
(1972) 04 MP CK 0027
In the Madhya Pradesh High Court

Lalman and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 27-04-1972

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 300, 302, 307

Citation : (1973) CriLJ 98 : (1978) ILR (MP) 519 : (1974) ILR (MP) 339 : (1972) JLI 606 : (1972) 17 MPLJ 1021 : (1972) MPLJ 1021

Hon'ble Judges : T.P. Naik, J;K.K. Dube, J

Bench : Division Bench

Judgement

21 persons were tried for murder of Sudarshan Prasad and Shitlaprasad and for causing grievous hurt to Narayan Prasad Tiwari, out of which 6 persons were acquitted. The remaining 15 accused have appealed against their conviction u/s 302 read with Section 149. Indian Penal Code and Section 147 Indian Penal Code. The State has not filed any appeal against the acquitted persons nor has any appeal been filed against the acquittal of the present appellants of the charges u/s 307 read with Section 149. Indian Penal Code.

Facts leading to the Incident which eventually resulted in the death of Shitlaprasad and Sudarshan Prasad and injuries to Narayan Prasad Tiwari may be briefly stated. Khasra No. 40 in village Sathiha belonged to Wasudeoprasad (P. W. 21). He made a gift of half portion of the field to his son-in-law Narayan Prasad (P. W. 10). Narayan Prasad by a registered sale-deed dated 2.1.1967 sold the portion of the field gifted to him to appellant Lalman Kurmi for Rs. 850/-. There was a dispute between Narayan Prasad and Lalman on account of the amount of consideration payable for the land. Narayan Prasad asserted that despite the fact that consideration was shown at Rs. 850/- in the sale-deed, it was orally agreed that Lalman would pay the same amount of price for the portion of the land sold to him as would be fetched by the other half belonging to Wasudeo Prasad when sold by him, Wasudeo Prasad sold his share in the land for Rs. 2,300/- to Jagannath Kurmi. one of the appellants. According to Narayan

Prasad therefore, he became entitled to get Rs. 1.450/- from Lalman Kurmi. Lalman Kurmi denied any verbal agreement and his liability to pay Rs. 1,450/-, But he seems to have paid a sum of Rs. 725/- on 25.9.1967 to Narayan Prasad as would be evidenced by the receipt. Ex. P-18. Narayanprasad now wanted to realise the remaining amount of Rs. 725/- from Lalman.

On 31.3.1968. Narayan Prasad went to village Sathiha with the object of realising Rs. 725/- from Lalman. He was accompanied by his father-in-law Wasudeo Prasad. his sitser's son Shitlaprasad (deceased) and Sudarshan Prasad (deceased). The said four persons went to a mango grove known as Naya Bagicha where they expected to find Lalman who had his Khaliyan. At Naya Bagicha. they found Jagannath (appellant) and Narayan Prasad is said to have asked Jagannath to bring Lalman there.

Either Jagannath did not send for Lalman or the man sent by him did not inform Lalman but Lalman did not turn up, Sudarshan Prasad then again asked Jagannath to fetch Lalman. It seems now Jagannath took exception to the behaviour of Sudarshan Prasad and refused to do so. Sudarshan Prasad at once gave him a slap. In the meantime, Rameshwar (P. W. 16), Kotwar of the village, happened to come there Rameshwar tried to pacify Sudarshan Prasad. It seems Sudarshan Prasad now insulted Rameshwar. at which the persons present in the Khaliyan raised a loud alarm shouting for help from the villagers. This provoked a number of villagers who rushed to the spot with lathis. Some fight took place near Naya Bagicha between the villagers and the complainants. Wasudeo Prasad concealed himself by remaining under the pile of crop kept there for thrashing. Sudarshanprasad, Shitla Prasad and Narayan Prasad finding themselves completely outnumbered, ran to save themselves towards the field of Fuljharia. The crowd of villagers, however, chased SudarshanPrasad and Shitla Prasad and overtook them near the field of Fuljharia and beat them. The crowd thereafter proceeded to deal with Narayan Prasad who had taken shelter in the house of Duijee. They broke open the door of Duijee, brought out Narayan Prasad and gave him good beating. The injured Shitlaprasad. Sudarshanprasad and Narayanprasad were carried to Naya Bagicha and left there.

At about 10 p.m. in the night, two Police constables Narbadaprasad (P. W. 2) and Atarsingh (P. W. 19) happened to pass village Sheopurwa on patrol duty. The constables learnt about the incident and on reaching Naya Bagicha found the 3 persons lying unconscious. The Police arranged to remove the injured persons who were taken to Gandhi Memorial Hospital at Rewa. Shitlaprasad and Sudarshanprasad succumbed to their injuries even before they reached the hospital.

The incident in which Shitlaprasad and Sudarshanprasad were assaulted is not in dispute. The learned Additional Sessions Judge found the participation of the present appellants fully established on the evidence of Ramsakha (P. W. 8). Wasudeoprasad (P. W. 21). Narayanprasad Tiwari (P. W. 10) and the statement of Girdhari given by him before the committal Court and brought on record u/s 288,

Code of Criminal Procedure. We generally agree with the appreciation of the evidence by the learned Additional Sessions Judge and the presence and participation of the appellants are fully proved on the strength of the evidence of Wasudeoprasad, Ramsakha and Narayanprasad. From the above evidence, it seems that the trouble started when Sudarshanprasad slapped Jagannath. When Rameshwar Kotwar intervened and was pacifying them, Sudarshanprasad manhandled and abused him. Being apprehensive of the behaviour of Sudarshanprasad, the persons present shouted. "Doudo Doudo. Daka Padne Aye Hai". On hearing the cries, the villagers rushed to the spot and a Marpeet took place (Lathiyan Chalne Lagi) Sudarshanprasad. Shitlaprasad and Narayanprasad ran towards Sheopurwa to save themselves. The crowd, however followed Sudarshanprasad and Shitlaprasad shouting "Maro, Maro." The crowd overtook them and gave them beating. The witnesses have made omnibus statements as regards beating being given to Shitlaprasad, Sudarshanprasad and Narayanprasad and it is not possible to know the exact part played individually by the appellants.

The prosecution has established the following facts and circumstances.-

(a) That Narayanprasad, Shitlaprasad, Wasudeoprasad and Sudarshanprasad had gone to Naya Bagicha at Sathiha to forcibly realise the amount of Narayan Prasad from Lalman. Lalman's Khaliyan was in the Naya Bagicha and his harvested crop was lying there. The intention of Narayanprasad Tiwari was to forcibly take away the crop in case money was not paid by him. It was specifically for that purpose that Sudarshanprasad who was a notorious bully and history-sheeter was brought by them.

(b) That Sudarshanprasad started the trouble by beating and manhandling Jagannath and Rameshwar and Sudarshanprasad, Shitlaprasad and Narayanprasad were themselves responsible for provoking the appellants.

(c) The belligerent attitude adopted by Narayanprasad and his party-men provoked the persons present at the Khaliyan who raised an alarm calling for help.

(d) That as a result of the alarm, the villagers had rushed to the spot armed with lathis. They do not seem to have any lethal weapon like Ballam or Farsa with them. That the appellants who were amongst the crowd started beating Shitlaprasad, Sudarshanprasad and Narayanprasad. Wasudeoprasad hid himself in the pile of harvested crop. The incised injuries to Sudarshanprasad could not be said to have been caused by either Ballam or by a Farsa.

(e) That the common object of the assembly was to beat Sudarshanprasad, Shitlaprasad and Narayanprasad Tiwari.

(f) That whatever justification the appellants may have in beating Narayanprasad, Shitlaprasad and Sudarshanprasad at Naya Bagicha the assembly assumed definitely the character of an unlawful assembly when they

chased Shitlaprasad. Sudarshanprasad and Narayanprasad Tiwari and overtook them and thereafter started waylaying them.

(g) There is no evidence as regards the individual part played by any of the appellants in beating Shitlaprasad on Sudarshanprasad. though the participation of all the appellants in the Marpeet is established.

(h) Dr. B.K. Shrivastava (P. W. 12) who performed the post-mortem examination on the dead body if Shitlaprasad stated that the injuries on the head resulting in fracture of the scalp bone were, sufficient in the ordinary course of nature to cause death. According to the doctor, there were two injuries on the head. First, there was a lacerated wound over the scalp 2" ? ?" ? ?" perpendicular to occipital region. The injury that had gone to the left side from the centre of occipital skull bone had resulted in the fracture of the skull into two pieces below it. The membranes covering the brain was torn and there was haemorrhage inside. In the mid head region, there was a simple lacerated injury measuring 1?" ? ?" ? ?". The bone below this injury was fractured. The death was due "to shock and intra-cranial haemorrhage.

(i) Dr. Purushottam Prasad Sharma (P. W. 6) who performed the autopsy on dead body of Sudarshanprasad found the following injuries on his person:

Below the angle of the right side of the mouth over the lower jaw, there was an incised wound measuring ?" x 1/8" x ?". On the back of the head in the occipital region, there was an incised wound measuring ?" x ?" and it was bone deep. The skull was intact. At the left side of the ankle joint laterally, there was an incised wound measuring ?" x 1/8" and it was bone deep. On the left dorsal part at the junction of the left metacarpo phalangeal joint, there was an incised wound (measurement not noted by the doctor in the post-mortem report).

Besides the aforesaid incised wounds, there were the following contusions on the dead body:

(i) There was a contusion measuring 4?" x ?" at the left side of the chest. The said contusion started from left epigastic region and was going oblique upto the fifth rib below the left nipple.

(ii) There was a contusion on the right side of the chest and it was measuring 2?" x ?". It started from right epigastic region and was overlapping the lower end of the injury No. (i) towards the right side in oblique direction on the right side of the chest.

(iii) There was a contusion on the left side of the back at the left scapula region on the spine of the scapula. The said contusion was going towards left shoulder and after crossing the mid-line it had gone about 1" towards the right side of the back side.

(iv) There was a contusion on the left arm above the left elbow on the lateral side in the anterior posterior direction. The said contusion was measuring 1?" x ?".

(v) There was a contusion on the left arm at the elbow joint 2" below injury No. (iv). The contusion was measuring 1" x 1".

(vi) There was a contusion on the left side of the back 4" below the inferior angle of the left scapula. The contusion was slightly oblique going forward crossing the mid-line and going 1" towards the right side. This contusion was measuring 4" x 1".

(vii) There was a contusion overlapping injury No. (vi) on the left side of the back. It was measuring 2" x 1".

(viii) There was a contusion on the left iliac region 1" x iliac crest below. The contusion was measuring 2 3/4" x 1".

(ix) There was a contusion over the left thigh slightly oblique in direction 4" below the head of femur. It was measuring 2" x 1".

The following abrasions were also found on the dead body:

(i) There were four small abrasions of different size over the forehead on the left side one inch above the left eye-brow.

(ii) There was an abrasion measuring 1" x 1" below the contusion No. (v) described above.

(iii) There was an abrasion on the dorsum of left palm 2" below the wrist joint. It was 1" x 1".

According to the doctor, due to laceration of the lungs which was caused by external injuries, shock was created which accounted for his death. The right lung was lacerated to the extent of 1" x 1". Left lung was also lacerated on the lower part at the anterior aspect. The injury No. (i) or any single contusion was not sufficient in the ordinary course of nature to cause death.

The question that would arise for consideration in this case is whether: all the members of the unlawful assembly could be vicariously held responsible for murder of Sudarshanprasad and Shitlaprasad when there is nothing contrary to hold that the common object of the assembly was only to chastise the deceased Shitlaprasad and Sudarshanprasad who had provoked them.

Common object or common intention of the unlawful assembly would always be a question of fact to be inferred from the various circumstances under which the offence was committed. In the instant case, the appellants had rushed to the spot without bothering to know anything on an alarm being raised to the effect. "Daka Padne Aye Hai". They had appeared with lathis in their hands. We do not think that any of them came armed with Ballam or Farsas as none of the deceased bore serious incised or penetrating wounds. After the beating at Naya Bagicha was given, Sudarshanprasad, Shitlaprasad and Narayan prasad were all in a position to move about and run away from that place. Had the intention been to kill the 3 persons, the assembly would have undoubtedly struck on vital parts

of the bodies of the victims. The absence of injuries generally on the vital parts of the bodies would indicate that the crowd did not want to kill Sudarshanprasad and Shitlaprasad. We are, therefore, of the opinion that the assembly that had suddenly gathered was not animated by a common object to take the lives of Shitlaprasad or Sudarshanprasad but merely to chastise them.

Not much could be usefully made out from the omnibus statements made by the witnesses as to the part played by the appellants in beating Shitlaprasad and Sudarshanprasad. The witnesses who deposed to the incident cannot be relied on to give the details of the assault. Ramsakha (P. W. 8) and Girdharilal (P. W. 15) have seen the incident from a long distance from more than 100 yards. Wasudeoprasad who hid himself under the heap of unthrashed crop also could not have seen the details. The actual scene of incident is Fuljharia's field which is easily more than 100 yards away from where he had hidden himself. Narayanprasad Tiwari was himself a victim and was running away to save his life. He had lacerated wound on the head and blood had covered his face and could hardly observe the various details. He had taken shelter into the house of Duijee. Therefore, we have only the nature of injuries to indicate how the crowd wanted to treat Sudarshan prasad and Shitla prasad.

As far as Shitlaprasad was concerned, there were two injuries on his head which seemed to be of a serious character and it was only the chest injury on Sudarshanprasad which caused laceration of the lungs which eventually resulted in his death. Barring these injuries, the other injuries on him are simple in nature. According to the doctor the head injury to Shitlaprasad was sufficient in the ordinary course of nature to cause death. Likewise, the 3 Injuries on the chest of Sudarshanprasad which resulted in the laceration, of the lungs were sufficient cumulatively to cause death of Sudarshan prasad. It was therefore, argued on the strength of *Anda and Others Vs. The State of Rajasthan*, and *Kalarimadathil Unni Vs. State of Kerala*, that clause 3rd to Section 300. Indian Penal Code applied as the intention of the assembly was to cause such Injuries which in the result would cause death in the ordinary course of nature.

The two Supreme Court cases are distinguishable on facts. In the Supreme Court cases, though the common intention may not have been to cause the death of the victim yet, there was a community of purpose in Inflicting such injuries as were sufficient in the ordinary course of nature to cause death. Once it was found that the common intention was to inflict those very injuries by the various acts of the participants, clause 3rdly of Section 300 of the Indian Penal Code applied. In the two cases, the participants in the crime knew the part the other person was likely to play and the extent of harm sought to be inflicted. Even If the desire to murder was not there, the co-offenders knew the extent of injuries to be inflicted to the victim and the intention was to cause the very Injuries. The injuries thus inflicted were fully in the contemplation of the offenders. The action of the co-offenders was animated by singleness of purpose as though from one mind but only with different hands. In such situation the totality of the harm

inflicted to the victim was known to the accused persons and the result of the intentionally caused injuries was then viewed objectively by applying 3rd clause to Section 300, Indian Penal Code and every person participating In the crime was equally held liable for the acts done by the other. The present case is much different from the above cases. It would be observed that the appellants were some of the persons who formed the assembly that had actually assaulted Shitlaprasad and Sudarshanprasad. The common object of the assembly was to give beating and it could not be said that they intended to cause death or that the intention of the assembly was to murder any of them. As already seen, had this been the intention It was not difficult for them to achieve their object even at Naya Bagicha where the first beating took place. It seems, finding that Shitlaprasad and Sudarshanprasad had not received enough beating, the crowd chased them when they ran to save "themselves from their plight. They were overtaken near the field of Fuljharia where some more beating was given and it was here that some one from the crowd struck one or two such blows to each of the victims that actually caused the death. In such a situation, the appellants who were members of the assembly could not be attributed with the knowledge that some one from the crowd was likely to give such a blow as would result in the death of Shitlaprasad and Sudarshanprasad. If it could be said that the assembly knew with reasonable certainty that some members were likely to inflict such, injuries in achieving their common object as would cause death, later part of Section 149 of the Code applied and such of the members of the assembly as did not actually cause the fatal injuries also became vicariously liable for the acts of the others.

In Shambhu Nath Singh and Others Vs. State of Bihar, . Shah. J.. speaking for the Court, said.-

Section 149 of the Indian Penal Code is declaratory of title vicarious liability of the members of an unlawful assembly for the acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed In prosecution of that object. If an unlawful assembly is formed with the common object of committing an offence and if that offence is committed in prosecution of the object by any member of the unlawful assembly, all the members of the assembly will be vicariously liable for that offence even if one or more but not all committed the offence. Again if an offence is committed by a member of an unlawful assembly and that offence is one which the members of the unlawful assembly knew to be likely to be committed in prosecution of the common object every member who had that knowledge will be guilty of the offence so committed. But members of an unlawful assembly may have community of object upto a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may 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.

Proceeding further his Lordship after reviewing a number of cases observed:

By Section 149 the vicarious liability of the members for offence committed in prosecution of the common object or for offences which were known to be likely to be committed by the members of the unlawful assembly is declared....

The common object of the unlawful assembly was in this case as found by the Courts below to cause grievous hurt; and death was caused by one of the members of the assembly. For causing the death, it is found that the other members of the unlawful assembly are not responsible. But the conviction for the offence of causing grievous hurt in prosecution of the common object of the unlawful assembly is maintainable.

It could not be reasonably inferred from the circumstances of the case that the assembly which was animated with a common object to chastise could also be imputed with the knowledge that some of the members may give such fatal blows on the head or chest as would result in the death of the victims. As already discussed, it could not be said that the assembly was of such a kind where the members knew, what the other members were going to do. It could not be said that it was known to members the extent to which the other man was likely to act in achieving the common object. The word "knew" in Section 149 of the Indian Penal Code has been interpreted by Supreme Court to imply the existence of facts from which a certain inference is so irresistible as to amount to a certainty. This knowledge must be shown to exist at the time of commission of the offence and not knowledge acquired in the light of subsequent events. We are, therefore, of the opinion that in the instant case it could not be said that the members knew that some one of them "would cause one or two such injuries as might result in the death of the victims. It is common knowledge that not all head injuries caused by a lathi would result in the death of the victim. Sudarshanprasad was known to be a tough man and it could not be said that the persons in the assembly would have known with certainty that he would succumb to the blows inflicted on him. The facts of the case are similar to Shambhu Nath Singh and Others Vs. State of Bihar, and we are of the opinion that the appellants can be convicted only u/s 325 read with Section 149, Indian Penal Code. We hold that the appellants could not be attributed with the knowledge that the injuries inflicted were likely to prove fatal and. therefore, they could not be convicted u/s 302 read with Section 149.

In the result, the appellants are convicted for an offence punishable u/s 325 read with Section 149, Indian Penal Code, for causing injuries to Sudarshanprasad and Shitlaprasad for which we sentence them each to rigorous imprisonment for four years. The appellants are also liable u/s 147, Indian Penal Code for which offence each appellant will suffer rigorous imprisonment for two years. Both the sentences shall run concurrently. The conviction and sentence of the appellants u/s 302 read with Section 149 of the Indian Penal Code are set aside and instead,

the appellants are convicted and sentenced as stated above. The appeal partly succeeds.