

SUPREME COURT OF INDIA

Shambhu Nath Singh

Vs.

State of Bihar

Crl.A.No.56 of 1956

(P. B. Gajndragadkar, K. Subba Rao and J. C. Shah, JJ.)

30.10.1959

JUDGEMENT

SHAH, J.:

1. This is an appeal by special leave. Before the Additional Judicial Commissioner Chotanagpur at Daltongunj, fourteen persons were put up for trial for offences punishable under Sections 147, 148, 302, 302 read with S. 149 of the Indian Penal Code and Ss. 19 (E) and 19 (F) of the Arms Act. The Additional Judicial Commissioner convicted nine out of the fourteen persons. He convicted the 1st accused Shambhu Nath Singh for the offence under S. 302 and for offences under Ss. 302 read with S. 149 and S. 148 of the Indian Penal Code and 19 (F) of the Arms Act. For the offence under S. 302 of the Indian Penal Code, the 1st accused Shambhu Nath Singh was sentenced to transportation for life; for the other offences no separate sentences were passed. The learned Judge convicted accused Nos. 2, 3 and 4 for offences under Sec. 326 read with Sec. 149 and 148 of the Indian Penal Code and sentenced each of them for the offence under Sec. 326 read with Sec. 149 to suffer rigorous imprisonment for six years. For the offence under Sec. 148 of the Indian Penal Code, he did not impose a separate sentence. He convicted accused Nos. 5, 6, 7, 8 and 14 for offence under Sec. 326 read with Sec. 149 and 147 of the Indian Penal Code. He also convicted the 7th accused for an offence under Sec. 19(E) of the Arms Act. The learned Judge sentenced accused Nos. 5, 6, 7, 8 and 14 for the offence under Sec. 326 read with Sec. 149 of the Indian Penal Code to suffer rigorous imprisonment for four years and did not pass any sentence under Sec. 147 of the Indian Penal Code. For the offence under Sec. 19 (E) of the Arms Act, the 7th accused was ordered to suffer rigorous imprisonment for six months. Accused Nos. 9, 10, 11, 12 and 13 were acquitted. Against the order of conviction and sentence, the accused who were convicted appealed to the High Court of Judicature at Patna. In appeal, the convictions of these accused persons were confirmed subject to a modification regarding the order of conviction of the 7th accused for the offence under Sec. 19 (E) of the Arms Act.

2. The prosecution case may briefly be set out. Of plot No. 493 in Khata No. 27 of the village Gulabjhari, one Baran Kahar was a tenant. This land was originally held on adh batai, but the rent was commuted to cash rent under an order passed by the Commutation Officer in exercise of authority under Sec. 61 of the Chotanagpur Tenancy Act. On 2nd July, 1954 at about 4 P.M. Baran Kahar and his sons Nanhu Kahar and Ramedni Kahar were ploughing and levelling the land and were sowing paddy. At that time, a crowd of persons including the fourteen accused arrived on the scene. Shambhu Nath Singh accused No. 1 was armed with a gun and the other accused were carrying weapons such as bhallas, garasas and lathis. Apprehending an assault, Ramdeni Kahar and

Mst. Sukri son and wife respectively of Baran Kahar implored the accused not to assault Baran Kahar, but the accused paid no heed to their intercession. Shambhu Nath Singh fired several shots causing injuries to Baran Kahar and killing him on the spot. Nanhu Kahar also received gun shot injuries which resulted in his death. Ramdeni Kahar and Mst. Sukri also received injuries. After the party of the accused left the field, Ramdeni Kahar gave information at the Police Station Chhatarpur about the assault made upon Baran Kahar and Nanhu Kahar. An offence was registered by the Sub-Inspector of Police and investigation was commenced. The fourteen accused were arrested in the course of the investigation and put up before the Magistrate 1st Class Daltonguni on a charge sheet for offences under Secs. 147, 148, 302, 302 read with Section 149 of the Indian Penal Code and Secs. 19 (E) and 19 (F) of the Arms Act. The Magistrate committed these accused to the Court of Session for trial. At the trial, accused Nos. 1 to 8 and 14 were convicted and the remaining accused were acquitted.

3. The learned Additional Judicial Commissioner held that on the day of the incident, Baran Kahar was in possession of the land in which rioting took place and that the accused who were convicted had formed themselves into an unlawful assembly and had committed rioting and that the common object of the unlawful assembly, was to commit an assault and that the members of the unlawful assembly, because they were armed with diverse weapons "must have known that grievous hurt was likely to be caused" in prosecution of the common object. He accordingly held accused Nos. 2 to 8 and 14 guilty of offences under Section 326 read with Sec. 149 of the Indian Penal Code for the act of the 1st accused in causing gun shot injuries resulting in the death of Baran Kahar and his son Nanhu Kahar. The 1st accused Shambhu Nath Singh was convicted for the offence under Sec. 302 of the Indian Penal Code. For some reason which it is not easy to appreciate, the learned Judge convicted the 1st accused also of an offence under Sec. 302 read with Sec. 149 of the Indian Penal Code.

4. It is the settled practice of this court that unless the trial is vitiated by an illegality or irregularity of procedure or the trial is held in a manner violative of the principles of natural justice resulting in an unfair trial, or unless the trial has resulted in gross miscarriage of justice, this court in a criminal appeal does not normally enter upon a review of the evidence on which the conclusion of the courts below is founded. The court of first instance found that on the day of the incident the land in dispute was in the possession of Baran Kahar and the accused who were convicted formed themselves into an unlawful assembly with a view to forcibly dispossess Baran Kahar and to commit assault. These are conclusions on questions of fact based upon appreciation of evidence and it is not suggested that the trial was vitiated by any illegality or irregularity of procedure or that the principles of natural justice were violated nor is it suggested that for other reasons, the trial has resulted in gross miscarriage of justice. These conclusions of the court of first instance which are affirmed by the High Court are therefore accepted by us.

5. The question which then falls to be determined is whether the conviction of accused Nos. 2 to 8 and 14 for the offence under Sec. 326 read with Sec. 149 of the Indian Penal Code may be sustained when no offender is found guilty of the substantive offence under Sec. 326 of the Indian Penal Code. Counsel for the appellants submits that these accused were acquitted of the offence under Sec. 302 read with Section 149 of the Indian Penal Code and in the absence of evidence to prove that grievous hurt was in prosecution of the proved common object caused by a member of the assembly their conviction for the offence under Sec. 326 read with Sec. 149 is in law unwarranted. The 1st accused Shambhu Nath Singh has been convicted of the offence under Sec. 302 read with Sec. 149 of the Indian Penal Code and the other accused have been convicted of the offence under Sec. 326 read with Sec. 149 of the Indian Penal Code. Counsel for the appellants contends that in the absence

of evidence to show that grievous hurt was caused by one of the accused in prosecution of the common object, the court was incompetent to record a conviction for the offence under Sec. 326 read with Sec. 149 of the Indian Penal Code.

6. Section 149 of the Indian Penal Code is declaratory of the vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. If an unlawful assembly is formed with the common object of committing an offence and if that offence is committed in prosecution of the object by any member of the unlawful assembly, all the members of the assembly will be vicariously liable for that offence even if one or more, but not all committed the offence. Again, if an offence is committed by a member of an unlawful assembly and that offence is one which the members of the unlawful assembly knew to be likely to be committed in prosecution of the common object, every member who had that knowledge will be guilty of the offence so committed. But "members of an unlawful assembly may have a community of object upto a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object and as a consequence of this the effect of Sec. 149 of the Indian Penal Code may be different on different members of the same unlawful assembly." *Jahiruddin v. Queen Empress*, ILR 22 Cal 306.

7. Therefore a conviction for an offence under Sec. 326 read with Sec. 149 of the Indian Penal Code may be recorded against the members of an unlawful assembly, even if it be established that an offence of murder was committed by a member of that assembly. The offence under Sec. 326 of the Indian Penal Code is in its relation to the offence of murder a minor offence and the language used in Sec. 149 of the Indian Penal Code does not prevent the court from convicting for that minor offence merely because an aggravated offence is committed. Counsel for the accused however sought to place reliance upon certain authorities in support of his contention. We may briefly deal with those authorities.

8. In *Queen v. Sabid Ali*, 20 Suth WR Cr 5 (FB), it was held, "Where a certain number of persons, members of an unlawful assembly Party A attacked another party B who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A fired a gun at and killed one of the persons in party B, it was held (Ainslie, J. dissenting) on a consideration of the evidence that the persons composing party A other than the person who fired the gun could not be convicted of murder under Sec. 149 Penal Code. The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under Sec. 148 of the Indian Penal Code." but in that case, the unlawful assembly in prosecution of which the offence was committed was to take forcibly the possession of the land in dispute, and the court on evidence found that the murder committed by one of the members of the unlawful assembly was not an offence such as the members of the unlawful assembly knew to be likely to be committed in prosecution of the object of the unlawful assembly. This case does not assist the appellants.

9. In *Ram Prasad Singh v. King Emperor*, ILR 1 Pat 753: (AIR 1923 Pat 50), the head note is as follows:

"Where the principal offender in a case of rioting is convicted of an offence the others cannot be held to have committed constructively an offence different from the offence found to have been committed by the principal offender.

Therefore, where the principal offender was convicted under Sec. 302, held, that the others could not be convicted under S. 304 read with S. 149."

10. Mr. Justice Coutts delivering the judgment of the court observed at page 757 as follows:

"In the present case Ram Prasad has been found guilty under Sec. 302. The learned Sessions Judge has found that the rest of the appellants cannot be held to be constructively guilty under Section 302 but he has found that they are constructively guilty under Section 304. I can find no authority, however, for convicting the principal offender of one offence and the rest of the members of the unlawful assembly of another offence, nor has the learned Assistant Government Advocate been able to refer us to any such case, and it seems to me clear from the section itself that if a member of an unlawful assembly is to be found constructively guilty of an offence under Sec. 149, it must be the same offence of which the principal is guilty and not some other offence. If the members of an unlawful assembly are not guilty of the same offence as the principal, the only reason why they are not guilty is because they do not come within the terms of S. 149."

We are unable to agree with the view so expressed.

11. The statement of the law in Ram Prasad Singh's case, ILR 1 Pat 753: (AIR 1923 Pat 50) (supra) was considered in Bhagwat Singh v. Emperor, AIR 1936 Pat 481. In that case, the court observed that in construing Sec. 149, a member of an assembly is not guilty necessarily of the same offence as the principal offender nor of the offence the member must have known to be likely to be committed. The court, in that case expressed its dissent from the decision in Ram Prasad Singh's case, ILR 1 Pat 753: (AIR 1923 Pat 50).

12. In Sidhu Gope v. Emperor, AIR 1946 Pat 84, it was held, that:

"the members of an unlawful assembly are not necessarily guilty of the same offence as the principal offender. It has to be determined with reference to the facts of the case, what offence the members must have known to be likely to be committed; if such offence is a minor offence, then they should be convicted accordingly."

13. But in the same volume, there is another case at page 242 of AIR 1946 Pat.; Ram Charan Rai v. Emperor, where preference is indicated for the view expressed in Ram Prasad Singh's case, ILR 1 Pat 753: (AIR 1923 Pat 50).

14. By Sec. 149 the vicarious liability of the members for offence committed in prosecution of the common object or for offences which were known to be likely to be committed by the members of the unlawful assembly is declared. The offence of murder being in its nature an aggravated form of the offence of grievous hurt, we are unable to hold that because no offender was proved to have caused grievous hurt to the victims, the conviction of accused Nos. 2 to 8 and 14 for an offence under Sec. 326 read with Sec. 149 of the Indian Penal Code is illegal.

15. The common object of the unlawful assembly was in this case as found by the courts below to cause grievous hurt; and death was caused by one of the members of the assembly. For causing the death, it is found that the other members of the unlawful assembly are not responsible. But the conviction for the offence of causing grievous hurt in prosecution of the common object of the unlawful assembly is maintainable. Conviction of accused Nos. 2 to 8 and 14 for offences under Sec. 326 read with S. 149 of the Indian Penal Code was therefore properly recorded.

16. The appeal fails and is dismissed.

Appeal dismissed.

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