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**(1979) 11 SC CK 0013**

**In the Supreme Court Of India**

**Case No : Criminal Appeal No. 213 Of 1973**

Mohar Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 06-11-1979

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 147, 149, 2, 302, 323

**Citation :** (1981) SCC(Cri) 552 : (1980) 12 UJ 357

**Hon'ble Judges :** S. Murtaza Fazal Ali, J;A. N. Sen, J;A. D. Koshal, J

**Bench :** Full Bench

**Final Decision :** Allowed

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## Judgement

A.D. Koshal, J.—The appellants are three out of sixteen accused who faced a trial on a charge under four heads for offences u/s 147, Section 302 read with Section 149, Section 325 read with Section 149 and Section 323 read with Section 149 of the Indian Penal Code. The three appellants were further charged with an offence u/s 392 of the Code. The learned Additional Sessions Judge who held the trial acquitted one of the accused named Kanchan Singh of all the charges while the other fifteen were convicted of an offence u/s 325 read with Section 149 of the Code and sentenced to rigorous imprisonment for a year and a fine of Rs. 100/- each, the sentence in default of payment of fine being rigorous imprisonment for two months. Three of the accused other than the appellants were convicted of an offence u/s 302 read with Section 149 of the Code and were sentenced to imprisonment for life. The substantive sentences of imprisonment passed by the learned Additional Sessions Judge were directed to run concurrently.

The convicts filed an appeal which was decided by a Division Bench of the High Court of Rajasthan through its judgment dated the 9th of August, 1973, along with a cross-appeal and a petition for revision of the order of the trial Court filed by the State. Accepting the State appeal in part, the High Court held that the three appellants were guilty of an offence u/s 302 read with Section 149 of the Indian Penal Code but that no other offence was made out against them except

one u/s 147 of the Code. The sentences awarded on these two counts were imprisonment for life and rigorous imprisonment for six months respectively. Out of the three accused sentenced to imprisonment for life by the trial Court, one named Charan Singh, was acquitted of the charge in its entirety while the sentence of imprisonment for life imposed on the two others by the trial Court was upheld. No offence whatsoever was held to have been brought home to any of the remaining ten accused so that the appeal filed by the convicts was accepted in so far as they were concerned.

It is the judgment of the High Court that is being challenged In this appeal u/s 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

2. The prosecution case giving rise to the appeal may be briefly stated. Village Dehtana situated within the territorial limits of Police Station Doog m district Bharatpur (Rajasthan) has two opposing factions one of which consists of the Rajput community and the other is comprised of Jatavs (Cha-mar). Apprehending danger at the hands of Rajputs on the 25th of September 1966, Devi Ram (PW-8), who is a Harijan, lodged report exhibit P-26 at Police Station Doog and returned to their village in the company of Head Constable Husaddilal (PW 20), Constable Chandra Singh (PW-6) and Constable Bharoselal (PW-7). The p3lice party collected the Rajputs (also known as Dhakure) and asked them to proceed to the police station. Vijai Ram who was a Haryan and was posted as Sub-Inspector of Police at Karauli was asked to proceed likewise as he felt aggrieved by a beating given to his father by the Rajputs in the morning

The police party started for the police station in the tonga in which they had come to the village and which was driven by Suraj ('PW-5) After the tonga had proceeded a short distance, the Thakurs who were following it in a body speeded up, over took the tonga and started calling bad names to and throwing stones at the party of Chamars who were going ahead of the tonga The Head Constable alighted from the tonga and tried to pacify the Thakurs but to no avail. Sensing trouble, he rushed to the police station in the tonga leaving behind the two Constables to see that peace was maintained Soon however, tempore ran high and the party of the Thakurs, who were armed with lathis, attacked the Chamars and killed two of them, namely, Golia and Gariba. Sub Inspector Vijai Ram had a revolver in a hand-bag which he was carrying. He took out the revolver when four of the Thakure' party darted at him, and he opened fire and killed two of his assailants named Giri Raj and Kamal (who was different from kamal appellant). At this point of time Mohar Singh appellant snatched the revolver from Vijai Ram and thereafter the party of the Thakurs rained blows on the Chamars and killed two more of them, namely, Chhanga and Baloo. Smt. Bhauti (PW-3), Davi Ram (PW-8) Smt. Anandi (PW-9) and Smt. Gordhaai (PW-15) who are all Chamars also received injuries at the hands of the Thakurs.

3. The four injured prosecution witnesses just above named and three others, namely, Hira Lal (PW-12), Giriraj (PW-14) and Smt. Mangalia (PW-15) supported

the prosecution case fully in the witness-box, Head Constable Husaddilal (PW-20) testified to the correctness of that part of the prosecution story which covers the incident preceding his departure for the police station. The two Constables also claimed to have witnessed the occurrence, their version of which, however, was not the same as that given by the other eye witnesses.

The learned Additional Sessions Judge held the prosecution case to be proved and convicted and sentenced 15 of the 16 accused as stated above.

The High Court closely examined the ocular testimony and found the depositions of PWs 8 and 12 to 15 to be unreliable inasmuch as they were refuted in important particulars by the medical evidence. In this connection the High Court observed:

Chandra Singh and Bhaross Lal have not mentioned the names of the assailants of Golia and Gariba but the Chamar witnesses have named the assailants of each individual victim. On a close examination of their testimony on this point, we find that it will not be safe to place reliance on the statements of the Chamar witnesses as their testimony does not find support from other independent evidence. Bhauti P.W. 3 names Kamal son of Bhawal, Tej Singh and Govind Singh as the assailants of Golia, but she has stated that all the assailants dealt lathi blows on the head of Golia, whereas we find only one lathi injury on the head of Golia in the post-mortem report Exi. P-33, which has been proved by Shyambehari Lal. Similarly, the method of giving beating to Gariba as disclosed by Smt. Bhauti does not find corroboration from the post-mortem report of Gariba, Ext. P. 29. According to Smt. Bhauti, Gariba was given beating by Giriraj deceased, Kamal son of Bhawal, Govind Singh and Tej Singh. Regarding the assailants of Chhanga, she has disclosed the names of Mohar Singh, Nand Kishore, Bhanwar Singh and Badri. Chhanga no doubt sustained four injuries on his body; but this fact alone cannot lend credence to the testimony of this lady regarding the assailants of Chhanga. However, all these witnesses have named Tej Singh and Charan Singh accused for giving lathi blows to deceased Baloo, but from his post mortem report. Ext. P-30, which has been proved by the doctor, we find only one injury on the body of Baloo. These discrepancies which have been pointed out in respect of the statement of Smt. Bhauti are also present in the statements of other witnesses namely P.W. 8, P.W. 9, P.W. 12, P.W. 13, P.W. 14, P.W. 15, and, therefore, we do not feel it safe to fasten the guilt on the accused persons because these partisan witnesses have named them as the assailants of individual victims.

However, the High Court was further of the opinion :

This version of the story cannot be doubted that the Chamars who were going ahead of the tonga were attacked by the Thakurs, who were following the tonga, with their lathis. First of all, stones were hurled at the Chamars and when temper rose very high and when the Thakurs could not be pacified by the persuasive efforts of Musaddilal and two other constables, Musaddilal left immediately for

Deag to get extra force leaving these two constables to control the situation, but they could not ultimately persuade the Thakurs not to take the law in their own hands and the Thakurs attacked the Chamars who were undoubtedly unarmed. It is also clear from the testimony of the witnesses that Goia was the first victim of the attack and thereafter Gariba was done to death. It is on this that Vijai Ram who was carrying a revolver in his 'thela' (bag) took it out and opened fire on the assailants and killed two persons namely Giriraj and Kamal. But before he could do more damage to the assailant party, he was over-powered and a lathi blow was given on his head which caused his immediate death as is apparent from the injuries sustained by him on the vital part of his body, and thereafter Chhanga and Baloo were killed by the assailants by giving lathi blows on their heads.

The High Court then proceeded to find out as to who of the accused were members of the party of the Thakurs which, according to the High Court, was undoubtedly the aggressor party. It reiterated its opinion that it was not safe to record a conviction on the basis of the depositions of PWs 8, 9 and 12 to 15 who were interested in the faction of Chamars and proceeded to find independent corroboration of guilt from the depositions of the two constables. It went on to say:

Both these witnesses have named accused Govind Singgh Tej Singb, Badri and Kamal son of Bawal who were present on the occasion and had shared the common object with the members of the unlawful assembly. Mohar Singh's presence has also been established by these two witnesses by assigning him an overt act of taking the revolver from the possession of Vijai Ram after he sustained a fatal blow on his head In this manner, the presence of five persons, namely, Govind Singh, Tej Singh, Badri, Kamal son of Bhawal and Mohar Singh is established on the scene of occurrence without a ray of doubt. The names of Govind Singh and Tej Singh have been mentioned by these witnesses and it has been said that they gave beating to Vijai Ram with their lathis. Badri's name has also been mentioned among these who darted at Vijai Ram. Kamal son of Dhawal has also been named by these two witnesses, who was present on the scene of occurrence, and it cannot be said that he was a mere spectator. In this manner, Govind Singh, Tej Singh, Badri, Kamal son of Bhawal & Mohar Singh cannot escape the consequences of being members of an unlawful assembly by whom five persons were done to death.

It was in this view of the matter that the High Court upheld the conviction of the three appellants for an offence u/s 147 of the Indian Penal Code and also found them guilty of another u/s 302 read with Section 149 of the Code.

4. After hearing learned Counsel for the parties we are of the opinion that the High Court was right in not relying on the testimony of PWs. 8, 9 and 12 to 15 for the reasons given by it We further find however that the testimony of the two Constables also does not provide sufficient material on which to base a conviction. In this connection we may point out one glaring error which has crept into the High Court judgment. It states that both the Constables named accused

Govind Singh, Tej Singh, Badri and Kamal as being present on the occasion and sharing the common object of the members of the unlawful assembly. A reference to the deposition of Cbandra Singh (PW-6) shows that he did testify to Badri and Kamal appellants being members of the party which was following the tonga. Thereafter, however, he makes no mention at all of these two appellants either in the examination in-chief or in the cross-examination. The High Court was therefore not right in saying that according to the Constables these two appellants were not only present on the occasion but also shared the common object of the unlawful assembly. It is further to be noted that the only part ascribed to Nohar Singh by Constable Chandra Singh (PW-6) is that he (Mohar Singh) disarmed Vijai Ram and took away the latter's revolver. The attack on Vijai Ram, according to the witness, was perpetrated by Govind Singh and Tej Singh accused and on that point the witness does not name any of the other accused. Constable Bharose Lal (PW-7) no doubt stated in Court that Vijai Rarn was hit with lathis by Govind Singh and Tej Singh accused and the three appellants but then this part of his statement, in our opinion, runs counter to that of the other Constable who does not name any of the three appellants in connection with the actual assault on Vijai Ram. The High Court was therefore not right when it observed that both the Constables had named five persons including the three appellants as the culprits who actually assaulted Vijai Ram to his death.

Another Fact which does not appear to have caught the attention of the High Court in this connection is that neither of the Constables was present at the place of occurrence when the Head Constable returned thereto with reinforcements from the police station. It appears probable to us that the two Constables had made themselves scarce when things got out of hand. Had this not been so, and if they had seen the occurrence through to its bitter end, there is no reason why the Head Constable should not have found them there on his return.

5. It is true that Mohar Singh is proved to have disarmed Vijai Ram; but then he did not use the revolver against his adversaries and surrendered it to the police at the earliest. There is thus no question of his having taken the revolver with intent to steal. On the other hand, his only intention appears to have been to cut short the shedding of blood.

6. In the view of the evidence that we have just taken, the case of the three appellants is at par with that of the ten accused acquitted by the High Court. In the result, therefore, the appeal succeeds and is accepted, the judgment of High Court, in so far as it relates to the appellants, is reversed and they are acquitted of the charge in its entirety.