Ansaram Rambhau Yelve and others

Vs

State of Maharashtra

Criminal Appeal Nos. 822A-825 of 1985

(M. K. Mukherjee, B. N. Kirpal JJ)

12.02.1996

JUDGEMENT

M. K. MUKHERJEE J.

1.Eleven persons, including the eight appellants in these appeals, were indicted before the Sessions Judge, Beed in Sessions Case No.82 of 1982 for rioting and murders and other allied offences in prosecution of their common objects. The trial ended with an order of conviction and sentenced under Section 325/149, 324/149, 323/149, 147 and 148 IPC recorded against all of them and also under Section 304 (Part I) IPC against two of them namely, Bajirao and Dagdu and of acquittal in favour of the other three. The cross case instituted against some of the witnesses of the above trial and others, for rioting and assault, which was also tried by the Sessions Judge (Sessions Case No.9 of 1983) however ended in an order of acquittal of all the persons arraigned. Against their convictions and sentences the appellants preferred two appeals one by Bajirao and Dagdu and the other by the rest. The respondent-State of Maharashtra also preferred an appeal against the acquittal of the appellants in respect of the charge under Section 302/149 IPC. A revision petition assailing the acquittal of the accused persons in the cross case was also filed by the appellant Ansaram. All the above matters were heard together by the High Court and disposed of by a common judgment by allowing the appeal of the State and dismissing the other two appeals and the criminal revision petition. While allowing the appeal of the State, the High Court convicted all the appellants under Section 302/149, 324/149 IPC and sentenced them to different terms of imprisonment, including life, and fine, with a direction that the substantive sentences shall run concurrently. The High Court also convicted five of the appellants under Section 148 IPC and the other three under Section 147 IPC but no separate sentence was passed for these convictions. The present appeals have been filed by the appellants, in different sets, under Section 379 Cr. P.C. and Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 assailing the above judgment of the High Court.

2. We may at the outset point out that Mr. Lalit, the learned counsel appearing on behalf of the appellants fairly conceded that one of these appeals, namely, Criminal Appeal No.825 of 1985 which has been filed by the appellant Ansaram challenging the dismissal of his revision petition against the order of acquittal in the cross case could not have been filed either under Section 379, Cr. P.C. or Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. We, therefore, dismiss Criminal Appeal No.825 of 1995 as not maintainable.

3. Before we proceed to consider the facts on which the parties have joined issue, we may refer to those which remain uncontroverted. The appellants Bajirao, Ansaram, Dadarao, Sarjarao and Haribhau are real brothers being sons of late Rambhau Yelve. Of the other three appellants, Dagdu is the son of Haribhau, Mantaram is the son of the mother's sister of Bajirao and Achit is the servant

of Dadarao. The sons of Rambhau (hereinafter referred to as the 'Yelves') own survey No.313 of village Gujarwadi. To the adjoining north of this land is Survey No.312, the eastern most strip of which measuring 100' x 40', was jointly owned by Gana, his son Sopan (the two deceased) and Nivrutti (P.W.11), nephew of Gana. To the immediate west of that strip of land are the strips of Dagdu, Devaibai and Vithal (P.W.1), in that order. Vithal also owns a small strip of land adjoining Gana's land on the north. In between the lands of Yevles and Gana runs a small Nala which is about 10 feet wide. On the southern bank of the Nala, that is, on the northern bank of the land of the accused there is a thick cactus growth.

4. According to the case of the prosecution even though the land under the Nala was exclusively owned and possessed by Gana, his son and nephew the accused persons were disputing his such claim and on August 16, 1982 they uprooted cactus plants along 12 feet and replanted them on the southern bank of the Nala, apparently for extending the boundary of their land.

5. The prosecution version as regards the incident of the murderous assault is that on the following day, that is, on August 17, 1982 at or abouut 7 a.m., Gana, Sopan and Nivruti (P.W.11) went to their land to see the damage done by the accused persons on the previous day. While they were engaged to inspecting removal of the plants, the accused persons came there variously armed. While five of them (who are amongst the appellants herein) were armed with axes the rest were armed with sticks. Reaching there they surrounded Gana and Sopan and started beating them with their respective weapons. The two victims raised alarms and hearing the same Vithal (P.W.1), Jalinder (P.W.2), Narayan (P.W.3), Eknath, Devaibai and Appa who were present in their respective lands nearby rushed to the scene. Three of them, namely, Nivrutti, Jalinder and Eknath were also beaten up by the accused. Gana and Sopan who had in the meantime fallen down on the bed of the Nala were then removed by the accused to the common bandh nearby where they were further assaulted resulting in instant death of Sopan and death of Gana a few hours later. Information about the incident was given to the police by Vithan (P.W.1) and on that information a case was registered against the accused persons which ultimately ended in a charge sheet.

6. The accused persons pleaded not guilty to the charges levelled against them and their defence was, as it can be gathered from the first information Report lodged by appellant Ansaram (which gave rise to the cross case), the statements made by them in their examination under Section 313, Cr. P.C. and the suggestions put to the prosecution witnesses, that the Nala in question did not exclusively belong to the deceased but was in possession of both the parties. On August 16, 1982 the two deceased and Nivrutti had tried to uproot the cactus plants from the boundary of their land, but owing to the resistance offered by the servants and the ladies of their household they had fled away. As regards the incident of August 17, 1982 their version was that the appellants Bajirao and Ansaram had gone to their field to see the damage done to their cactus growth and the appellants Dagdu and Achit had taken bullocks to the field for grazing. Reaching there they found Gana, Sopan, Nivrutti, Eknath and Julinder present in their land armed with axes and Gana cutting cactus from the boundary of their land. When Bajirao remonstrated with Gana as to why he was cutting the cactus the later threatened them with dire consequences. Thereupon Gana and Sopan started assaulting Bajirao and Ansaram with axes. When the other two appellants present there rushed to their rescue Sopan, Eknath,Nivrutti and Jilinder joined Gana in the assault. In the melee that ensued Bajirao and Dagdu snatched the axes from the hands of Eknath and Nivrutti threw them there and straightaway went to the police station were Ansaram lodged information, the other four appellants denied their presence at the time of the incident and contended that they had been falsely implicated.

7. On consideration of the evidence adduced during trial the learned trial Judge held that the bed of

the Nala along its entire width belonged to and was in actual possession of the two deceased only and that the appellants had nothing to do with it. Regarding the incident of August 16, 1982 the learned Judge held that the appellants had tried to uproot a part of their own cactus growth and shifted it towards the north. So far as the main incident of August 17, 1982 was concerned the learned Judge held that the appellants had formed themselves into an unlawful assembly to prevent the two deceased and their party from restoring the previous position of the cactus growth and, therefore, it could only be said that common object of that assembly was to cause injuries and not to commit murder. In negativing the plea of right of private defence claimed by the appellants, the learned Judge observed that neither side had presented the true version of the incident before the Court. In conclusion the learned Judge constructed his version of the incident which is reproduced below :

> "It is therefore on the basis of the above discussion it is acceptable that the eight accused Nos.1 to 4 and 7 to 10 (the appellants) had participated in this maramari. They had gone there to see that the deceased do not uproot the cactus. Hence they had assembled there for this purpose. When the deceased and others came there was a verbal altercation. So at this time these accused persons would have the common object of preventing Gana or Sopan from uprooting the cactus. Thereafter the exchange of words developed into Maramari. Thus these accused had participated in the Maramari with an object to prevent Gana and Sopan from uprooting the cactus. Thus it can be accepted that the assembly had assaulted Gana, Sopan, Nivrutti, Eknath and Jalinder to prevent them from uprooting the cactus. It can also be accepted that the injuries to these five injured persons were caused by the members of this unlawful assembly while trying to achieve their object of preventing Gana and Sopan from uprooting the cactus. Also from the earlier discussion it can be accepted that initially only the Maramari with sticks took place. Therefore from these circumstances accused can be accepted to have the common object of the assembly of heating with sticks and causing injuries with sticks. It can therefore be accepted that when Gana, Sopan, Nivrutti, Eknath and Jalinder resisted and had also caused injuries to accused Nos. 1 to 4 including injuries with sharp edged weapon, the accused Nos. 1 to 3 used axes. Hence under these peculiar circumstances it is difficult to accept that the common object to the assembly was to cause injuries which would be sufficient in normal course of nature to cause death. This is made more clear because only one incised injury is caused to Gana and only the incised injuries are caused to Sopan on his head. One incised injury is caused to the area of Sopan. This therefore makes out that the intention of the common object of the assembly could not have been to cause death of Sopan or Gana otherwise there would have been numerous incised injuries".

8. In disagreeing with the ultimate order of the trial Judge the High Court first referred to the patent legal infirmities appearing therein. It first pointed out that not only the conviction recorded against all the appellants both under Section 147 and 148, I.P.C. was legally impermissible but the learned Judge did not even care to ascertain whether a particular appellant was carrying a deadly weapon before invoking the later Section. The High Court then noticed that the trial Judge had given the benefit of the Fourth Exception to Section 300, I.P.C. to appellants Bajirao and Dagdu in utter disregard of the provisions thereof and made the following observations :

> "On reading it, even a laymen would realise that for attraction of the exception a number of conditions must be fulfilled. The death ought to be caused in a sudden

fight, without premeditation, in that heat of passion, upon a sudden quarrel. Then the offender should not have taken any undue advantage or acted in a cruel or unusual manner. We may repeat that the two deceased had each sustained more than a dozen of injuries. It is common ground that the dispute between the two sides over the Nala, had been shouldering for a number of years. The learned Judge expressly holds that the accused persons had appeared on the scene of 17th with the avowed object of resisting by force any attempt on the part of Gana and party, to restore the cactus hedge to its original place. It is difficult to appreciate how a fight arising in these circumstances could be legitimately termed as a fight without premeditation or in a heat of passion or upon a sudden quarrel".

The High Court next held that the appreciation of the evidence by the trial Judge was, to say the least, superficial and ambivalent and to draw such conclusions it referred to various observations made by him. The High Court then proceeded to discuss the evidence and on such discussion held that the finding of the trial Court that the land under the Nala exclusively belonged to and was in possession of Gana and that the appellants had no right to it, possessory or proprietary was correct and, consequently the appellants had no right of private defence of property. The next question which the High Court posed for an answer was whether the appellants could claim right of private defence of their persons in the context of the fact that four of them had sustained some injuries in the incident. To answer this question, the High Court discussed the evidence of the eye-witnesses and held that having regard to the fact that on August 16, 1982 the accused persons had uprooted the cactus and thorny fencing, it was evident that their object was to consolidate the encroachment of Gana's land right up to northern bank. Judged in that background, it could be safely concluded that when on the following day they came armed with axes and sticks and inflicted 40 injuries on their adversaries, they were the aggressors. As regards the injuries found on the person of the accused the High Court observed that they were minor and superficial and the evidence on record was so clear and cogent to prove that the appellants were the aggressors that it far outweighed the effect of the omission on the part of the prosecution to explain the injuries. In making the above observations the High Court drew inspirations from the judgment of this Court in Lakshmi Singh v. State of Bihar, AIR 1976 SC 2263 and Ramlagan Singh v. State of Bihar, AIR 1972 SC 2593. Lastly the High Court took up the question as to what was the common object of the unlawful assembly which caused the death of Gana and Sopan and injured others. The finding of the High Court in this regard is as under:

"The extent of violence indulged in by them and the damage brought on Gana and party, leaves no doubt about the common object of the Assembly. Needless to say, it was to commit murderous assault on Gana and his associates. The lower Court has resorted to a strange reasoning for its conclusion that the common object was restricted to causing ordinary injuries only. The learned Judge observes that had the accused persons really intended to commit murderous assault, then they would not have spared lives of Jalindar, Eknath, Nivrutti, Vithal, his brother Munja, Devalibai who had come to the rescue of the deceased. The learned Judge also feels that if the common object was to commit murder, the assailants would have dealt greater number of axe blows on the heads of the deceased and other victims of assault. We cannot persuade ourselves to endorse this queer reasoning. The learned Judge is pegging his standards too high, when he thinks that the assembly would have killed

> all eight persons or at least used their axes more liberally than they actually did, if the common object was to mount a murderous assault. We reiterate our finding that the performance of the assembly is spectacular enough to credit them with the common object of committing murderous assault. As the barest minimum, the members did know that it was quite likely that in an assault by a group of eight armed with axes and sticks, the offence of murder could be committed. The latter part of Section 149, I.P.C. also stands squarely attracted".

9. We have heard the learned counsel appearing for the parties and have considered the judgments in the light of the evidence on record. In view of the concurrent findings of the learned Courts below, that the deceased were the owner and in possession of the land under the Nala and that the appellants had no right, title, interest or possession therein it must be held that the appellants were not entitled to any right of private defence of property. As regards the manner in which the incident took place the prosecution rested its case upon the evidence of Vithal (P.W.1), Jalinder (P.W.2), Narayan (P.W.3), Eknath, Nivrutti, (P.W.11). Their claim that they had witnessed the incident stands corroborated by the fact that they were named as the rioters in the counter case. The fact that Nivrutti (P.W.11), the Jalinder (P.W.2) sustained injuries in the incidents also goes a long way in support of the probative value of their evidence. Their evidence unmistakably proves that the appellants had come to the field armed with axe and lathis and attacked the complainant party without any provocation whatsoever. When their evidence is read along with the medical evidence that the injuries sustained by the four accused were minor and superfluous, it cannot but be said that the finding of the High Court that the appellants were the aggressors and therefore, they had also no right of private defence of person is unexceptionable.

10. Coming now to the question as to what was the common object of the unlawful assembly it is evident from the circumstances leading to the incident, the manner in which it took place, the weapons used and the nature, number and location of the injuries inflicted upon the two deceased that the appellants had come to the field for murderous assault. The High Court was, therefore, fully justified in reversing the finding of the trial Court in this regard and holding that the appellants shared such a common object.

11. Mr. Lalit brought to our notice quite a few omissions in the police statements of the eye-witnesses as regard the individual role played by the appellants in the assault. Having carefully gone through those omissions we are unable to hold that they are material omissions, for they related only to the actual portions of the body where the individual appellants inflicted the blows and not to their participation in the assault itself. Mr. Lalit also strenuously argued before us that even if the entire prosecution case was accepted the appellants, Bajirao and Dagdu who assaulted the deceased with axes could only be held liable under Section 302 read with Section 34 of the Indian Penal Code for they might have the common intention to cause the death of the two victims but it could not be said that all the members of the unlawful assembly shared such a common object as they had only used sticks for which they could be liable under Section 325 or 323, I.P.C. with the aid of Section 149, I.P.C. We do not find any substance in this contention for the evidence on record clearly shows that it was only after the two deceased were assaulted with axes by the two appellants that the other appellants started beating them with lathis resulting in a number of injuries, which according to the doctor could be caused thereby including fractures; and that clearly indicates that they also wanted to ensure their deaths.

12. On the conclusions as above we do not find any merit in these appeals, which are accordingly dismissed. The appellants, who are on bail, will now surrender to their bail bonds to serve out the

remainder of the sentence. Appeal dismissed.