

Halim Mian and Others

Vs

State of Bihar

Jangloo Mian

Vs

State of Bihar

Criminal Appeals Nos. 104 and 108 of 1967

(K. S. Hegde, A. N. Grover JJ)

28.04.1971

JUDGMENT

HEGDE, J. -

1. These appeals by special leave are directed against the decision of the High Court of Judicature at Patna in Cr. A. No. 178/65 on its file.

2. Twelve persons including the appellants were tried and convicted for various offences by the learned 3rd Additional Sessions Judge, Gaya. In appeal all except the appellants Manzoor, Halim, Jangloo, Ekramul, Enamul and Sattar were acquitted. Manzoor, Halim, Jangloo and Ekramul were convicted under Section 324/34, I.P.C. and sentenced to suffer rigorous imprisonment for two years each for that offence. Ekramul and Enamul were convicted under Section 323 read with Section 34, I.P.C. and for that offence each one of them was sentenced to suffer one year's rigorous imprisonment. Sattar was convicted under Section 323, I.P.C. and sentenced to suffer rigorous imprisonment for one year. The sentences imposed on such of the appellants as were convicted for more than one offence were ordered to run concurrently. In these appeals the appellants challenge their conviction.

3. The incident with which we are concerned in these cases, as found by the High Court commenced in connection with a dispute regarding taking water from Sarfara Ahar. The High Court found and that finding was not challenged before us, that the water from this river was used to irrigate the fields in the village Bandi as well as that in Sarfara but the water could be taken by the cultivators only after obtaining the permission of Mokararidars and Thikedars. The High Court further found that on the date of the occurrence viz., October 3, 1964, some of the members of the prosecution party belonging to Sarfara village came and blocked the channels through which water was taken to Bandi village and diverted the entire water to their fields in Sarfara village and at that time the appellants who belonged to Bandi village came and obstructed them and at that stage there was a flight between the two parties as a result of which several persons were injured. The further finding of the High Court is that the appellants-party is not proved to have gone to the scene of occurrence with the common object of assaulting the prosecution party. But on the other hand they had gone there to protect their own rights. The High Court has also come to the conclusion that the common

object mentioned in the charge is not proved. It further held that the appellants were not members of an unlawful assembly. None of the accused was charged with any offence read with Section 34, I.P.C. On the facts of this case, no question of common intention could have arisen. But yet the learned Judge of the High Court relied on Section 34, I.P.C. in convicting some of the appellants. A charge under Section 34, I.P.C. presupposes the sharing of a particular intention by more than one person to do a criminal act. In the instant case as found by the High Court, the accused party did not intend to commit any criminal act. They went to the scene of occurrence only with the object of protecting their own rights. That being so the High Court was not justified in relying on Section 34, I.P.C. while considering the case against some of the appellants. In Paragraph 19 of the judgment the learned judge of the High Court observed :

"In the view I have taken that the appellants were not members of an unlawful assembly with any unlawful common object, the question that requires to be considered now is what offence, if any, the appellants have committed."

4. Another finding reached by the High Court, which finding again was not challenged before us is that :

"It cannot be said with any amount of certainty which of the assailants was responsible for causing which of the injuries."

5. Let us now recapitulate the material findings reached by the High Court. They are : (1) the accused went to the scene of occurrence to protect their own right; (2) they were not members of an unlawful assembly and (3) it is not possible to ascertain from the records whether any particular accused caused any particular injury.

6. The High Court has also not come to the conclusion that any of the appellants had assaulted any one of injured persons. All that is proved is that they were there at the scene along with several other persons; there was a fight between the two parties and several persons were injured, some seriously in the course of that fight.

7. Curiously enough after reaching the conclusions set out above, the High Court yet came to the conclusion that the appellants were guilty of the offences for which they are convicted. The evidence against Sattar, Rojan and Alif was identical. Rojan and Alif were acquitted, Sattar alone was convicted for causing simple hurt to Andhi. The High Court has given no reason in support of its conclusion that Sattar had assaulted Andhi. In fact it had opined as already mentioned that on the basis of the evidence it is not possible to connect any accused with any particular injury.

8. The High Court used different standards in judging the evidence against different accused. Dealing with the conviction of appellant Moinuddin under Section 324, I.P.C. for having voluntarily caused hurt to P.W. 16, Gope it observed thus :

"On these facts, it must, therefore, be held that the accused persons had right to take away also the overflowing water. In this state of the record, I think that the injury caused by this appellant (Moinuddin), which was simple in nature, though caused by a Saif, cannot be said to be unjustified. In the circumstances of this case, his conviction under Section 324 and the sentence passed thereunder are set aside."

9. But it did not adopt the same reasoning in the case of Manzoor, Halim, Jangloo and Ekramul.

10. We agree with the High Court that on the basis of the evidence on record, it is not possible to come to the conclusion that the accused were members of an unlawful assembly. The evidence also does not justify the High Court's conclusion about common intention. Hence the question of constructive liability has to be ruled out. That being so, a particular accused could have been only convicted for the offence committed by him. There is no satisfactory evidence to show that any of the appellants had caused any injury to any of the injured persons. In this state of the evidence none of the appellants could have been convicted.

11. In the result these appeals are allowed and the appellants acquitted. The appellants are on bail, their bail bonds do stand cancelled.

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