and there is a pitched battle. The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commanders".

There can be no question of a free fight in the present case, as there is a clear finding of the High Court that Anjaninandan's party were the aggressors.

Having regard to the finding reached by the High Court that the riot took place at the narrow path as a result of the dispute about the Nepali pilgrim and the further fact that Gajanand's party received more numerous injuries one of which was fatal, it is obvious that Gajanand's party cannot be said to have constituted an unlawful assembly. Gajanand's party was engaged in the peaceful pursuit of worship at their own takhat and was busy attending to the Puja for the Nepali pilgrim. It is not suggested that at that point of time they were members of an unlawful assembly. There is no material to justify the conclusion that they became members of the unlawful assembly at any time thereafter.

It was the party of Anjaninandan who left their place and came to Gajanand's takhat, presumably raising a dispute over the offerings made by the Nepali pilgrim. They came armed with deadly weapons and one of them inflicted a sever blow on Sukku which resulted in his death and other received as many as 27 serious injuries. In these circumstances it is not possible to suggest that both parties were pre-determined for a trial of strength and had a free fight. Gajanand's party were the worst suffered and though they also inflicted injuries on the other side, they did so in the exercise of their right of self-defence. Learned counsel for the State was unable to point to any material on the record to show that Gajanand's party which was lawful in its inception became unlawful afterwards and we hold, therefore, that the conviction and sentence of Gajanand and his associates cannot be sustained under Section 147 and Sections 324/149 and 323/149, I.P.C.

These appellants had been acquitted by the Session Judge but were convicted by the High Court on appeal by the State. We are of opinion that this was hardly a case for interference with the order of acquittal.

6. We accordingly allow the appeal, set aside their conviction and sentence and order that they be set at liberty at once.

7. We now take up the other appeal. It appears that on the side of Anjaninandan twelve persons were prosecuted. Six of them were convicted by the Sessions Judge and the other six were acquitted. The High Court acquitted two in appeal including Lalji who had been convicted and sentenced to death but convicted the other four. These four are Raghunath Dube, Baji Nath, Paras Nath and Ram Autar.

8. It has been contended by Dr. Tek chand on behalf of the appellants that their conviction under

Section 302/149, I.P.C. is not legally sustainable. It is urged that according to medical evidence Sukku died of shock and haemorrhage as a result of fracture of skull and injury to brain caused by a sharp edged weapon. Injury No. 1 which proved fatal is described as "incised angular would with 11 stitches 6 1/2" long on top of head running from front backwards and to the right".

According to the prosecution case Lalji had a gandasa and Mullu, who was acquitted by the Sessions Judge, had a sharp edged weapon. It is argued, therefore, that the appellants, who were not armed with any sharp edged weapon could not be convicted under Section 302/149, I.P.C., unless it is shown that they had knowledge that one of the members of the assailants' party was armed with a deadly weapon, or that he would use such a weapon which would result in death.

9. It was held in --- 'Ram Charan Rai' v. Emperor', AIR 1946 Pat 242 (B), that

"under Section 149 the liability of the other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge may reasonably be collected from the nature of the assembly, arms or behaviour, at or before the scene of action. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed during the occurrence does not arise."

We agree with this statement of the law.

The question is whether such knowledge can be attributed to the appellants who were themselves not armed with sharp edged weapons. The evidence on this point is completely lacking. The appellants had only lathis which may possibly account for injuries Nos. 2 and 3 on Sukku's left arm and left hand but they cannot be held liable for murder by invoking the aid of Section 149, I.P.C. According to the evidence only two persons were armed with deadly weapons. Both of them were acquitted and Sosa, who is alleged to have had a spear, is absconding. We are not prepared therefore to ascribe any knowledge of the existence of deadly weapons to the appellants, must less that they would be used in order to cause death.

Accordingly we hold that the appellants are not guilty of the offence under Section 302/149, I.P.C., and set aside their conviction and sentence of transportation for life. That, however, does not conclude the matter. The appellants were convicted under Sections 147, I.P.C., 323/149, I.P.C., 324/249, I.P.C., 325/149, I.P.C. and sentenced to rigorous imprisonment for two years, one year, 3 years 5 years' R.I. respectively, the sentences to run concurrently. The appellants have been found to be the aggressors and this finding supported as it is by the material on the record must be accepted as binding. We accordingly see no reason to interfere with their convictions and sentences passed under the various sections referred to above.

10. It was argued on behalf of the appellants that the trial of the appellants was vitiated because the prosecution had not been fairly conducted. Reference was made to the strong comments passed by the High Court on the conduct of the investigation and in particular to the fact that the Police did not produce the Police diary before the High Court despite several reminders. We are unable to enter into the question of the fairness or unfairness of the trial due to certain irregularities in the investigation, for we do not think it affects the merits of the matter. The High Court was fully conscious of these defects and although it severely commented upon the conduct of the prosecution, yet it arrived at the finding adverse to the appellants so far as their participation in the offence is

concerned.

11. The result is that we partly allow the appeal, set aside the conviction and sentence of the appellants under Section 302/149, I.P.C., but dismiss the rest of the appeal and maintain their conviction and sentence passed against them by the High Court.

Order accordingly

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