

Lala Ram and others

Vs

State of M.P.

Criminal Appeal No. 809 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

23.07.1992

JUDGMENT

1. This is an appeal filed under S. 379 of the Code of Criminal Procedure, 1973, read with S. 2(a) of the Supreme Court Enlargement of Criminal Appellate Jurisdiction Act, 1970. The five appellants figured as A- 1 to A-4 and A- 11 in the trial Court. A-1 and A-3 are sons of A-2. A-2 and A-4 are real brothers.

2. Before the trial Court the prosecution case was that these five appellants along with nine others formed an unlawful assembly, on 22-11-71 with the common object of abducting Smt. Shanti. wife of A-1 and to cause the death of the deceased Amrit Lal. Among them A-1 and A-3 were armed with guns. It is alleged that A-1 shot at the deceased as a result of which he died on the spot. A-3 shot into the air. During the course of the same transaction A-4 is alleged to have caused an injury to one Harcharan, a prosecution witness. The plea of the accused was one of denial. They, however, pleaded that they had gone to fetch Smt. Shanti (D.W. 1 wife of A-1) not forcibly but on her own invitation and that A-1 and A-4 were attacked by deceased Amrit Lal and his party and, therefore, in scuffle the gun went off killing the deceased. They also took the plea that the act of A-1 even if believed would amount to exercise of the right of self defence. It must be noted that Smt. Shanti figured as defence witness and gave a version in support of the defence. The prosecution, however, relied on the evidence of other eye-witnesses. The trial Court accepted the prosecution evidence to a large extent. It, however, held that A-1 acted in exercise of the right of self-defence and he did not exceed the same. In that view of the matter it acquitted all the accused. The State preferred an appeal. In the appeal a Division Bench of the High Court accepted the prosecution case that the accused formed an unlawful assembly and in prosecution of the common object A-1 shot at the deceased and A-4 caused an injury to Harcharan; A-3 shot twice but did not cause any injury to anybody. The High Court further held that A-1 by firing second time, attempted to commit the murder of one Mukhtiyar Khan. The High Court held that the others did not share the common object and they were not the members of the unlawful assembly. In that view of the matter the High Court acquitted the other accused. The High Court convicted A-1, Lalaram under S. 302, I.P.C. simpliciter and sentenced him to undergo imprisonment for life and also under S. 307, I.P.C. to suffer five years R. I. A-2 Kamarlal is convicted under S. 302 read with S. 149, I.P.C. and sentenced to imprisonment for life. A-3 Panna Lal is convicted under S. 302 read with S. 149, I.P.C. and sentenced to imprisonment for life and also under S. 307, I. P.C. to suffer five years R. I. A-4 Bharosi is convicted under S. 323, I.P.C. and sentenced to six months R.I. and also under S. 302 read with S. 149, I. P.C. and sentenced to imprisonment for life. A-11 Mangilal is convicted under S. 302 read with S. 149, I.P.C. and sentenced to imprisonment for life.

3. Learned counsel for the appellants submitted that admittedly Smt. Shanti D. W. 1, who is the wife

of A-1, was in the house of the deceased Amrit Lal who is no other than her brother and the only inference that can be drawn is that she was not forcibly taken away and, therefore, the Sessions Court was right in observing that the accused had a right to rescue her and when they were attacked by the deceased and others they had a right of private defence and they did not exceed the same. We are unable to agree so far as A-1 is concerned. The findings of both the Courts below are to the effect that he shot at the deceased Amrit Lal and caused his instantaneous death and again he also fired at the prosecution party but that did not cause any damage. So far as A-3 is concerned, both the Courts below have held that he fired two shots. The overt acts of the other accused namely A-2, A-4 and A-11 are also held to be proved.

4. The next important question is whether all these five accused had the common object of causing the death of the deceased Amrit Lal. The evidence on record is to the effect that the accused were interested in taking back Smt. Shanti who is no other than the wife of A-1 but unfortunately there was a scuffle and during that scuffle A-1 intentionally shot at the deceased. From this, we find it difficult to hold that others also had common object to cause the death of the deceased. Having gone through the evidence carefully we are of the view that the common object of the unlawful assembly was only to take away Smt. Shanti, if necessary, by force, The act of A-1 in causing the death of the deceased by firing at him was his individual act and, therefore, he would be liable for punishment under S. 302, I.P.C. simpliciter. The others are convicted by the High Court under S. 302 read with S. 149, I.P.C. by holding them constructively liable. In this case we are unable to say that the second limb of Section is attracted namely the other accused had knowledge that A-1 was likely to cause the death of the deceased as mentioned above. Unfortunately this incident happened between the two families who are closely related to each other when A-1, the husband, and his family members wanted to take away Smt. Shanti D.W. who is no other than the wife of A-1. Under these circumstances we alter the convictions of the appellants and sentences as follows.

5. The conviction of A-1 under S. 302, I.P.C. and the sentence of imprisonment for life are confirmed. His conviction under S. 307 and the sentence thereunder are also confirmed. The conviction of A-3 under S. 307 is also confirmed. From the records it appears that he was in jail for more than two years both during the trial and also after his conviction till he was released on bail. Therefore, the ends of justice would be met if his sentence is reduced to the period already undergone and in addition impose a fine of Rs.1,000/-. His conviction under S. 302 read with S. 149, I.P.C. and sentence of imprisonment for life are set aside.

6. The conviction of A-2 under S. 302 read with S. 149, I.P.C. is set aside and he is acquitted. Likewise the conviction of A-4 under S. 302 read with S. 149, I.P.C. and sentence of life imprisonment are set aside. However, his conviction under S. 323, I.P.C. and sentence of six months' R. I. are confirmed. Since he has already suffered the sentence he shall be set at free.

7. Now coming to A-11 he is convicted only under S. 302 read with S. 149, I.P.C. and there is no other conviction and for the above reasons he is also acquitted of the charge. In the result the convictions and sentences of A-2 and A-11 are set aside and they are completely acquitted. The convictions of A-1 and sentences awarded to him are confirmed and these are to run concurrently. The conviction of A-4 under S. 302 read with S. 149, I. P.C. and sentence of life imprisonment are set aside and the other convictions under S. 323, I.P.C. are confirmed and the sentence as indicated above is reduced to the period already undergone. So far as A-3 is concerned his conviction under S. 307, I.P.C. is confirmed but sentence is reduced to the period undergone, but he shall, however, pay a fine of Rs. 1,000/- or in default to suffer three months' R. I.

8. The bail bonds of A-2 and A-4 and A-11 are cancelled and they shall be set at liberty forthwith.
9. A-1 has to surrender before the concerned authority to serve out the sentences.
10. The appeal is disposed of accordingly. Order accordingly.

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