

(1960) 02 BOM CK 0008

In the Bombay High Court

Case No : Criminal Revision Application No. 458 of 1959

Motiram Bajirao and Others

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 26-02-1960

Acts Referred:

Penal Code, 1860 (IPC) — Section 141, 147

Citation : AIR 1960 Bom 515 : (1960) 62 BOMLR 514 : (1960) CriLJ 1571 : (1960) NLJ 62

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Nisarali, for the Appellant; N.L. Abhyankar, Special Govt. Pleader, for the Respondent

Judgement

Raju, J.

(1) This is a Criminal Revision Application by three applicants Motiram, Dewaji and Lahanu, whose convictions under S. 147, Indian Penal Code, by the Magistrate First Class, Sakoli, in Criminal Case No. 70 of 1958, were confirmed by the Sessions Judge, Bhandara, in Criminal Appeal No. 28 of 1959. At the trial, originally there were 7 accused, but in appeal the learned Sessions Judge set aside the convictions of appellants nos. 1, 2, 4 and 7, and confirmed the convictions of appellants 3, 5 and 6 under S. 147, Indian Penal Code, and these three persons have now come in revision.

(2) The only point urged in revision is that if out of an unlawful assembly consisting of 7 named persons 4 are acquitted the other three cannot be convicted of rioting as members of an unlawful assembly. A conviction for being a member of an unlawful assembly or for rioting as a member of an unlawful assembly requires the proof that there was an unlawful assembly consisting of at least five persons. If this ingredient is proved, it is not necessary to prove the identity of the five or more persons constituting the unlawful assembly. If the prosecution establishes satisfactorily the presence of at least five members in an

unlawful assembly with the requisite common object, although four persons may be acquitted on the ground of their identity not being satisfactorily established, the remaining one person may be convicted. It is essential that the prosecution must satisfactorily prove the existence of unlawful assembly of five or more persons. But there may be cases in which the prosecution case is that the unlawful assembly consists of five or more named persons and if in such a case the Judge entertains a reasonable doubt as to the presence of some of the named persons and the number of the remaining persons is less than five, the result would be to cast a reasonable doubt on the presence of at least five members in the unlawful assembly. For instance, if the complainant and the prosecution witnesses say that the unlawful assembly consisted of accused 1 to accused 7 and the Judge finds that there is reasonable doubt as to the presence of accused 5, 6 and 7, that would automatically cast a reasonable doubt on the existence of an unlawful assembly. But if the complainant and the prosecution witnesses are believed when they say that there were 7 persons in the unlawful assembly with an unlawful common object and they recognise only two of them, the two persons recognised may be convicted although the identity of the remaining five is not established.

(3) The instant case appears to be of the former type because it is the prosecution case, according to the evidence of the injured person Laxman and the three prosecution witnesses Gopinath, (P. W. 4), Naktu (P. W. 5) and Baga (P. W. 6) that 7 named persons, namely, Parasram, Abhiman, Motiram, Sitaram, Deewaji Lahanu and Karnu, constituted an unlawful assembly. But the learned Sessions Judge has found that there was a reasonable doubt about the presence of four of these, namely, Parasram, Abhiman, Sitaram and Karnu. If that be the case, then there is reason to doubt as to whether there were 7 persons in all, because it is not the prosecution case that apart from the 7 named persons viz., the 7 accused who stood their trial there were any other persons in the unlawful assembly. The conviction of the three applicants under s. 147, Indian Penal Code, must therefore be set aside as there is reasonable doubt on the finding of the Sessions Judge himself as to the existence of an unlawful assembly of five or more persons.

(4) But the learned Sessions Judge has also found that two of the three applicants i.e. Motiram and Lahanu, have actually beaten Laxman, Motiram, and Lahanu can therefore be properly convicted under S. 323, Indian Penal Code, as the common object of the unlawful assembly alleged by the prosecution was to beat Laxman. I therefore set aside the convictions of Motiram and Lahanu for rioting under S. 147, and convict them under S. 323, Indian Penal Code, for voluntarily causing hurt to Laxman, and award them the same sentence viz. the sentence of fine of Rs. 50/- each, in default to one month's rigorous imprisonment. As regards Dewaji, the learned Special Government Pleader has conceded that there is no finding of the Sessions Judge that Dewaji assaulted Laxman. The conviction and sentence of Dewaji are therefore set aside.

(5) Order accordingly.