

Mukteshwar Rai and Others

Vs

State of Bihar

Bhola Rai Kurmi and Others

Vs

State of Bihar

Criminal Appeal Nos. 459-60 and 458 of 1988

(S. R. Pandian, K. Jayachandra Reddy JJ)

25.09.1991

JUDGMENT

K. JAYACHANDRA REDDY, J. -

1. These are all connected appeals and arise out of the judgment of the Patna High Court in Criminal Appeal Nos. 219 and 231 of 1981. The prosecution case is as follows :

On March 25, 1978 at about 11 a.m. persons of several villages gathered in village Bisharam four miles away from P.S. Dinara in District Rohtas. They were variously armed with rifles, guns, bhalas, lathis etc. and the mob was searching for some persons in the village and the villagers fled in all directions. It is also alleged that the mob set some houses on fire and ransacked them. On receiving information PW 8, a police officer came there and the mob fled. According to the prosecution in all four persons were killed. Two of them got burnt and the other two were not traced. Therefore, according to the prosecution those two must have died or must have been abducted by the mob. The prosecution examined PWs 1 to 12, 14, 16, 18, 22 and 30 as eye-witnesses. After completion of the investigation the charge-sheet was laid. The learned Sessions Judge who tried the case convicted all the appellants under Section 364 read with Section 149, Section 436 read with Section 149 and Section 395 and sentenced each of them to undergo 10 years' RI and all of them were also convicted under Section 302 read with Section 149 IPC and each of them was sentenced to imprisonment for life. Ramdular Rai, A-30 was also convicted under Section 30 of the Arms Act and sentenced to undergo imprisonment for three months. All the convicted accused preferred two Appeal Nos. 219 and 231 of 1981. The State also preferred Appeal No. 42 of 1981 against the acquittal of four of the accused. All the three appeals were heard by a Division Bench of the High Court. Both the learned Judges agreed that the State appeal has to be dismissed and accordingly dismissed the same. So far as the convicted accused are concerned, one learned Judge took the view that they should be acquitted but the other learned Judge disagreed. Therefore the appeals were heard by a third learned Judge. He acquitted six of them. He also set aside the conviction under Section 395 and sentences of 10 years' RI thereunder but confirmed the convictions and sentences of others. The convicted accused have preferred these three appeals against the same common judgment.

2. Shri Kohli, learned counsel appearing for the appellants submitted that there was a big mob and on the basis of mere presence of some of them the conviction cannot be sustained. It is also his submission that the third learned Judge who convicted the appellants has applied a mechanical test namely that if two or three witnesses have identified any of the appellants then they are held to be members of the unlawful assembly. The learned counsel also submitted that if the overt acts attributed to some of the accused are completely disbelieved then on the mere presence all the appellants cannot be held constructively liable for the major offences by the application of Section 149 IPC.

3. We have perused the impugned judgment. The learned Judge has discussed the evidence of all the eye-witnesses and thereafter he has discussed the case against each of the accused and such of those appellants who have been identified by two or more eye-witnesses have been held to be the members of the unlawful assembly. We may observe that so far as the presence of the present appellants are concerned two learned Judges have accepted the prosecution case and after going through the evidence carefully we see no reason to disagree. Therefore the presence of these appellants in the mob is established.

4. Before considering the nature of offences committed by these appellants we may note that the place and time of occurrence are beyond dispute. Likewise the presence of the eye-witnesses also cannot be doubted at all. The fact that several houses were burnt and two persons were charred to death and that some houses were ransacked, is also established. There was sufficient motive because of some of the criminal proceedings under Section 107 etc. Therefore the persons who gathered were members of an unlawful assembly. To this extent we see no hesitation to agree with the findings of the High Court. But the specific overt acts attributed to A-1 and five others who are said to have actively participated in setting the fire and thrown some of the victims into the fire stand disbelieved. It may also be noted that none of the PWs is injured and we find from the judgment of the High Court that none of the witnesses say that any one of these appellants were armed. The learned Judge has extracted the incriminating part in each of the witnesses against these appellants. It stated that these accused were identified by those respective witnesses mentioned therein in discussing the case against each of the accused. There is nowhere any mention that any one of these appellants was armed. In such a situation the question is whether these appellants also had a common object of committing the murder. We have given earnest consideration to this aspect. Taking a general picture of the case and after a close scrutiny of the evidence we find that two persons were charred to death. This must have been the result of setting fire to those houses. With regards the other two missing persons it cannot be concluded that they were murdered in the absence of any iota of evidence. Under these circumstances we find it extremely difficult to hold that a common object of the unlawful assembly was to commit murder.

5. We are unable to agree with the learned counsel that these appellants were mere onlookers. The prosecution case is that mob in which these appellants were present moved into the village. Therefore it is established beyond reasonable doubt that the common object of the unlawful assembly was at least to set the fire punishable under Section 436 read with Section 149 IPC. So in the result the conviction in respect of each of these appellants under Section 302 read with Section 149 IPC and sentence of imprisonment for life are set aside. The other convictions are confirmed. But so far as the sentence under Section 364 read with Section 149 and Section 436 read with Section 149 IPC is concerned, it is reduced from 10 years to 5 years. All the other convictions and sentences are confirmed. With the above modifications these three appeals are partly allowed.

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