

SUPREME COURT OF INDIA

Umrao Singh

Vs.

State of U.P.

(K.T. Thomas and R.P. Sethi JJ.)

02.08.2000

ORDER

K.T. THOMAS, J.

1. All these appeals arise from the incident which was the culmination of the escalating confrontation between members of the Provincial Armed Constabulary (PAC) in the State of U.P. and the State Administration. On the night of 21.5.1973 the situation reached a saturating point when twelve members of the PAC died, 21 members of the force were injured while on the other side 2 armed men died and 123 injured. The investigating agency moved into action and arrested a large number of persons including the appellants herein. After completing the investigation, charge sheets were sent up against 165 persons for various offences including the offence under Section 302 read with Section 149 of the Indian Penal Code. The Trial Judge convicted 108 accused and acquitted fifty persons. During the pendency of the trial seven accused died.

2. The convicted persons filed appeals before the High Court of Allahabad. The State of UP. also filed appeal against the orders of acquittal. By an elaborately considered judgment a Division Bench of the High Court of Allahabad dismissed the State appeals, and confirmed the conviction of seventeen convicted persons under Section 302 read with Section 149 of the I.P.C. All other convicted persons were acquitted of the aforesaid offence though some of them were convicted under lesser offences and they were sentenced to lesser terms of imprisonment. As they have already undergone the sentence they were ostensibly not interested in challenging such conviction and sentence. But 12 accused whose conviction and sentence under Section 302 read with Section 149 I.P.C. were confirmed by the High Court have now filed these appeals by special leave.

3. After hearing the arguments of learned Counsel for the appellants and learned Counsel for the State, we are not disposed to disturb the finding on facts concurrently arrived at by the two Courts below. However, we felt it necessary to consider the nature of the offence, whether it would be murder of the first degree so as to invoke the conviction under Section 302 of the I.P.C. with the help of Section 149 of the I.P.C. or whether it is only culpable homicide not amounting to murder.

4. It is admitted that none of the appellants had entertained any previous vengeance towards any one of the persons killed in the action. It is also admitted that the incident developed stage by stage and finally ended up in the wanton acts of shooting indulged in by the infuriated PAC members. The

appellants were convicted not on the basis of the finding that any one of them had particularly shot any of the deceased but on a finding that they were members of the unlawful assembly the common object of which was to murder the victims. It is difficult for us to concur with the finding that the common object to the unlawful assembly was to murder the victims. But at the same time it is not possible for the appellants to persuade us in holding that the members of the unlawful assembly were not aware that consequence of their wanton acts would include death of at least some of the persons. For the aforesaid reasons we bring down the offence to Section 304 Part I read with Section 149 the I.P.C.

5. The said alteration would call for alteration in the quantum of sentence also. A plea was made that the sentence may be limited to the period already undergone by the accused. Some-of them had undergone only imprisonment for a couple of years whereas some others are still languishing in jail. For the application of a uniform sentence we are of the opinion that each one of them must be sentenced to rigorous imprisonment for a period of seven years. We do so.

6. Those appellants who have already completed the aforesaid period (including the remission to which they are entitled) shall be set at liberty forthwith by the jail authorities. We cancel the bail bonds executed by those appellants who were released on bail by this Court and direct them to surrender before the jail authorities. In regard to them the jail authorities would count whether they have already completed the sentence imposed by us in which case they shall also be set at liberty forthwith. Regarding those remaining appellants whose jail sentence is yet to be completed the jail authorities need free them on Completion of such sentence.

7. The above is not enough to completely dispose of the appeals, for there are eight other convicted persons who are not before us. When we have held that the offence committed by the persons of the unlawful assembly cannot escalate beyond Section 301 Part 1 read with Section 149 of the I.P.C. interest of justice demands that the said legal benefit must ensue to those convicted persons who have not chosen to appeal before us. This Court has already taken such a view in regard to the convicted persons who have not filed appeal, when their co-convicts have come up to this Court by special leave (vide Raja Ram and Ors. v. State of M.P.) . We deem it necessary in the interest of justice to extend the same benefit to those convicted persons also whose names are given below:

Pooran Chand Yadav

Baljeet Singh

Parvesh Narain Bajpai

GoreThapa

Triloki Nath Dubey

8. We direct the jail authorities to set them at liberty forthwith if they too have completed imprisonment for a period of seven years. Subject to the above modifications and alterations made by us we confirm the judgment of the High Court.

9. The appeals are disposed of accordingly.

