

# CALCUTTA HIGH COURT

Jahiruddin

Vs

Queen-Empress

(Beverley and Banerjee, JJ.)

21.12.1894

## JUDGMENT

### **Beverley and Banerjee, JJ.**

1. The appellant has been convicted by the Sessions Judge of Backergunge under Section 302, read with Section 149, and under Section 436 of the Indian Penal Code, of the offence of murder which was committed by some members of an unlawful assembly of which he was a member, in prosecution of the common object of that assembly, and of the offence of causing mischief by fire to a human dwelling, and he has been sentenced to transportation for life.
2. In appeal it is contended before us first, that the evidence is insufficient to warrant the finding that the accused was present at the riot; secondly, that, even if it be found that the accused was present at the riot, the evidence is insufficient to warrant his conviction for murder, the requirements of Section 149 of the Indian Penal Code not being shown to have been fulfilled; and, thirdly, that the evidence is insufficient to warrant the conviction under Section 436 of the Indian Penal Code.
3. With reference to the first and the third contention it is enough to say that we have considered the evidence and the comments upon it by the learned vakil for the appellant, but we see no reason to think that it is either insufficient or unreliable. We think it is sufficient to warrant the finding that the accused was present at the riot, and after the firing of the guns, when the rioters began to disperse, on hearing that a man had been killed, he, along with certain other members of the unlawful assembly, removed the dead body of Safiruddin and set fire to the huts of the attacked party.
4. In support of the second contention the learned vakil for the appellant relies strongly on the finding of the Court below that, up to the setting fire to the house, the accused did nothing in particular, and upon the authority of the decision in the case of the *Queen v. Sabed Ali*<sup>1</sup> urges that the conviction under Sections 302 and 149 should be set aside. On the other hand, Mr. Kilby for the Crown contends that, considering the facts that the accused was one of a body of rioters of

whom six were armed with loaded guns and fired them in a volley, that he was himself armed with a spear, and that after the murder he removed the dead body of Safiruddin, the conviction for murder should be held to be right, and he relies upon the case of *Hari Singh v. The Empress*<sup>2</sup>

5. We do not think that either of the two cases cited lays down any hard and fast rule applicable to all cases. The only general principle laid down by the majority of the Full Bench in Sated Ali's case is that, in order to bring a case under the first part of Section 149 of the Indian Penal Code, the offence, which is there spoken of as committed in prosecution of the common object of the unlawful assembly, must be one which is committed with a view to accomplish the common object. But each of the two cases was decided with reference to its own facts, and every case depending upon the application of Section 149 of the Indian Penal Code must be so decided.

6. In dealing with such cases, while, on the one hand, it is necessary for the protection of accused persons that they should not, merely by reason of their association with others as members of an unlawful assembly, be held criminally liable for offences committed by their associates, which they themselves neither intended, nor knew to be likely to be committed, on the other hand, it is equally necessary for the protection of peace that members of an unlawful assembly should not lightly be let off from suffering the penalties for Offences for which, though committed by others, the law has made them punishable by reason of their association with the actual offenders with one common object. The cases of Sated Ali and Hari Singh cited above, respectively, emphasize the necessity of keeping in view the one and the other of these two conflicting, but equally necessary, considerations. We may add that members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and that the knowledge possessed by each member of what is likely to be committed in prosecution of their common object, will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object; and, as a consequence of this, the effect of Section 149 of the Indian Penal Code may be different on different members of the same unlawful assembly.

7. Having these considerations in view, and having carefully gone through the evidence, we think the appellant has been rightly convicted under Section 302, read with Section 149 of the Indian Penal Code. He had an interest in the subject-matter of the dispute; he had, previous to the occurrence, used threats to the persons in possession. On the scene of the occurrence he was present armed with a spear, and was among those who were carrying the guns and who fired the fatal shots; and after the murder was committed, instead of leaving the place at once, he busied himself in removing the dead body of Safiruddin and in setting fire to the huts of his adversaries. These facts, in our opinion, clearly show that the conditions, required by Section 149 to be fulfilled in order to make one member of an unlawful assembly guilty of an offence committed by any of his associates, have been satisfied in this case. They fully warrant the conclusion that the murder that took place was committed in prosecution of the common object of the unlawful assembly, of which the appellant was a member, namely, the turning out of the opposite party from the huts in question at any risk, in which common object he fully shared, and, further, that

he knew it to be likely that murder would be committed in prosecution of that common object.

8. We must, therefore, affirm the conviction and sentence and dismiss the appeal.

**Cases Referred.**

111 B.L.R. F.B. 347 : 20 W.R. Cr. 5

23 C.L.R. 49