

SUPREME COURT OF INDIA

Moti Das

Vs.

State of Bihar

Crl.A.No.54 of 1953

(B. K. Mukherjea, Vivian Bose and Ghulam Hasan, JJ.)

08.05.1954

JUDGEMENT

BOSE J. :

1. The appellants are six in number. Five of them have been convicted under section 147, I. P. C. and sentenced to one years' rigorous imprisonment each. The sixth, Misri Das, was convicted under sections 148 and 324, I. P. C. and sentenced to fifteen months; rigorous imprisonment under the former. No separate sentence was imposed under section 324.

2. The conviction of Misri Das under section 324 calls for no comment. He has been convicted under that head for his individual act and the only question raised there touches the credibility of the witnesses who have been believed. Following our usual rule not to interfere on questions of fact, we dismiss that part of the appeal.

3. The other matter depends on whether or not there was an unlawful assembly. It arises in this way.

There was a dispute between some of those on the prosecution side and the appellants about the right to occupy and cultivate certain lands. It is proved that the title to them resides in Jattu Rai (P. W. 4) and one Gena Kumar. Originally they had belonged to one Mangal Das and certain others. A decree was obtained against them for arrears of rent. In execution the lands were put up to auction and were purchased by one Banarsi Prasad in 1927. He sold them to Jattu Rai (P. W. 4) and one Gena Kumar on 25-7-1928. None of this is disputed.

The prosecution case is that Jattu Rai and Gena Kumar cultivated a portion of the purchased area themselves and cultivated the rest through their bataidars, Sonu Gope (P. W. 1), Sahdeo Gope (P. W. 5), Jadu Gope (P. W. 6), Manu Gope (P. W. 8) and Nankeshwar Pasban (P. W. 9). The appellants deny this and contend that they are the bataidars of Jattu and Gena and that they, and not the others, have been in cultivating possession ever since 25-7-1928. The finding of the Courts below is that neither side has been able to prove its possession. We must accept those facts.

4. Coming now to the incident which gave rise to the prosecution, the facts are as follows:

According to the prosecution (see, for example, Sonu Gope, P. W. 1, and Sahdeo P. W. 5, who have both been believed), the appellants went to their fields on the day in question (30-11-47) with about 100 to 150 labourers and about 30 or 40 'lathials', and at least one of them, Misri Das, had a spear.

They started to cut the paddy growing there. Seeing this, Sonu Gope (P. W 1), who claimed to be the bataidar, rushed off to the police outpost which is half a mile distant and returned to the scene with the police havaldar (P. W. 3) and two constables. On nearing the fields Sonu Gope went ahead to remonstrate. When he reached the spot he began to protest and the rest of the incident is best given in the words of Sahdeo Gope (P. W. 5).

"The reapers were taking away bundles of paddy. Sonu came ahead to stop them. Moti gave the order for assault. Misri ran towards Sonu and Sonu fled. Misri over took him and gave him a bhala blow with the result that he fell down in the field of Rasul Mian. The other accused person then assaulted him with lathis. The Havaldar and constables came up and caught hold of accused Jagan and Churaman".

This is substantially the version which has been believed by both the Courts and so we must accept those facts.

5. Founding on them the learned counsel for the appellants contends that no conviction can be based on the facts so found. He says that the prosecution must be strictly confined to the charge and that they cannot now travel beyond it. He says the charge was that the appellant formed an unlawful assembly because their common object was to steal the paddy in the field and assault Sonu Gope in the course of the transaction of stealing. They have been acquitted on the dacoity charge of which the main ingredient was the theft because the prosecution have not proved either that the complainant was in possession or that the accused were not. Therefore, if no question of theft arises, no question of assaulting Sonu Gope as part and parcel of the transaction of stealing can arise either.

In the alternative he says that even if the portion relating to Sonu Gope can be separated from the rest of the charge, it is evident that the appellants could not have met there for the purpose of assaulting him because no one knew that he would come. It follows, he argues, that the common object set out in the charge fails, and if there is no common object there can be no unlawful assembly and without an unlawful assembly there can be no riot. If some hot-heads in a lawful assembly suddenly lose their heads and chase and assault a man each can only be held responsible for his own actions. The assembly cannot, without a common object which postulates pre-concert as an ingredient, be turned into an unlawful assembly because of that alone.

6. It is not necessary to enter into a controversy about the nature of the assembly at its inception. Let us assume that it was lawful to start with despite the numbers and despite the armed body guard of 'lathials'. Even so it became unlawful the moment Moti Das called on the others to assault Sonu Gope and they, in response to his invitation, started to chase Sonu Gope who was running away. It is legitimate to infer from the facts set out above that the intention of those who chased Sonu in response to a call of that kind, made in the circumstances just narrated, was to assault him, particularly when it is coupled with the fact that he was in fact assaulted. It is not likely that the motive which impelled each to run after him arose spontaneously and independently and had no relation to Moti Das' incitement.

7. Now an assembly which was lawful when it assembled can become unlawful subsequently. That is the Explanation to section 141 of the Indian Penal Code. The law on this point has, in our opinion, been correctly set out in the 18th edition of Ratanlal's Law of Crimes at page 333 in these words:

"An assembly which is lawful in its inception may become unlawful by the subsequent acts of its

members. It may turn unlawful all of a sudden and without previous concern among its members. But an illegal act of one or two members, now acquiesced in by the others, does not change the character of the assembly".

Previous concert is not necessary. The common object required by section 141 differs from the common intention required by section 34 in this respect.

8. To return now to the charge. We are unable to agree that the two objects set out, namely the theft and the assault, are inseparable. If they had been charged as two counts; or placed in two paragraphs, this objection could not have been taken. But a mere imperfection in the charge cannot be used to overthrow a conviction unless prejudice can be shown. The irregularity is curable both under section 225 and section 537 of the Criminal Procedure Code.

9. We do not think prejudice is possible in this case. The First Information Report set out the facts in detail. They are simple. There are only six accused and a few prosecution witnesses who have told their story shortly and concisely. Nobody could have been misled by the omission to set out the two objects of the assembly in separate paragraphs.

We therefore uphold the convictions under section 147, I.P.C. and the conviction of Misri Das under section 148. He was armed with a spear and used it, so his case falls squarely under that section once it is conceded that the assembly was unlawful.

10. We do not think the sentences call for interference.

The assemblage of 30 or 40 'lathials' at a place where the peaceable reaping of paddy is supposed to be in progress indicates an intention to use force; and in this case the complainant, who felt himself aggrieved, did not take the law into his own hands but had recourse to the authorities and sought and obtained the assistance of those in local charge of the forces of law and order.

In the face of that, to attack an unarmed man, peaceably registering a protest in the very manner contemplated by the law, does not call for an exercise of leniency.

11. The appeal is dismissed and the convictions and sentences maintained.

Appeal dismissed.

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