SUPREME COURT OF INDIA

Umesh Singh

Vs.

State of Bihar

Crl.A.Nos.824-825 of 1998

(S. Rajendra Babu and Y. K. Sabharwal, JJ.)

10.05.2000

JUDGEMENT

RAJENDRA BABU, J.:-

1. On a report made by Jugeshwar Singh (PW-7) alleging that the appellants herein along with several other persons numbering about 20 came to 'Khalihan' (threshing floor) of Bhola Singh where he and other members of his family were threshing paddy. They tried to take away the paddy. Upendra Singh threatened that any resistance would be met with such action which might even result in death. Thereafter Rajendra Singh hit Bhola Singh with a lathi and Upendra Singh moved backward and fired at Bhola Singh with gun as a result of which Bhola Singh was hit and fell down writhing in pain. Saryu Singh was shot at by Rajendra Singh and Bhagwat Dayal Singh, who was also inflicted a bhala blow by Arvind Singh, appellant in the connected matter. Umed Singh and Sheonandan Singh fired at Rajdeo Singh as a result of which he fell down. When Dharmshila, wife of Bhola Singh reached the threshing floor with her child aged about one and half years old in her arm named Rinku, Sheonandan Singh snatched the child and threw the child on the ground as a result of which the child died. After investigation, the police submitted a charge-sheet against seven persons named in the FIR as three of them had died during the pendency of the investigation. The trial Court convicted Sheonandan Singh and Upendra Singh under Section 302, I.P.C. and sentenced

them to death, one of the accused - Satyendra Singh, was acquitted and rest of the accused persons were convicted under Section 302, I.P.C. read with Section 149 and sentenced for life imprisonment. They were further convicted under Section 324 read with Section 148, I.P.C. and under Section 27 of the Arms Act. On appeal to the High Court conviction was maintained while sentence of death on Sheonandan Singh and Upendra Singh was reduced from one of death of life imprisonment thereafter. Appeals have been preferred before this Court.

2. In the appeals before us, two of the accused are in appeal in Crl. A. Nos. 824-825 of 1998 while in the connected appeal Crl. A. No. 659/99, Arvind Singh and Bipin Singh have filed appeals. However, Bipin Singh not being able to surrender his appeal has been dismissed.

3. In the appeals of Umesh Singh s/o Sheonandan Singh and Rajendra Singh s/o Pragash Singh, Shri U.R. Lalit, learned senior advocate for the appellants, considering the fact that there are four witnesses (who were injured) and two eye witnesses to the incident and their evidence has been believed by the two Courts below, did not pitch their cases too high but confined his arguments only to certain probabilities arising even accepting the evidence tendered before the Courts below on the basis of the acts attributed to the appellants. His submission is that while Rejendra gave a blow to deceased Bhola Singh with a lathi, he could not have intended his death and the act attributed to Umesh Singh is that he fired at Rajdeo Singh and no doctor has been examined with reference to the injuries inflicted upon Rajdeo Singh but only after post-mortem examination took place, a doctor has been examined. He addressed an argument that the common objective was only to take away paddy from the threshing floor and it was not that it should be one to cause injuries much less than death to anyone. If that is so, they could not be attributed vicarious liability punishable under Section 149, I.P.C. and when Rajendra Singh gave blow with lathi to Bhola Singh, he could not be stated to be intending to cause death of Bhola Singh and the gun which is stated to have been used by Umesh Singh has not been recovered. The medical evidence tendered also is not very clear in this regard to support the case of the prosecution as to the manner in which the incident has taken place. The fact remains that Rajendra Singh attacked with lathi and the injuries were sustained by Bhola Singh. As appeared from the evidence of the doctor PW-5 the injuries on Bhola Singh include a fracture of the left leg above ankle joint which was confirmed by dissection. Bhola Singh had received seven blows on his leg with lathi and several pellet injuries were found in the front of his chest and abdomen which had caused damage to the internal system resulting in his death. Therefore, there is ample evidence on record in the shape of the evidence of the eye witnesses and the witnesses who had sustained injuries, sounding a ring of truth to prosecution case put forward, with the trial Court and the High Court having taken identical views, we do not think there is any good reason to upset those findings.

4. Vicarious liability, we may state, as rightly contended for the State by Shri B.B. Singh relying upon the decisions of this Court in Shamshul Kanwar v. State of U.P., (1995) 4 SCC 430 : (1995 AIR SCW 2741 : AIR 1995 SC 1748) and Bhajan Singh v. State of U.P., (1974) 3 SCR 891 : (AIR 1974 SC 1564 : 1974 Cri LJ 1029) extends to members of the unlawful assembly only in respect of acts done in pursuance of the common object of the unlawful assembly or such offences as the members of the unlawful assembly are likely to commit in the execution of that common object. An

accused whose case falls within the terms of Section 149, I.P.C. as aforesaid cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he had joined. It is not necessary in all cases that all the persons forming an unlawful assembly must do some overt act. Where the accused had assembled together, armed with guns and lathis, and were parties to the assault on the deceased and others, the prosecution is not obliged to prove which specific overt act was done by which of the accused. Indeed the provisions of Section 149, I.P.C. if properly analysed will make it clear that it takes an accused out of the region of abetment and makes him responsible as a principal for the acts of each and all merely because he is a member of an unlawful assembly. We may also notice that under this provision, the liability of the other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge can reasonably be intended from the nature of the assembly, arms or behaviour, at or before the scene of action. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed during the occurrence does not arise. Tested on this touchstone, we may safely say that in the present case when the appellants were members of an unlawful assembly which was armed with lathis and guns and a declaration had been made that in the event there is any resistance to take away the paddy which is stated to have been the original object, they were willing to take life out of the deceased and take away the paddy. If that is the position, it is futile to contend for the appellants that their conviction is in any way bad.

5. In that view of the matter, we find absolutely no merit in Crl. A. Nos. 824-825/98 and we dismiss the same.

6. So far as Arvind Singh, appellant in Crl. A. No. 659/99, is concerned, his case stands on a different footing. On the evidence on record, the learned counsel for the appellant, was not in a position to point out any infirmity in the conviction recorded by the trial Court as affirmed by the appellate Court. The only contention put forward before the Court is that the appellant is born on 1-1-1967 while the date of the incident is 14-12-1980 and on that date he was hardly 13 years old. We called for report of experts being placed before the Court as to the age of the appellant, Arvind Singh. The report made to the Court clearly indicates that on the date of the incident he may be 13 years old. This fact is also supported by the school certificate as well as matriculation certificate produced before this Court which indicate that his date of birth is 1-1-1967. On this basis, the contention put forward before the Court is that although the appellant is aged below 18 years and is a child for the purpose of the Bihar Children Act, 1970 on the date of the occurrence, his trial having been conducted along with other accused who are not children is not in accordance with law. However, this contention had not been raised either before the trial Court or before the High Court. In such circumstances, this Court in Bhola Bhagat v. State of Bihar, (1997) 8 SCC 720 : (1997 AIR SCW 4205 : AIR 1998 SC 236 : 1998 Cri LJ 390) following the earlier decisions in Gopinath Ghosh v. State of West Bengal, 1984 Supp SCC 228 : (AIR 1984 SC 237 : 1984 Cri LJ 168) and Bhoop Ram v. State of UP, (1989) 3 SCC 1 : (AIR 1989 SC 1329 : 1990 Cri LJ 2671) and Pradeep Kumar v. State of U.P., 1995 Supp (4) SCC 419 : (1993 AIR SCW 3733 : AIR 1994 SC 104 : 1994 Cri LJ 148) while sustaining the conviction of the appellant under all the charges, held that the

sentences awarded to them need to be set aside. In view of the exhaustive discussion of the law on the matter in Bhola Bhagat (supra) case we are obviated of the duty to examine the same but following the same, with respect, we pass similar orders in the present case. Conviction of the appellant, Arvind Singh is confirmed but the sentence imposed upon him stated set aside.

He is, therefore, set at liberty, if not required in any other case.

7. The appeal filed by Arvind Singh succeeds to the extent indicated above. The appeal is allowed in part accordingly.

Appeal partly allowed.