

S. P. Sinha and Others

Vs

State of Maharashtra

Criminal Appeal No. 223 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ)

08.04.1992

JUDGMENT

1. There are four appellants before us. They along with 118 others were tried for offences punishable u/ Ss. 147, 148, 302 read with S. 149, 452, 427, 337, IPC. The trial court convicted 37 of them and acquitted the rest. All of them preferred an appeal to the High Court. A Division Bench of the High Court in a very lengthy judgment having discussed the evidence of the eye-witnesses elaborately, confirmed the convictions and sentences of 8 of them and acquitted the rest. An appeal filed by the State was dismissed by the High Court. Out of the 8 convicted accused Jag Mohan (A-45), Pancham (A-77), S. P. Sinha (A-110) and Suraj Pal (A-115) have preferred this appeal. The prosecution case is as follows:

There were rival unions in the colliery town of Majari situated in Chandrapur district in the State of Maharashtra. The colliery was owned before its nationalisation by private owners who employed a work force of about 1200 to 1600 men. In 1973 they were nationalised. Before that a union of the workers was established which was affiliated to INTUC. Accused No. 1 was its founder President while the deceased Pawar was its Vice-President. There were other members of the Committee also. The workers used to pay some subscriptions to the Union. It appears that a section of the workmen were dissatisfied with the running of the union and disputes arose and that the deceased Pawar was heading group of those workers who raised that dispute. Consequently, there was a rift between the President, A-1, Pandey and the deceased, Pawar. There were number of incidents on account of conduct of Pawar speaking against A-1 who was the President. Tension arose in the colliery and the relations became further strained. On the night of 16th/ 17th of October 1973 a meeting was addressed by A-1. In that it is alleged that he asked his workers to remain united. The dispute between the two sections led by A-1 and Pawar was also aired at the level of INTUC President. Some workers were prevented from going to their work by means of force and threats and violence. It became necessary to post S.R.P. battalion in the colliery but later they were withdrawn. On 20-11-1973 witness Nizamuddin went to time office to report for duty. A-93 was working in the time office and there was exchange of hot words between them. Nizamuddin having suffered the humiliation went to Pawar to whom he owed allegiance and reported the incident to him. Some reports were made by Pawar to the authorities. Thereafter a group of 150-200 persons collected from the side of workshop who were armed with variety of weapons and started throwing stones. A group thus collected proceeded towards the

union office shouting slogans. They crossed the railway line and entered the Union office where Pawar was staying. It is alleged that some blows were dealt and Pawar ran away from the Union office into an open space and a crowd of about 120 persons chased him and he was surrounded and was mercilessly beaten resulting in his death. The dead body was carried to the hospital. News was sent to the colliery officers and later police came to know about it. The sub-inspector and other police officers with force proceeded to the colliery. The sub-inspector took up the investigation. He found that number of persons belonging to either group were injured. A report was sent. The crime was registered. An inquest was held over the dead body and the doctor found number of injuries. The injured witness as well as accused persons were treated by the doctor. The accused in general denied the offence.

2. The prosecution mainly relied upon the evidence of 5 witnesses. After screening through the evidence the learned Sessions Judge convicted 37 accused but as stated above the High Court upheld the conviction of only 8 out of which 4 are before us as appellants. We have gone through the voluminous judgment of the High Court carefully. The High Court after discussing the evidence of each of the witnesses formulated certain principles based on the ratio laid down in *Masalti v. State of U.P.*, (1964) 8 SCR 133: (AIR 1965 SC 202). Before doing so the High Court also noticed that most of the witnesses are highly interested and partisan. The High Court also rejected the pleas of the defence that there was a free fight. Regarding the scope of S. 149 and its applicability the High Court at one stage observed thus:

"It is not unusual that persons are attracted by curiosity to an occurrence of assemblage. Merely because they were at the place of the incident would not make them members of the unlawful assembly. Therefore, something more than a mere passive attitude, some positive indication of sharing of the common object of the unlawful assembly or the possibility of imputing knowledge of the likelihood of the commission of offence in the course of the commission of the common object of the assembly to that individual, along with his presence at the time of commission of the offence is a requisite for conviction of any person u/ S. 149, IPC. That is the proper rule to apply and we propose to follow that rule and hold only such persons who are shown to have been members of the unlawful assembly at the time of committing of that offence, to be, vicariously liable."

3. Having set out this principle the High Court on the basis of the identification and mention being made by two or more witnesses, thought fit or safe to convict the 8 accused. So far as the common object of the unlawful assembly was concerned the High Court relied upon the evidence of the witnesses who stated that the crowd was raising slogans 'Mardalo Pawar ko' and on the basis of the injuries found on the dead body held that common object was to commit the murder of the deceased. Therefore, the High Court ultimately concluded that the 8 accused who were convicted were members of the unlawful assembly and therefore liable under S.302 read with S. 149, I.P.C.

4. The learned counsel for the appellants submits that no specific overt acts are attributed to any one of the four appellants and there is nothing to show that they inflicted any of the fatal blows on the deceased persons and that it is difficult to hold that they were members of the unlawful assembly with the common object of attacking the deceased.

5. Having gone through the discussion of the evidence by the High Court we are also of the view that the presence of these witnesses cannot be doubted. The magnitude of the occurrence is such that

even according to the prosecution a large crowd consisting of 200-300 persons marched towards the union office where Pawar was staying. In such a situation as rightly observed by the High Court unless there is a clinching evidence to show that the presence of any of the accused is proved by virtue of his participation he cannot be held to be member of the unlawful assembly sharing the particular object. According to the prosecution there were 3 stages of the occurrence. In the first instance there was a gathering of 200-300 persons and they started marching towards the union office. The next stage is, even according to the prosecution witnesses some of them entered into the union office and inflicted some blows on Pawar the deceased who naturally apprehending danger to his life, ran out of the union office and was running to the open space. Then comes the third stage of the occurrence. According to the eye-witnesses some of the members of the crowd surrounded Pawar who was running and inflicted severe blows as a result of which he fell down. As mentioned above the High Court proceeded to fix the presence of these accused on the basis of their being identified by two or three witnesses and some overt acts committed by them. The evidence of these eye-witnesses shows that these 4 appellants were also in the crowd and they were moving towards the union office. They proceeded to the place where Pawar was staying. These 4 along with some more about 6 or 8 forcibly entered into the union office. Then inside the office what has happened is not known except omnibus allegations that all of them beat Pawar. Only Ramesh, one witness, only states that A-45 dealt a blow with a stick. However, the evidence is to the effect that the deceased did not receive any serious injury inside the union office. They have deposed that Pawar managed to escape and ran away from the office. It is only when he was in the open space some members of the crowd surrounded and attacked him and dealt the fatal blows. It may be mentioned that these 4 appellants or the other 4 who were convicted by the High Court are not named to be the assailants in the group which inflicted injuries on the deceased in the open space. It must also be noticed in this context that a number of accused had also received injuries. Taking an overall picture of the occurrence we are of the view that a rioting took place during the course of which the attack on Pawar also took place in the manner stated above. Therefore, it is difficult to hold that all the persons who were in the crowd or who were running towards the union office had the common object of committing the murder of the deceased. Taking each stage of the occurrence into consideration and if the same is considered in the background the persons who entered and ran towards the union office and if some of them entered the union office dealt some stick blows it cannot also be held all of them had the common object to kill the deceased. The circumstances show it is only during the third stage by the time of which some of the accused have also received the injuries, unlawful assembly developed a common object of inflicting fatal blows on the deceased and this occurrence took place in the open space while the deceased was running away. Taking all the circumstances into consideration the appellants and the 4 other convicts who are identified among the group of persons who entered in the union office cannot be said to have shared the common object of the group which later surrounded and attacked the deceased. No doubt, on the deceased, the doctor found about 18 injuries. But all of them were contusions which could have been caused by sticks. Each of them is not fatal. It may be that the persons who entered into the union office caused only simple injuries and one of them might have caused grievous injury. Otherwise it would not have been possible for the deceased to run into the open space which is at a distance. In this view of the matter, we find it difficult to hold that the 4 appellants and the 4 other convicted accused by the High Court shared the common object of committing the murder of the deceased. Consequently we set aside the conviction of the appellants u/ S. 302 read with S. 149, IPC. Instead we convict them u/ S. 326 read with S. 149, IPC and sentence them to undergo 5 years R.I. So far as S. P. Sinha (A-110) is concerned we find from the record that he is aged above 80 years and he was also in Jail for about 2 years. Therefore, while convicting him u/ S. 326 read with S. 149, IPC we reduce his sentence to the period already undergone. The convictions and the

sentences awarded under other charges are confirmed.

6. The appeal is accordingly disposed of. Order accordingly.

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