
(1982) 05 AHC CK 0083
In the Allahabad High Court

Mohan Lal and Others

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 25-05-1982

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 332, 395, 435

Citation : (1982) CriLJ 1998

Hon'ble Judges : A.S. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.S. Srivastava, J.—These four connected appeals are directed against the judgment and order dated 9-3-1978 of the V Additional Sessions Judge, Saharanpur, in S. T. No. A-195 of 1974 in which these appellants along with five others were tried for offences under Sections 147, 452, 332/149, 435/149 and 395, I.P.C. By this order all these appellants have been acquitted of the charge u/s 395, I.P.C. Sixteen of them, viz. Shakti Dutt Tyagi, Jagdish Prasad Pahalwan, Zarif, Master Karan Singh. Master Mahendra Singh, Prem Singh, Trilok Singh, Mohan Lal, Surendra Kumar, Shankar, Pramod Kumar (son of Satya Prakash). Som Prakash, Jeet Ram, Jai Narayan, Jagdish Lamba and Kukoo alias Rajtendra have been convicted and sentenced to various terms of imprisonment (to run concurrently) under Sections 147, 452/332/149, 435/149 I.P.C. The remaining five, namely, Pramod Kumar (s/o Chhote Lal), Ramesh. Gauri Shankar, Hari Om and Shashi Gulathi have been acquitted of these charges also.

2. The prosecution of the aforesaid appellants was a sequel to an incident which took place on 3-4-1973 between 8 P- M. and 9-15 P. M. at Outpost Nawabganj, P.S. Kotwali, Saharanpur, situated only at a distance of about three furlongs from p. S. Kotwali in which the said outpost was besieged by a mob of 2000 or 2500 persons shouting slogans. The higher police officers and the then City Magistrate D. P. Gupta had also reached there. The Police had ultimately to resort to a lathi charge for dispersing that crowd.

3. The case of the prosecution is that the appellant Shakti Dutt Tyagi and Jagdish Pahalwan who were leading that mob had along with other members of that crowd, formed an unlawful assembly with the common object of committing trespass in the premises of the outpost with the intention of causing mischief and injuries to the police constables stationed there and were actually inciting that crowd to commit acts of violence. Consequently this mob committed trespass in the premises of that outpost and removed two bicycles therefrom. They also caused fire to another damaged bicycle kept therein. They also assaulted the constables present in the outpost and caused them injuries. The crowd indulged in these activities despite the efforts of the police and the City Magistrate to pacify them. When the crowd caused injuries to the constables, the City Magistrate ordered their dispersal by resorting to a lathi charge. The Police then swung into action, dispersed the crowd and arrested 12 persons on the spot who were : Shakti Dutt Tyagi, Jagdish Prasad son of Khub Chand, Zarif, prem Singh, Master Karan Singh, Master Mahendra Singh, Mohan Lal, Trilok Singh, Surendra Pal Singh, Shankar, pramod Kumar son of Satya Prakash and Som Prakash. Soon thereafter 4. e. at 10-30 p. m. a report of this incident was also lodged at P.S. Kotwali by Sub-Inspector Inder Singh in which nine more persons were recognised in that crowd but who could not be arrested. They were Pramod Kumar son of Chhote Lai, Ramesh Chand, Gauri Shankar, Jit Ram Jit, Hari Om, Jagdish Lamba, Kukoo, Shashi Gulathi, Ganesh and Jai Narain. Three witnesses of the public namely, Viren-dra Singh Yadava, Yashpal Singh and Surendra Kumar Kapil were named in the F.I.R. as eye witnesses of the incident.

4. It also transpires from this report that son of Bal Kishun was murdered and the outpost was surrounded by the crowd on account of that murder. They were infuriated against the Head Constable in charge of that outpost Jag Charan Sharma and his associates. It is alleged in the report that the crowd while shouting slogans were also shouting to kill the "Dewan of the Chouki". It further alleges that the Dy. S. P. D. S. Siyal, the City Magistrate and other police officers were trying to pacify that crowd by assuring them that the murderers of the child were already arrested and that severe action would be taken against them as well as against constables who were found guilty. The efforts of this persuasion was however rendered ineffective by the exhortation of three persons including the appellants Shakti Dutt Tyagi and Jai Narain who insisted that they wanted to avenge that murder by murder and that they would set fire to the outpost also. Following this exhortation two persons including the appellant Jit Ram entered the premises of the outpost where three bicycles were kept. They set fire only to one of the bicycles and removed the other two. The crowd also caused damage to the boundary walls of the outpost. While shouting slogans Shakti Dutt Tyagi gave a lathi blow to constable Ganesh Singh and Jagdish Prasad appellant gave a lathi blow to constable Sharat Chandra. The crowd hurled brickbats also causing injuries to 20-25 constables, Dy. S. P. Siyal and the City Magistrate D. P. Gupta. This crowd dispersed as a result of lathi charge.

5. The appellants have denied the prosecution case. They have stated to have

been falsely implicated by the police. Some of them have even denied their presence in the crowd. Shakti Dutt Tyagi and Jagdish Prasad have even denied their arrest in that crowd. They have stated to have been arrested by the Police on the next day, i.e. on 4-4-1973. Shakti Dutt Tyagi has stated that on 4-4-73 he was holding a meeting when S. I. Mahendra Singh took him to the police station from there. Jagdish Prasad has stated that, at the time of the aforesaid incident, he was with Ved Prakash Garg, Executive Officer, Dr. p. S. Mathur, Om Prakash Engineer and that he was arrested by the police on 4-4-1973.

6. The evidence of the prosecution consists of the statements of S I., H. H. Zaidi (who was head constable at P.S. Kotwali on the date of occurrence. Surendra Kapil, Dy. S. P. Daljit Singh, Jag Charan Sharma, Har Saran Singh, G. R. Nagar, Dr. S. N. Mandal, D. P. Gupta (City Magistrate), Kishun Singh and Ishwar Chand. The accused have also produced witnesses Ikram Bakshi, Dr. P.S. Mathur, Om Prakash Sharma, Kailash Gupta, Jagdish Singh, Jitj Ram, Prem Nath Garg Dharemvir, Ved Prakash V. K. Bhatiya, Jagdish Chandra and Ved Prakash Garg. Shakti Dutt Tyagi appellant has entered into the witness box also and has made a statement on oath.

7. After examining the aforesaid evidence I agree with the learned Sessions Judge that the prosecution has proved in this case that on 3-4-1973 between 8 and 9.15 P. M. a mob consisting of 2000 or 2500 persons had surrounded the police outpost Nawbganj, Saharan-pur. This crowd, according to the City Magistrate was shouting slogans such as "Police Murdabad" "Tana Shahi Nahi Chalegi". While they were shouting these slogans they were demanding that Jag Charan Sharma, Head Constable in charge of the outpost be handed over to them and the other guilty persons be (suitably) punished. The City Magistrate has stated that both he and the Dy. S. P. Siyal had called some members of the crowd inside the outpost and were trying to pacify them and had also told them that four constables found negligent in the matter were already sent to the police lines, and that further steps were being taken to send the said head constable also to the Police Lines. The crowd however did not relent and demanded the custody of Head Constable Sharma.

8. Jag Charan Sharma (P. W. 4) who was then in charge of the outpost of Nawabgani has been examined in the case. He has stated that a child was born to one Bal Kishun who was lifted from the maternity hospital and later his dead body was found in the Company garden at the pointing out of one Ram Chandra who was one of the persons arrested by him in connection with that murder and who was admitted in the police station Kotwali at 8.24 P. M. i.e. while the outpost was besieged by the crowd and, according to him, he had not left the outpost) on that evening after 4.48 P. M. i.e. the arrested persons were not sent to the P.S. Kotwali prior to 4.48 P. M. The time of admission of Ram Chandra in P.S. Kotwali at 8.24 P. M. shows that he was not admitted there till then although he was arrested by Head constable Jag Charan Sharma before 4.48 P. M. and the dead body of the child was also recovered at his pointing out. Ram Chandra as

admitted by head constable Jag Charan Sharma, used to visit the outpost from, before. Kishun Singh (P. W. 10) has stated that it was a talk in the crowd that if the police had arrested the accused earlier, the life of the child could have been saved. This shows that the crowd that had assembled at the outpost was accusing the police of inaction in the case of that child lifting. According to P.W. Surendra Kapil the crowd spread from the Maternity Hospital to the outpost was uncontrollable. S. I. Mahendra Singh has stated that when he had reached the outpost the crowd was of 500-700 men only. It swelled subsequently up to 2500-3000. The I. O. Ishwar Chand Tyagi (P. W. 11) has admitted that in those days Youth Congress was very influential and its recommendations carried weight in all quarters. He has further stated that this Youth Congress had two factions. The appellant Shakti Dutt Tyagi was the leader of the opposite group and the appellant Jagdish Prasad and Jeet Ram belonged to his group. The main witness of the prosecution Surendra Kapil has admitted that he was also a member of the Youth Congress and his appearance as a witness against the appellant Shakti Dutt Tyagi shows that he belonged to the rival faction.

9. From the above resume of evidence the following inferences of fact naturally follow:

A child born to one Ram Kishun and lifted from the Maternity Hospital was found murdered and the persons arrested in that connection included one Ram Chandra, a visitor to the outpost and on whose pointing out, the dead body of the child was found at the Company garden. The same day Ram Chandra was arrested by head constable Jag Charan Sharma in the day sometime prior to 4-48 P. M. but he was not admitted in the police lock-up. He was admitted in the police lock-up after the besiege of the outpost by the angry mob of about 2500-3000 persons i.e. at 8.24 P. M. The dead body of the child was also recovered in the day at the pointing out of Ram Chandra. No explanation has been given by the prosecution why Ram Chandra was not taken into custody and put in the police lock-up immediately after the recovery of the dead body at his pointing out by head constable Jag Charan Sharma who returned to the outpost at 4.48 P. M. after making the recovery. Instead, Ram Chandra was admitted in the police lock up at 8.24 P. M. after the outpost was besieged by the angry mob demanding action against the said head constable. This fact has given rise to legitimate contention on behalf of the appellants that head constable Jag Charan Sharma had let off Ram Chandra even after recovery of dead body of the child and was hushing up the matter. Ram Chandra was taken into custody and admitted in the police lock-up after the outpost was surrounded by the accusing crowd which was demanding action and on account of which the matter had also gone to the notice of the higher authorities, it is also contended that when head constable Jag Charan Sharma did not leave the outpost after 4.48 P. M. it is evident that Ram Chandra was again arrested and admitted in the police lock up at 8.24 P. M. because the head constable had earlier let him off after recovering the dead body of the child in a process of hushing up the matter. He was arrested again under the pressure of the mob. The grievance of the mob was, therefore, apparently

genuine. It was such a crowd of 2500-3000 persons spreading from the Maternity Hospital to the outpost which is alleged to have been led by the appellants Shakti Dutt Tyagi and Jagdish Prasad, both belonging to the opposition group of the Youth Congress, it is obvious from the above fact that the intention of the crowd was not to commit either criminal trespass, or arson, or cause any damage to the building of the Outpost or to do any other act of this nature. The crowd had assembled not only to express indignation of the public against the police (which was, in their opinion, hushing up the said crime and helping the main culprit Ram Chandra) but also to demand action against such policemen who were hushing up the matter including the head constable Jag Charan Sharma. The crowd which was only 700 or so in the beginning had swelled to 2500-3000 obviously because it was not satisfied with the assurances and ultimately it had become uncontrollable and could be dispersed only after a lathi charge. It is from such a crowd that the appellants are alleged to have been arrested. In other words, the appellants were arrested from a crowd which had assembled to express indignation of the public against the police of outpost Nawabganj, and its in charge head constable Jag Charan Sharma who had at least mishandled the case of a child lifting from Maternity Hospital even after arresting the main culprit responsible for it and at whose instance the dead body of the child was also recovered by him sometime in the day. This main culprit was not put up in the police lock. up. till after the besiege of the outpost by this crowd.

10. It is evident from the above fact that this crowd had assembled as a consequence of inaction of the police of O. P. Nawabganj in taking effective action in the matter even after the arrest of Ram Chandra by head constable Jag Charan Sharma. Therefore, as already stated above the intention of such a crowd was not to commit criminal trespass, arson, loot, damage or any other act of this nature. Responsible officers had tried to pacify this crowd but it had become uncontrollable. If any member of such a crowd had indulged in any act of arson or violence, it cannot, from such an individual act, be presumed that it was either the common object of the crowd or that every member of that crowd had necessarily shared the object of that individual who had committed the act. In other words, the acts of only a few individuals of such a crowd cannot be held to be the common object of that crowd nor every member of that crowd can be presumed to have shared the object with which such acts were committed by only a law members of that crowd. A reference in this connection may be made to *Musakhan and Others Vs. State of Maharashtra*, . The mere presence "of the appellants in that crowd would not, therefore, make them responsible for any act of damage, violence or arson committed by any member of that crowd. The appellants can also not be deemed to have shared the object with which the aforesaid acts were committed by some members of the crowd. In that event the appellant cannot be held to have committed the offence of rioting also. In such a case the particular individual concerned alone will be liable for his act, for whatever offence his act may constitute. The appellants can, therefore, be held

responsible only if it is proved that they or any one of them had committed any of the acts complained of.

11. The crowd is alleged to have committed the following acts.

- (i) Damaged the wall of the Outpost,
- (ii) Caused fire to one of the three bicycles lying in the compound of the Outpost,
- (iii) Carried away two other bicycles kept there and,
- (iv) Caused injuries to the constables and others who were present at the Outpost.

12. I will now examine the evidence of the prosecution to see whether the aforesaid acts were committed by the appellants or any one of them. I will first refer to the statements of the Dy. S. P. Daljit Singh and Sub-Inspector Mahendra Singh, Dy. S. P. Daljit Singh has stated that this was an act of riotous mob. S. I. Mahendra Singh has also stated that the damage to the boundary wall was caused by the crowd while trying to force entry into the Outpost. The wall had fallen down on account of the thrust on it from behind. The crowd must have been forcing for an entry into the Outpost because its main gate must have been locked. None of these two witnesses has named the appellants or any one of them as persons in the crowd who had deliberately caused damage to its boundary wall. Similarly none of the prosecution witnesses (except head constable Jag Charan Sharma) has stated that the appellants or any one of them had deliberately set fire to any bicycle kept in the police station. Even head constable Jag Charan Sharma had not named all the appellants. He has named only two of the appellants viz. Jit and Trilok. His solitary statement against these two appellants is also not confidence-inspiring. He was the main target of the crowd. He is, therefore, obviously interested in getting the leaders of the crowd nabbed in this case. Therefore, his statement is not sufficient to prove that even Jit and Trilok appellants had set fire to one of the bicycles lying at the Outpost. In fact, this part of the prosecution case appears to be very doubtful. If any member of the crowd wanted to commit an act of arson, he would not have contented himself by setting fire only to a damaged bicycle kept in the compound of that Outpost. On the other hand, it is possible that a fire was caused to a damaged bicycle kept in the compound designedly for the purpose of aggravating the object of the crowd. The possibility of such a fabrication is rendered further probable because the story of the removal of two other bicycles kept in the compound of that Outpost by some members of the crowd has been found to be false by the trial, court itself. The crowd is also alleged to have caused injuries to some constables and others present at the Outpost. D. P. Gupta, the City Magistrate who is also alleged to have received injuries, has stated that whatever injuries were received they were received in a "pathrao" by the crowd. None of the appellants has been named by him. Two independent witnesses of this case viz. Surendra Kapil and Kishun Singh have stated that neither the appellants nor any one of them had indulged in this "pathrao." In fact, Kishun Singh has been

declared hostile. S. I. Mahendra Singh no doubt stated that he had seen two persons among the crowd who were wielding lathis but. he has also not named any one of them. He is the maker of a very detailed F.I.R. in which all the appellants are named. Therefore, if the appellants or any one of them had wielded lathis, this witness would not have omitted to mention this specific role of the appellants in his statement. Thus, on this fact also, head constable Jag Charan Sharma is the only witness. He has named Shakti Dutt Tyagi as the person who had caused injuries to the constables Sharat Chandra and Gaje Singh. These two injured constables have not been produced in the court to corroborate him. As has already been stated earlier, head constable Jag Charan Sharma was the main target of the crowd. Shakti Dutt was one of the leaders of the crowd. Jag Charan Sharma, is therefore, a person interested against Shakti Dutt Tyagi. The solitary statement of head constable Jag Charan Sharma does not, in the above circumstances, prove that Shakti Dutt Tyagi was responsible for injuries caused by the crowd to any person inside the Outpost. In other words, the prosecution has failed to prove in this case that the appellants or any one of them had indulged in any act responsible for the injuries caused to any person inside the Outpost.

13. Thus the evidence on the record goes to show that it was not the common object of the crowd to commit arson, loot or violence nor any such act was committed by any member of the crowd in prosecution of the common object of the crowd. The evidence also does not prove that the appellants or any one of them had themselves indulged in any such act or had shared the object of some individual acts of some particular persons present in the crowd. None of the appellants, therefore, deserved conviction either for rioting or for having committed the offences for which he has been convicted and sentenced by the learned Additional Sessions Judge.

14. These appeals are accordingly allowed. The order of conviction and sentence of the appellants is set aside. They are on bail. They need not surrender to their bail bonds which are hereby cancelled.

15. This judgment shall govern all the four connected appeals.