
(1997) 05 AHC CK 0184
In the Allahabad High Court
Case No : Criminal Revision No. 1464 of 1984

Ram Bahadur Singh and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 23-05-1997

Acts Referred:

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

Citation : (1997) 21 ACR 840

Hon'ble Judges : Kundan Singh, J

Bench : Single Bench

Judgement

Kundan Singh, J.—This revision has been directed against the judgment and order dated 13.7.1984 of the Sessions Judge, Azamgarh, allowing the Criminal Appeal No. 165 of 1983 and setting aside the conviction and sentence u/s 147, I.P.C. and confirming the conviction u/s 323/149, I.P.C. modifying the sentence to a fine of Rs. 500 each, and in default of payment of fine, each of the applicants was directed to undergo simple imprisonment of one month.

2. The applicants were convicted by the Judicial Magistrate under Sections 147 and 323/149, I.P.C. and sentenced each of the applicants to a fine of Rs. 500 each, u/s 147, I.P.C. In default of payment of fine, each of the accused was directed to undergo one month's simple imprisonment, while each of the applicants was sentenced to one year's R.I. u/s 323/149, I.P.C. by judgment and order dated 30.9.1983, In Criminal Case No. 1038 of 1983.

3. Being aggrieved, the applicants preferred appeal before the learned Sessions Judge against their conviction and sentence awarded by the learned Magistrate. The learned Sessions Judge allowed the appeal in part, set aside the conviction and sentence u/s 147, I.P.C. and maintained the conviction u/s 323/149, I.P.C. modifying the sentence of imprisonment to a fine of Rs. 500 each. In default of payment of amount of fine, each of the applicants was directed to undergo simple imprisonment for one month.

4. The learned Counsel for the applicants raised a legal argument and submitted that the applicants were charged u/s 147, I.P.C. also. That charge failed and the applicants were acquitted from that charge u/s 147, I.P.C. by the Additional Sessions Judge. As such, the applicants cannot be convicted with the aid of Section 149 u/s 323. I.P.C. He relied on a decision of the case Maheswar Gouda and Others Vs. The State, , wherein it has been held that Section 149 postulates an assembly of five or more persons, having a common object as specified in Section 141 and then the commission of an offence by one of the members in prosecution of that object. Thus, the ingredients of Section 147 or Section 148 are implied when a charge u/s 149 is framed. But if a specific charge u/s 147 or Section 148 has been framed and that charge has failed against the accused persons. Section 149 cannot be used against them.

5. The learned Counsel for the applicants further relied on the case Mahadeva Sharma and Others Vs. State of Bihar, . wherein it has been held that the prosecution has proved the existence of an unlawful assembly, its common object which was murder of Misari and the membership of each of the Appellants. Of course, if a charge had been framed u/s .147 or 148 and that charge had failed against any of the accused then Section 149 could not have been used against him.

6. I have given my anxious thought to the submission made on behalf of the applicants. It has to be seen whether the acquittal or the finding recorded for setting aside the conviction and sentence u/s 147 was Justified. In the present case, the learned Sessions Judge has observed in paragraph No. 10 of his judgment that he was in the agreement of the submission that Marpeet took place at such place where both the parties were present and it could not be said that they had not come after preparation. No such weapon was used for which the accused persons would have made preparation. Lathi and danda are available at every place in the rural area. There was no need to make preparation to that effect. As such, prosecution was not able to prove the charge u/s 147, I.P.C. It appears that the learned Sessions Judge travelled on his imagination and surmises. He has to go through the evidence and record the finding as to whether any of the accused persons was holding lathi or used lathi in the incident. The finding recorded by the learned Sessions Judge is based on surmises and conjectures which was not sustainable and it could have been set aside in case the Government would have filed the appeal against that finding. In case the court erroneously discharges any person from a charge u/s 147 or 148. I.P.C., and that erroneous order would not exonerate the accused persons from the charge u/s 323 read with Section 149, I.P.C. wherein his participation has been proved beyond reasonable doubt.

7. I see no ground calling for interference by this Court in the revisional Jurisdiction.

8. Accordingly the revision is dismissed.