

Ramashish Yadav and Others

Vs

State of Bihar

Criminal Appeals Nos. 719-22 of 1999

(D. B. Pattanaik, N. Santosh Hegde JJ)

09.09.1999

ORDER

1. Seven accused appellants who were tried along with 6 others for having committed an offence under Section 302/149 and some other of offences were ultimately convicted by the learned Sessions Judge under Sections 302/149 and were sentenced to rigorous imprisonment for life for having caused the murder of Mundrile and Ram Tapeshwar Yadav. Out of the 13 accused persons who were convicted by the learned Sessions judges, one expired after the judgment of the learned Session Judge. The High court considered the case of all the accused persons who stood convicted buy the learned Sessions judge and acquitted 5 of them but maintained the conviction of the rest 7 under sections 302. 302.149, 302/34 and other offences and as such these appeals are by the 7 appellants. According to prosecution case these accused persons were ploughing the land claiming the land to be theirs on the date of occurrence and some of the accused persons had a gun while some other had weapons like gandasa and lathis. When the informant and some others belonging to his party went and protested as to why they were ploughing the land belonging to the informant the accused persons asserted that it was their land, therefore, the would continue to plough the land in question. On this score there was some altercation and then accused Ram Das Yadav brought out the gun and fired which hit Mundrika and Mundrika died at the spot. Two other accused persons, namely, Ram Pravesh Yadav and Ramanand Yadav suddenly came and caught hold of Tapeshwar Yadav belonging to the complainant party and at that point of time Samundar Yadav and Sheo Layak Yadav came with gandasa in their hand and gave blows on the head of Tapeshwar by means of gandasa. The informant was caught hold of by Ramanand Yadav, Sukhdeon Yadav, Sheo Layak Yadav and Ram Ishwar Yadav who has already dies, gave a lathi-blow on the wrist and Ramanand Yadav gave a chhura-blow. On the basis of information given by PW 1, the police started investigation and submitted the charge-sheet, as already stated. The prosecution case is sought to be proved through the evidence of the 3 eyewitnesses PW 1, 3 and 4. The learned Session judge relying upon the evidence of the aforesaid eyewitnesses came to hold that all the accused persons formed an unlawful assembly and in furtherance of the common object of the said assembly accused Ram Das Yadav had fired the gun as a result of which Mundrika died and, therefore, convicted all of them under Section 302/149. Accused Ram Das Yadav who had fired the gunshot was convicted under of the three eyewitnesses PWs 1, 3, and 4 and came to the conclusion that their evidence can be relied upon which finds corroboration from the evidence of the doctor. The High Court further came to the conclusion that their evidence can be relied upon which finds corroboration from the evidence of the doctor. The High Court further came to the conclusion that there is satisfactory and convincing evidence on record to establish that Mundrika Yadav had been shot t by Ram Ishwar Yadav and Ramanand Yadav but since the witnesses had not scribed any positive role to accused Rajeshwar Yadav, Chandeshwar Yadav, Devi Dayal Yadav, Rajendra Yadav and Sonadhari Yadav, they cannot

be held to have Shred the common object of assaulting or killing persons who became the victim of the occurrence and accordingly held them to be not guilty of any offence and acquitted them of the charges. But so far as the five appellants are concerned, the High Court held them guilty of the offence under Section 302/149 IPC, and affirmed the sentence of imprisonment for life. The High Court also held accused Samundar Yadav and Sheo Layak Yadav to be guilty of offence under Section 302/34 IPC for having caused the murder of Tapeswar Yadav's conviction under Section 325 for two years was upheld. So far as the conviction of the accused Ramanand under Section 307 IPC is concerned, the High Court set aside the same and instead convicted him under Section 325 for causing grievous injury to the informant and sentencing him to undergo RI for two years was upheld. So Far as the conviction of the accused Ramanand under Section 307 IPC is concerned, the High Court set aside the same and instead convicted him under Section 324 IPC and sentenced him to undergo to undergo RI for one year. The sentences were directed to run concurrently.

2. It is contended by the learned counsel for the appellants that even taking the prosecution case in full on the evidence of PWs 1, 3 and 4 only Ram Das Yadav can be convicted under Section 302 who had fired the gun and Mundrika died on account of the gunshot injury and the two others who gave the gandasa- blows on Tapeswar can be convicted under Sections 302/34. But the two other who caught hold of Tapeswar as well as two others who caught hold of Tapeswar as well as two other appellants who never assaulted either Mundrika or Tapeswar who had caused the injury on PW 1 could not have been convicted under Section 302/149. Mr. B. B. Singh, appearing for the State of Bihar, on the other hand, contended that the very fact that the accused persons when there with arms in their hands and then after the informant party went and challenged them, there was an exchange of words and then they started assault as a result of which two people died, it must be held that all of them had the common object and could be held liable by taking recourse to Section 149. In the alternative he argued that at least those who caught hold of the deceased who facilitated the other two accused persons to give the gandasa-blow on Tapeswar would be liable under Section 302/34. To appreciate the contentions of Mr. Singh we have scrutinised the evidence of PWs1, 3 and 4. From the evidence it transpires that the accused persons had gone to the field and were ploughing. Obviously, at that point of time it cannot be said that they constituted and unlawful assembly within the meaning of Section 141 of the India Penal Code inasmuch as it has not been established by the prosecution that they had one of the five specified objects enumerated in Section 141 IPC as their common objects. Mr. B. B. Singh, however, relied upon the explanation to Section 141 and contended that an assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly. There is no dispute with the aforesaid preposition. But from the evidence of PWs 1, 3 and 4, it is difficult for us to conceive that at any letter point of time the accused persons can be said to have nurtured one of the five specified objects as their common objects. This being the position and in the absence of establishing the fact that the accused persons constituted unlawful assembly, their conviction by taking recourse to Section 149 IPC is unsustainable. Section 149 postulates and assembly of five or more persons having a common object namely, one of those named in Section 141 and then the doing of acts by members of the assembly, conviction of the appellants under Section 149 IPC cannot be sustained. We accordingly set aside the conviction of the appellants under Section 302/149 IPC. But so far as the accused Ram Das Yadav is concerned, the witnesses being Mundrika died and medical evidence corroborates the same, he is convicted under Section 302 IPC and sentenced to imprisonment for life.

3. Coming to the question of applicability of Section 34 for the Murder of Tapeswar, we find from the evidence of the three eyewitnesses that while Ram Pravesh Yadav and Ramanand Yadav caught hold of Tapeswar, accused Samundar Yadav and Sheo Layak Yadav came with gandasa and gave blows on the head of Tapeswar, as a result of which Tapeswar died. Section 34 lays down a

principle of joint liability in the doing of a criminal act. The Essence of that liability is to be found in the existence of common intention animating the accused leading to the doing a criminal act in furtherance of such intention. The distinct feature of Section 34 is the element of participation in action. The common intention implies acting in concert, existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. It requires a pre-arranged plan and it presupposes proper concert. Therefore, there must be prior meeting of minds. The prior concert or meeting of minds may be determined from the conduct of the offenders unfolding itself during the course of action and the declaration made by them just before mounting the attack. It can also be developed at the spurt of the moment but there must be pre-arrangement or premeditated concert. This being the requirement of law for applicability of Section 34 IPC, from the mere fact that accused Ram Pravesh Yadav and Ramanand Yadav came and caught hold of Tapeshwar, whereafter Samundar Yadav and Sheo Layak Yadav came with gandasa in their hand and gave blows by means of gandasa, it cannot be said that the accused Ram Pravesh Yadav and Ramanand Yadav shared the common intention with accused Samundar Yadav and Ramanand Yadav cannot be held guilty of the charge under Section 302/34 IPC but accused Samundar Yadav and Sheo Layak Yadav did commit the offence under Section 302/34, avenge assaulted deceased Tapeshwar on his head by means of gandasa on account of which Tapeshwar died. The accused Ram Pravesh Yadav and Ramanand Yadav are, therefore, acquitted of the charges levelled against them and they be set at liberty forth with. So far as the two other appellants are concerned, namely, Ramashish Yadav and Sukhdeo Yadav, they have merely caused injury they can only be convicted under Section 324.34 IPC and are sentenced to imprisonment for two years, But they have already been in custody for more than seven years by now, they should also be set at liberty forth with. In the net result, therefore, the conviction of appellant Ram Das Yadav under Section 302 IPC and sentence of imprisonment for life is upheld and his appeal stands dismissed. Conviction of appellants Samundar Yadav and Sheo Layak Yadav under Section 302/34 IPC and sentence of imprisonment for life in upheld. Appeal by them, therefore, stands dismissed. Accused Ram Pravesh and Ramanand are acquitted of the charges and be set at liberty forthwith. Accused Ramanand are acquitted of the charges and be set at liberty forthwith,. Accused Ramashish Yadav and Sukhdeo Yadav are convicted under Sections 324/34 IPC and sentenced to two years' RI and since they have already been in custody for more than seven years, they are directed to be set at liberty forthwith.

4. The appeals are disposed of accordingly.