

Gokul and Others

Vs

The State of Rajasthan

Kanhaiya

Vs

The State of Rajasthan

Criminal Appeal No. 179 and 180 of 1969

(I.D. Dua, D.G. Palekar JJ)

17.11.1971

JUDGMENT

DUA, J. -

1. These two connected appeals by special leave, Crl. A. 179 of 1969 being by five appellants and Crl. A. 180 of 1969 by one, arising out of one criminal trial, are directed against the judgment and order of the Rajasthan High Court dated April 9, 1969. Facts giving rise to these appeals may now be state :

"29 accused persons, including the six appellants before us, were committed by the sub-divisional Magistrate, Rajgarh to stand their trial for various offences, broadly stated, under Sections 302, 332, 325, 324, read with Section 149, I.P.C. and under Section 307 or in the alternative under Section 307 read with Section 149, I.P.C. Some of them were also charged under Section 148, I.P.C. and the remaining under Section 147, I.P.C. It is unnecessary for the purpose of the present appeal to give more precise details about the charges. The occurrence giving rise to the trial took planned on April 12, 1967 at about 10.30 a.m. near the thrashing floor of Kanhaiya, appellant against whom a money decree had been secured by Shyamlal (PW 12). In execution of that decree Shyamlal had obtained a warrant of attachment on April 11, 1967 in respect of the crop belonging to Kanhaiya and lying at his thrashing floor. On the morning of April 12, 1967 Raghubir Saran (PW 16) Nazar of the court of Munsif, Lachmangarh and Ghasi Singh (PW 10) peon of the same court, along with Jawaharlal, police constable and Shyamlal, decree-holder, went to the thrasing floor of the judgment-debtor, Kanhaiya. On seeing them Kanhaiya, appellant, warned Raghubir Saran and his companions against proceeding with the attachment threatening them that if they did so they would get killed. Raghubir Saran, (PW 16) having become conscious of the danger arising out of the threat given by the judgment-debtor, sent Ghasi Sigh (PW 10) to request the Munsif to provide police assistance. As a result, Shrilal, head constable (PW 11), along with four more police constables arrived at the spot. In the meantime Kanhaiya, judgment-debtor, also collected a large number of persons armed with pharsis and lathis and they all

threatened the Nazar and police officials with dire consequences if they did not leave the place. Apparently, there was some hue and cry, hearing which Sampat Meena (the deceased) and his son Girraj (PW 1) came out of their house and on learning of the dispute between Kanhaiya on the one side and the Court Nazar and the policemen on other, they, along with some other persons proceeded to the spot. Girraj, it may be pointed out, had been elected Sarpanch in 1961. In 1964, however, he was not elected as Sarpanch but his father Sampat Meena was elected Panch in that year. On reaching Kanhaiya's thrashing floor quarrel with the Government servants and advised them to settle the matter peacefully and amicable. On this intervention on the part of Sampat Meena, Kanhaiya, Judgment-debtor, shouted to his companions that he (Sampat Meena) was the root cause of the whole trouble and should, therefore, be first done away with. Having thus addressed his associates Kanhaiya, along with Mangal and Lachman, pounced upon Sampat Meena and gave him blows with Pharsis on his head Shrilal, head constable in his attempt to rescue Sampat Meena advised the latter to run away. Sampat Meena thereupon tried to leave the place. But the assailants chased him crying "marlo, marlo" and caught him as he stumbled in his attempt to escape. Dhanna, and Sheodan, accused, surrounded him and gave him further pharsi belows on his head as a result of which he fell down on the ground. Ramsahai, accused, also gave Sampat Meena a pharsi below on his chest. Girraj (PW 1) requested the assailants not to beat his father but it only served to provoke the accused Gulla, Gokul and Kalyan to beat Girraj (PW 1) as well. During the course of the occurrence Shrilal, head constable (PW 11) Kanhaiyalal (PW 15) Shyamlal decree-holder (PW 12), Girraj (PW 1), Prahlad Singh, police constable, Sampat son of Bhoma Jat, Arjun Jogi, Kanhaiya (appellant) and Devi Ram and Sheodan, accused, received injuries. First information report was lodged by Shrilal, Head constable (PW 11) at about 11.45 a.m. at the police station Lachmangarh the same day. As Sampat Meena's condition became precarious he was immediately removed to the hospital at Lachmangarh but he could not survive the injuries and expired by the time he reached Lachmangarh."

2. In the trial Court all the accused, except Kanhaiya, judgment-debtor, had denied the prosecution story by merely pleading ignorance and Laxman had pleaded alibi and produced two witnesses in support thereof. Kanhaiya, appellant, had, to quote from the judgment of the trial Court "admitted that the Nazar and the police officials had come for the attachment and that he told them that he would not allow them to effect the attachment, whereupon they went away from the spot and he also went away to his other field. Then the police came and arrested him." The learned Sessions Judge convicted Kanhaiya, Mangal, Ramsahai, Dhanna, Sheodan, Prabhati, Gokul, Kalyan, Gulla and Deviram for Offence under Sections 302 /149, I.P.C. and sentenced each of them to imprisonment for life. They were further convicted under Sections 332/149, I.P.C. and sentenced to rigorous imprisonment for a year and half.

3. It is unnecessary for the purpose of the present appeals to refer to the conviction of the various accused persons for other Offence as no specific point was sought to be made here with respect to those Offence. All the sentences were, however, directed to run concurrently. All the accused were acquitted of the charge under Section 307 and of the alternative charge under Sections 307/149, I.P.C. It may be pointed out that the charge "under Section 307 or Section 307 read with Section 149, I.P.C." was framed with respect to the injuries said to have been inflicted on Girraj. According to Dr. S. B. Mathur (PW 5) out of the five injuries found on the person of Girraj, fracture of the left index finger was grievous whereas the remaining four injuries were simple, one of them being a

mere bruise. Considering the nature of these injuries charge under Section 307 read with Section 149, I.P.C. was held unsustainable.

4. Three appeals were presented in the High Court by the accused convicted at the trial. All the accused were acquitted of the charge under Sections 332/149, I.P.C. Dhanna, Shivdan, Kalyan and Deviram were acquitted of all the other charges as well. The convictions and sentences of the present appellants for the offence under Sections 302/149, I.P.C. were upheld. The direction that all the sentences should run concurrently was also affirmed. The High Court, believing the version of the occurrence given by Girraj (PW 1) which was held to have been corroborated by all the eye-witnesses in regard to its broad features, observed that :

"In the circumstances, even if it be assumed that the persons who assembled at the thrashing floor in response to the backoning made by Kanhaiya, did not constitute an unlawful assembly at the inception despite the numbers and despite the arms possessed by them, they definitely turned into an unlawful assembly the moment they at the invitation of Kanhaiya, accused, started inflicting injuries to Sampat Meena who was chased surrounded and beaten even when he was running away to save himself. There is thus no doubt in our mind that even if the assembly may be lawful when it assembled in response to the call made by accused Kanhaiya, it became unlawful subsequently at the stage when its members began to assault Sampat Meena."

5. The conviction of Kanhaiya, and Mangal was upheld on the basis of the testimony of PW 1 Girraj, PW 2 Chajju, PW 3 Kalu, PW 10 Ghasi Singh, Pw 11 Shyamlal, PW 13 Chaji, PW 14, Gokul. PW 15 kanhaiyalal, PW 16 Raghubir Saran who were the eye-witnesses to the occurrence. The learned counsel on behalf of these accused persons, according to the High Court, was not able to point out any ground for disbelieving the testimony of so many eye-witnesses. Their only criticism against their conviction levelled by their counsel in that Court was that Ghasi Singh (PW 10) and Raghubir Saran (PW 16) had been declared hostile and should, therefore, not be believed. About the other witnesses it was contended that their evidence having not been accepted with regard to the 19 accused persons, who were acquitted by the trial Court, with respect to those convicted also their evidence should be discarded as untrust-worthy. The High Court did not accept these contentions. The testimony of Ghasi Singh and Raghubir Saran was held to be fully corroborated by the medical evidence. Kanhaiya's presence was further held to be corroborated by injuries on his person, the duration of which, according to medical evidence, was such as to synchronise their infliction with the time of the occurrence. With regard to Ramsahai also the High Court considered the evidence of PWs 1 to 3 and PWs 13 and 14 to be acceptable. Their evidence was held to be corroborated by the medical evidence. In regard to Dhanna and Shivdan, however, the High Court gave them benefit of doubt because the medical evidence did not seem to support to the version of these two accused having given blows to the deceased, as alleged. Whether or not benefit of doubt was rightly given to them does not arise for consideration in the present appeal. Prabhati, Gokul and Gulla had also been convicted by the trial Court on the basis of the evidence of Girraj (PW 1), Chajju (PW 2) and Kalu (PW 3) and the High Court did not find any cogent ground for disbelieving or doubting their testimony as against them.

6. In this Court the main, as indeed, the only serious argument urged by Shri S. M. Jain in CrI. A. 179 of 1969 was founded on the following observations of the High Court in the impugned judgment :

"The above facts clearly reveal that in fact no occasion arose to give effect to the initial common object of the assembly. But suddenly at the nick of the time there across different common object viz; to assault Sampat Meena. In the circumstances, it cannot be said that all the persons who assembled at the spot at the initial stage shared the common object which suddenly arose later on. In our opinion, there came into existence two assemblies at that place, one with the common object to prevent attachment of the crop and the other with the common object to assault Sampat Meena and those who attempted to save him. We are not concerned with the former assembly as no occasion arose for it to do any act in furtherance of its common object. The latter assembly formed at the nick of the time was certainly an unlawful assembly as its common object fell within the purview of the provisions of Section 141, I.P.C. in the circumstances, the only safe criterion in the matter of finding out whether or not any particular accused was the member of the suddenly constituted unlawful assembly, is to see what overt act he did in prosecution of the common object of the said unlawful assembly."

7. The argument developed at the bar of this Court was that there is no evidence to show that the present appellants were member of the second unlawful assembly which was suddenly constituted at the nick of the time appellants, so proceeded the submission, could by no stretch have considered fatal assault on Sampat Meena as likely because this, even according to the prosecution case, was no the common object of the first unlawful assembly. According to the prosecution, the Counsel added, the first unlawful assembly was only concerned with the object of preventing attachment of Kanhaiya's crop lying in his thrashing floor by resisting the party of the Court Nazar and there was no plan or even remote thought of assaulting Sampat Meena. The object of assaulting Sampat Meena may have suddenly developed when the matter amicable and peacefully. This argument of two different assemblies with different common objects may have prima facie appear to be attractive; but we do not think it can bear scrutiny. Kanhaiya, appellant, indisputably knew that the decree-holder, along with the Nazar of the Court and the police constables, had come to attach his crop on the thrashing floor pursuant to an order of the Court. The police aid had been secured because he had threatened resistance to the Nazar and in the meantime had also gathered together a large number of his supporters to resist and prevent the attachment of the crop by use of force and it was pursuant to this basic common object that when Sampat Meena reached the spot and requested in judgment-debtor not to quarrel with the Nazar and the policemen but settle the matter amicably that Kanhaiya and his supporters, feeling irritated and provoked, attacked Sampat Meena in order to accomplish the same common object of resisting and diffusion every effort in the direction of effecting the attachment of his crop. The call give by Kanhaiya sparked off the use of force by the members of the assembly for achieving the common object of preventing the attachment of the crop. The mere fact that Sampat Meena, who was not one of those who had originally accompanied the Court Nazar happened to be the first target of use of violence in accomplishing the common object, did not, in our view imply that the members of the assembly participating in the assault on the deceased had a different common object from that of the original assembly. This is clear from the fact that the deceased was attacked only when he had asked Kanhaiya not to quarrel with the Court Nazar and the police party but settle the matter amicably and peacefully. Indeed, even those members of the group who had earlier accompanied Shyamlal were not spared and they also suffered injuries at the hand of Kanhaiya and his supporters. Our attention was not drawn to any provision of law nor was any principle or precedent cited in support of the appellant's argument that on the facts and circumstances of this case the appellants could not be considered to be members of the assembly which assaulted and injured Sampat Meena, his son and others. The High Court was

thus not strictly justified in upholding the theory of two distinct unlawful assemblies having two different common objects namely to prevent attachment of Kanhaiya's crop which was imputed to the first assembly and to kill Sampat Meena, which was imputed to the second.

8. However, granting that there were technically two assemblies as assumed by the High Court in our opinion, when Kanhaiya incited his companions to do away first with Sampat Meena who was stated to be the real root cause of the trouble all those who in response to Kanhaiya's call joined in the assault on the deceased and also in causing injuries to other must be held to have entertained the common object of assaulting all those who appeared to be siding with the party which came to attach the crop. The common object of assaulting Sampat Meena and other was actually adopted and shared by all then appellants in this court as their conduct, according to the judgment of the High Court, clearly shows.

9. Shri Jain, learned Counsel in Cr. A. 179 of 1969 and Shri H. K. Puri learned Counsel in Cr. A. 180 of 180 of 1969 both however, strongly contended that no charge was framed against their respective clients with regard to the common object of the second assembly to kill Sampat Meena and this omission is fatal to their conviction. Shri Puri in this connection relied on *Suraj Pal. v. State of U.P.* ((1955) 1 SCR 1332 : AIR 1955 SC 419 : 1955 SCJ 351 : 1955 Cri LJ 1004) The ratio of that decision appears in the head-note which read :

"When a person has been charged along with others under Sections 302 and 307 of the Indian Penal Code each, only as read with Section 149 of the Code, his convictions and sentences for the substantial offences under Sections 302 and 307 of the Code are erroneous. The absence of specific charges in this behalf is a serious lacuna in the proceedings, inasmuch as the framing of a specific and distinct charge in respect of every distinct head of criminal liability constituting an offence is the foundation for a conviction and sentence therefor. The conviction in these circumstances under Section 302 and 307 of the Code and sentence of death and transportation for life cannot be maintained unless the Court is satisfied, on the facts of the case, that the accused has not been prejudiced in his trial. Whether or not in such a situation the questioning of the accused during the course of his examination under Section 342 of the Code of Criminal Procedure in relation to the offences under Sections 302 and 307 of the Indian Penal Code can be relied upon as obviating the likelihood of prejudice has to be determined with reference to the facts and circumstances of each case. All the circumstances of the case and the evidence and materials on the record should be looked into on the question arising in such a situation on as to whether a retrial should be ordered or not."

10. The law laid down in that decision is unexceptionable but we consider it wholly unhelpful to the appellants. We do not find any distinction between Kanhaiya's case and that of the other appellants. In Kanhaiya's case one of other charges relates to the offence of Sampat Meena's murder and it refers to the "Offence under Section 302 I.P.C. or in the alternative Sections 302/149 I.P.C.." In the case of the other appellants also there was a specific charge with respect to Sampat Meena's murder under Section 302/149 I.P.C. All the appellants were convicted under Sections 302/149, I.P.C. Surajpal's case is therefore, of no assistance to the appellants.

11. The number and nature of injuries inflicted on the deceased leaves no doubt as to what the intention of the members of the assaulting party was. They must be assumed to have intended the normal and natural consequences of the injuries inflicted by them on their victims. It is note-worthy

in this connection that the High Court only convicted those persons who, it felt, on the evidence on the record, to be participants in the assault on various person who had received injuries in the course of the occurrence. The question whether a person happens to be innocently present at the place where the members of an unlawful assembly have gathered together to prosecute their common object, or is a member thereof sharing their common object is normally one of fact. The conclusion of the High Court on this point has ordinarily to be accepted by this Court and in the absence of serious infirmity in the process of appraising evidence or arriving at the - con-conclusion, resulting in failure of justice, this Court does not, as a rule, proceed under Article 136 of the Constitution, as if it is a court of fact, to review or reappraise the evidence for itself for examining the correctness of the conclusions of the High Court on the credibility and value of the evidence and in the case. This Article without itself conferring a right of appeal on a party, merely reserves to this Court a special discretionary power of interference, which, though couched in wide terms, is to be exercised sparingly and only in exceptional cases where grave and substantial injustice has resulted, by some illegality or material irregularity of procedure or, by violation of rules of natural justice. With respect to none of the counts on which the appellants have been convicted has any case been made out for interference by this Court under this Article. There is no manifest injustice as a result of any disregard of any forms of legal process or of any other grave or serious error.

12. Both the appeals must, therefore, fail and are dismissed.

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