

Sheo Mahadeo Singh

Vs

The State of Bihar

Criminal Appeal No. 88 of 1967

(A. N. Ray, I. D. Dua JJ)

06.03.1970

JUDGMENT

RAY, J. -

1. This is an appeal by special leave against the judgment of the High Court at Patna, dated February 28, 1967, allowing the appeal in part by acquitting Ram Rattan Singh, Sheo Pujan Singh and Ram Nagina Singh and acquitting the remaining accused of the charge under Section 447 of the Indian Penal Code and dismissing the appeal by upholding the conviction of those remaining accused under Sections 302/149 of the Indian Penal Code and of the appellant and accused Manogi Singh under Section 324 of the Indian Penal Code and altering the sentence of death imposed on Rajballam into one of rigorous imprisonment for life.

2. The appellant and seven others are all Gwalas by caste and residents of village Rayapur situated at a distance of five miles from Maner Police Station in the District of Patna where the occurrence took place. The 8 accused belonged to three different families. The accused Sheo Pujan Singh and Rajballam are sons of the accused Manogi Singh. The appellant Sheo Mahadeo Singh and accused Ram Nagina are the sons of accused Ran Charan. The accused Ram Rattan is the son of accused Ram Lakhan.

3. The prosecution case in short is that at about 7 a.m. on October 23, 1965, the accused Rajballam and seven others including the appellant attacked Ram Prasad and other members of the prosecution party. Sarjug and Suraj Mahto the two brothers were sitting neat their tube-well towards the south of the village Bayapur when accused Ram Lakhan armed with Garasa and the other accused armed with Bhalas came suddenly in a mob and began to demolish the stairs attacked to the tube-well. On protest by these two brother under orders of assault given by the accused Ram Charan, the accused Manogi and the appellant gave Bhala blows on the person of Sarjug Prasad. On alarm raised by Sarjug and Suraj Mahto, their other brothers Lakshman and Ram Prasad, the deceased, arrived there and protested against the action of the accused. Then the accused Rajballam gave a Bhala blow the throat of Ram Prasad who died at the spot. Ram Lakhan gave Garasa blow on the head of Bharat. The remaining accused are also alleged to have continued wielding their Bhalas and Ramcharan's Bhala struck the right hand of Bharat. Several Persons of the village came as a result of hue and cry. The accused fled away.

4. The motive for the occurrence alleged by the prosecution was that accused were envious of Sarjug Prasad and others of his family having constructed tube-well 5-6 months before the occurrence and at the time of the occurrence the accused came armed with the object of forcibly removing the tube-well and on protest being made against their action, they committed the assault

and the murder.

5. The accused pleaded innocence. Some of them pleaded alibi as well. The plea of alibi was rejected by the Trial Court and was not pressed in the High Court. The defence was that there was some quarrel on the date of occurrence much before 7 a.m. between accused Manogi on one side and Sarjug and others of family on the other and further that the brothers of the deceased Ram Prasad assaulted accused Manogi. It was further alleged that the villagers could not tolerate the high-handed act of Ram Prasad and his brother in assaulting Manogi; they came to the Gairmazarua land where the accused Manogi was assaulted by Ram Prasad and there was a free fight between the villagers on one side and Ram Prasad and other members of the family on the other in which Ram Prasad was killed.

6. The High Court rejected the defence version. On a review of the entire evidence the High Court came to the conclusion that there was sufficient evidence to prove that Rajballam was responsible for the murder of Ram Prasad. The High Court further held that the charge under Section 324 against the three accused and the appellant and the charge under Section 426 against all the accused other than Ram Rattan, Ram Nagina and Sheo Pujan and the charge under Sections 302/149 of the Indian Penal Code against all the persons other than Ram Rattan, Ram Nagina and Sheo Pujan were proved.

7. At the hearing of this appeal the only contention which was advanced was that the death caused by Rajballam was an individual act and the appellant could not be convicted of the charge of the common object to commit murder, assaults, mischief and criminal trespass.

8. The essence of Section 149 of the Indian Penal Code is that an accused person whose case falls within the terms of the section cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly. It is an offence committed by a member of an unlawful assembly in prosecution of the common object of that assembly and it is an offence such as the members of that assembly knew to be committed in prosecution of that object.

9. Section 149 created a specific offence and deals with the punishment of that offence. There is an assembly of five or more persons having a common object and the doing of acts by members is in prosecution of the object. The emphasis is on common object. There is no question of common intention in Section 149. The act must be one which upon the evidence appears to have been done with a view to accomplishing the common object attributed to the members of the unlawful assembly. Thus every person who is engaged in prosecuting the same object, although he had no intention to commit the offence, will be guilty of an offence which fulfills or tends to fulfill the object which he is himself engaged in prosecuting in the circumstances mentioned in the section. It is in this sense that common object is to be understood.

10. In the present case the facts and the circumstances show that the assault and the demolition of the stairs of the well took place in the same transaction because the members of the unlawful assembly attacked Ram Prasad and his people and injured some of them simultaneously or in quick succession. Sarjug Mahto and Suraj Mahto both said that at the instigation of accused Ram Charan accused Manogi gave a Bhala blow near the left elbow of Sarjug Mahto. Sarjug also said that accused Sheo Pujan gave him a Bhala blow on the finger of right hand. According to Suraj Mahto the appellant stuck Sarjug Mahto on the finger of his right hand. Suraj and Sarjug then raised an alarm. On hearing the alarm Ram Prasad, Bharat and Lakhan Came. Ram Prasad protested to the

accused against the attack on Sarjug Mahto. At the instigation of accused Ram Charan accused Rajballam struck Ram Prasad with a Bhala. Ram Prasad fell down and died there. Ram Lakhan then struck Bharat with a Garasa. Ram Charan struck him on the head with a Bhala. The assailants then fled away. The evidence proves that the common object of all the members of the assembly was that murder was likely to be committed in prosecution of a common object, namely, to commit murder, assault, mischief and criminal trespass. All the members of the assembly were armed with weapons, they knew that murder was to be committed in prosecution of that object. It cannot, therefore, be said that the appellant is not guilty of the charge under Section 302/149 of the Indian Penal Code.

11. In the result, the appeal fails and is dismissed.

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