

Lalji And Others

Vs

State of U. P

Criminal Appeal No. 227 of 1983

(K. N. Saikia, JJ)

17.01.1989

JUDGMENT

K. N. SAIKIA, J. -

1. This appeal from the special leave is from the judgment of the High Court of Judicature at Allahabad in Criminal Appeal No. 680 of 1976 dismissing the appeal of the four instant appellants namely Lalji, Mansa, Milkhi and Bhagwati, and upholding their conviction and sentence of life imprisonment under Sections 302/149 and also the conviction of Milkhi with sentence of two years RI under Section 148 IPC and of the other three appellants under Section 147 IPC with sentence of one year RI.

2. The facts are simple. On June 24, 1975 at noon Manju, son of Girdhari Lal, manhandled Chhotey Lal and Mansa, nephews of Minister Lal, after they gave him (Manju) a push. The prosecution version was that Minister Lal with a cans in hand, Chhotey Lal with a kanta, Milkhi and Chainu with spears and others with lathis arrived near Girdhari Lal's house and after an altercation started assaulting Girdhari and Siddhu. The alarm attracted Ram Avtar and Manju who came there. The appellant party started assaulting them also whereupon they retreated to their house but were followed by Minister Lal, Lalji and others of the party. Girdhari Lal and Siddhu died in consequence of the assault. Ram Avtar picked up the loaded gun of his father Girdhari and fired a shot at Minister Lal who fell down dead and by another shot he injured Lalji.

3. The defence version was that Girdhari Lal summoned Minister Lal to his house and the accused persons came with or after Minister Lal. This resulted in a cross-case on Lalji's FIR (Ex. Ka-19). It has admittedly resulted in acquittal.

4. The present case was registered under FIR (Ex. Ka-1) upon the information lodged by Babu Ram son of siddhu at P. S. Maigalganj. Altogether eleven persons, including the appellants herein faced trial. The learned trial court relying on the evidence of the three eye. Witnesses convicted eight and acquitted three of them, namely, Ram Lotan, Kripa Dayal and Barkau. The eight convicted persons were appellants before the High Court in Criminal Appeal No. 680 of 1976. Out of them conviction of four appellants was upheld, while the other four, namely, Shiv Kumar, Chhotey Lal, Munna and Chainu were acquitted by the High Court.

5. The learned counsel for the appellants Mr. R. L. Kohli, senior advocate counters submitting that as out of the eleven persons three were acquitted by the trial court and four were acquitted by the High Court as there was no corroboration in their cases, the position of two of the appellants, namely, Milkhi and Bhagwati remains the same and they must also be similarly acquitted for want

of corroboration.

6. The learned counsel for the State Mr. Prithvi Raj, senior advocate counters submitting that when the appellants have been convicted under Section 302/149 IPC the question of corroboration in case of individual appellant would not arise; and there is enough corroboration in the evidence including medical evidence on record to prove that they were members of the unlawful assembly when the offence was committed.

7. The precise question to be decided in this appeal, therefore, is whether in view of death caused to Girdhari and Siddhu by the unlawful assembly which is punishable under Section 302 with the aid of Section 149 IPC the corroboration as to participation of each individual member of the assembly would be necessary, and if so, whether in the instant case there is such corroboration.

8. Section 149 IPC provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person, who at the time of committing of that offence is a member of the same assembly, is guilty of that offence. As has been defined in Section 141 IPC, an assembly of five or more persons is designated an 'Unlawful Assembly' if the common object of the persons composing that assembly is to do any act or acts stated in clauses 'First', 'Second', 'Third', 'Fourth', and 'Fifth' of that section. An assembly, as the explanation to the section says, which was not unlawful when it assembled, may subsequently become an unlawful assembly. Whoever being aware of facts which render any assembly an unlawful assembly intentionally joins that assembly, or continues in it, is said to be a member of unlawful assembly. Thus, whenever so many as five or more persons meet together to support each other, even against opposition, in carrying out the common object which is likely to involve violence or to produce in the minds of rational and firm men any reasonable apprehension of violence, then even though they ultimately depart without doing anything whatever towards carrying out their common object. The mere fact of their having thus met will constitute an offence. Of course, the alarm must not be merely such as would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness and courage. The two essentials of the section are the commission of an offence by any member of an unlawful assembly and that such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. Not every person is necessarily guilty but only those who share in the common object. The common of the assembly must be one of the five objects mentioned in Section 141 IPC. Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behavior of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.

9. Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and distinct offence. In other words, it created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability of the members of the unlawful assembly extends only to the acts done in pursuance of the common objects of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial. He 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 or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together, armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten victoriously criminal liability under Section 149. It must be noted that the basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge.

10. Thus, once the court holds that certain accused persons formed an unlawful assembly and an offence is committed by any member of that assembly in prosecution of the common object of that assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing of that offence was a member of the same assembly is to be held guilty for that offence. After such a finding it would not be open to the court to see as to who actually did the offensive act or require the prosecution to prove which of the members did which of the offensive acts. The prosecution would have no obligation to prove it.

11. In the instant case after having held that the appellants formed an unlawful assembly carrying dangerous weapons with the common object to violence (as described in the charge) it was not open to the High Court to acquit some of the members on the ground that they themselves did not perform any violent act, or that there was no corroboration of their participation. In other words, having held that they formed an unlawful assembly and committed an offence punishable with the aid of Section 149 IPC, The High Court erred in examining which of the members only did actively participate and in acquitting those who, according to the court, did not so participate. Doing so would amount to forgetting the very nature and essence of the offence created by Section 149 IPC. The court in under serving cases cannot afford to be charitable in the administration of criminal justice which is so vital for peace and order in the society.

12. On the basis of the evidence on record Milkhi and Bhagwati's membership of the unlawful assembly at the relevant time has been satisfactorily established. Both the courts below having held them to have been members of the unlawful assembly, the mere fact that they were not active participants, would be of no avail. It is not open to the court to scrutinize as to whether any member of the unlawful assembly actively participated.

13. In an appeal by persons convicted under Section 302 with the aid of Section 149 IPC, the question whether a particular person was a member of that unlawful assembly at the relevant time may of course be examined; and if it is found from the evidence on record that he was not a member of the unlawful assembly, he could not be convicted with the aid of Section 149. The question to be examined by us in the instant case is whether Milkhi and Bhagwati were members of the unlawful assembly at the relevant time and not whether there was enough corroboration for their individual participation in the commission of the offence.

14. It has not been denied that the names of Milkhi and Bhagwati were mentioned in the FIR (Ex. Ka-1). PW 2 Manju, son of Girdhari, whose presence at the place of occurrence has not been challenged, mentioned Milkhi and Bhagwati among the accused persons with their relationship. He

categorically stated that the two, amongst others, were present at his house beating his father and uncle and chasing him and Ram Avtar. Milkhi according to him had a spear in his hand. Manju denied the suggestion that Milkhi and Bhagwati were standing there on the side of the witnesses. PW 3 Smt. Ram Devi clearly corroborated Milkhi's participation. PW 1 Babu Ram while giving vivid description of the occurrence stated that Milkhi was there in the assembly with spear and Bhagwati with lathi and that all the persons present beat Girdhari and Siddhu. Milkhi also assisted in carrying Minister Lal after he was shot. In reply to the question who beat Manju, he clearly stated that Mansa and Bhagwati beat him with lathi when he was entering the house. DW 2 Lalji stated that at the time of the occurrence Puran, Bhagwati, Kripal etc. had also come. In the FIR (Ex. Ka-19/C. 1) lodged by Lalji on the same occurrence presence of Milkhi and Bhagwati was admitted by him. The submission that they were mere spectators could not be believed.

15. From the above evidence on record it could not be held that Milkhi and Bhagwati were not the members of the unlawful assembly at the relevant time. Whether any specific injury could individually be attributed to them or not could not at all be material. The submission that the two be acquitted on ground of lack of corroboration has, therefore, to be rejected.

16. In the facts and circumstances of the case it is not open to this court to apply the reasoning of the High Court to acquit members of the unlawful assembly for lack of corroboration as to their participation.

17. No other submission was made for the other appellants.

18. In the result, we do not find any merit in this appeal and hence it is dismissed.

19. Appellant Mansa is on bail. He shall surrender to serve out his sentence.

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