

(1997) 08 SC CK 0029

In the Supreme Court Of India

Case No : Criminal Appeal No. 238 of 1994

Ananta Kathod Pawar and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 14-08-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (1997) 21 ACR 858 : (1997) 7 JT 408 : (1997) 5 SCALE 487 : (1997) 11 SCC 564

Hon'ble Judges : S. Saghir Ahmad, J; M. K. Mukherjee, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mukherjee J.

1. The 6 appellants before us and 5 others were arraigned before the Additional Sessions Judge, Thane for rioting, attempting to commit murder and other related offences. The trial ended in convictions of all of them under Sections 148 323/149 324/149 I.P.C. and sentences of different terms of imprisonment. In appeal, the High Court affirmed their convictions but reduced the sentences to the period already undergone and imposed a fine of Rs. 250/-each. The above judgment of the High Court is under challenge in this appeal.

2. According to the prosecution on June 24, 1978 between 7.00 and 7.30 A.M. the accused persons formed an unlawful assembly armed with swords, spears, iron rods and sticks in village Arwali with the common object of assaulting Tukaram (P.W. 2), Ballaram (P.W. 3), Gajanan (P.W. 4), Vasant (P.W. 5), Ankush (P.W. 6), Naguba, (P.W. 7), Ganpat (P.W. 8) and of attempting to commit the murder of Pundalik (P.W. 9) and in prosecution of the said common object used force and violence against all of them.

3. The defence of the accused persons was that it was the complainant party which attacked them with various weapons as a result of which one of them,

namely, Haribhau died while others sustained injuries. According to the defence, to save their skin they filed a false case against them.

4. On consideration of the evidence adduced during trial, the trial Court held that the incident did not take place in the manner alleged by the prosecution witnesses. The trial Court further held that having regard to the injuries found on the persons of the accused and the fact that one of them, namely, Haribhau succumbed to the injuries, it was clear that there was a free fight between the two groups, each one coming armed with weapons. The trial Court observed that every prosecution witness tried to feign ignorance about the injuries sustained by some of the appellants and about the cause of death of Haribhau. It then referred to the judgment of this Court in *Lakshmi Singh Vs. State of Bihar* [AIR 1976 Supreme Court 2263] and concluded as under:

If these principles are applied to the facts of the present case, it can be said that the prosecution has suppressed the genesis and origin of the occurrence and has not presented the true version as to how the incident started. It can equally be said that the prosecution witnesses are telling lies on material point.

5. In our considered view, with the above observations and findings, the trial Court was not at all justified in convicting the appellants for rioting or for the other offences with the aid of Section 149 I.P.C. Equally untenable is the High Court's affirmation of the above convictions for the evidence on record clearly establishes the findings recorded by the trial court. Once the trial Court found that there was a sudden and free fight between the two groups in which members of both the groups sustained injuries, the trial Court should have held that there was no scope for convicting members of one of those groups under Sections 147 or 148 I.P.C. and for that matter for substantive offences with the aid of Section 149 I.P.C. In such a case, the accused persons would be liable for their individual acts and would not be liable vicariously. In the instant case, we are unable to convict the appellants for their individual acts also as no specific evidence was led by the prosecution in that regard.

6. For the foregoing discussion, we allow this appeal, set aside the impugned order of convictions and sentences and acquit the appellants of the charges leveled against them. The fine if paid, be refunded to the appellants.