
(1975) 02 MAD CK 0005
In the Madras High Court
Case No : Criminal App. No. 22 of 1971

Santosh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-02-1975

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 300, 302

Citation : (1976) LW(Cri) 16

Hon'ble Judges : Beg, J; Alagiriswami, J

Bench : Division Bench

Advocate : P.P. Juneja, for the Appellant; Ram Punjwant, H.S. Parthar and I.N. Shorff, for the Respondent

Final Decision : Allowed

Judgement

Beg, J.—This is an appeal by special leave by one out of 118 persons who were prosecuted for participation in a serious riot on 1st August,

1965, in village Ganiari, Tehsil Bilaspur, in the State of Madhya Pradesh, as a result of which several persons were attacked with sharp edged

weapons and three of them died of wounds sustained by them. Five accused persons were discharged by the Committing Magistrate. One

hundred and thirteen persons were jointly tried for various offences punishable under Ss. 147, 148, 302, 307, 323 and 323 I.P.C. Charges were

also alternatively framed u/s 302/149, 307/149, 323/149 and 323/149 against all of them. Ao(sic) additional Sessions" Judge of Bilaspur acquitted

sixty one accused persons and convicted fifty two persons. He found all the convicted persons guilty u/s 147 I.P.C. and sentenced them to two

years rigorous imprisonment. We need only mention the other convictions of the Appellant before us. He was held guilty u/s 304(1)/149 I.P.C. and

sentenced to five years rigorous imprisonment and under 9. 323/149 I.P.C. and sentenced to two years rigorous imprisonment, and u/s 323/149

I.P.C. and sentenced to a moatb"s rigorous imprisonment.

2. On appeals by the convicted persons as well as by the State Government, the High Court, while convicting only fourteen persons, including the

Appellant, altered his conviction u/s 304(1)/149 I.P.C. into three convictions u/s 302/149 for the murder of three persons, Badlu, Santu, Chhote

Baurwa, but it made the sentences of life imprisonment concurrent for the three offences. It maintained the other convictions and sentences passed

by the learned Sessions" Judge.

3. Learned Counsel for the Appellant has tried to advance some arguments to assail the conviction of the Appellant for participation in rioting. But,

we are not impressed by any of the criticisms levelled against six witnesses relied upon by the Trial Court as well as the High Court. Baliram,

P.W.1. Ganesh Rao, P.W.2, Gingaram, P.W.3, Bade Bhurwa, P.W.4, Kabra. P.W.5, and Lulwa, P.W.7. The unshaken evidence of these

witnesses established that the Appellant had participated in the riot; and chased the victims, and even inflicted some minor injuries on Baliram,

P.W.1. But, beyond that, the participation of the Appellant in the actual acts of cutting the limbs of the three persons, who eventually died of

profuse bleeding, was not deposed to by any prosecution witness.

4. Although we are unable to disturb the concurrent finding of the fact by the Trial Court and the High Court of the participation of the Appellant in

the serious riot which took place on 1st August 1963 in village Ganiari, we are also unable to concur with the view of the High Court that, on facts

established, the object of the unlawful assembly was necessarily to cause the death of the three individuals who, unfortunately, lost their lives as a

result of the out-burtt of frenzy of an outraged mob against persons who, according to the learned Sessions" Judge, had given cause to the villagers

to be seriously displeased with their nefarious activities.

5. The learned Sessions" Judge, while convicting the Appellant u/s 304(1), had observed :

I am inclined to take a lenient view of these killings because the persons killed had become a nuisance to the village community and their criminal

acts knew no bounds or rationality. A time comes when even an orderly society

revolts finding no relief in the regular course. Though such acts are not permissible even in such cases and cannot be encouraged yet due discrimination was not lost sight of by the assailants and severe penalty is thus not called for in the present case.

We do not consider these reasons of the learned Sessions Judge, who had given them for convicting the Appellant together with other accused

persons u/s 304(1)/149 I.P.C. and sentencing them to five years" rigorous imprisonment, to be at all sound or relevant in justifying a conviction u/s

304(1)/149 I.P.C.

6. The learned Sessions" Judge had relied upon *Kapur Singh v. State of Pepsu* AIR S.C. 654 to hold that, as injuries were inflicted upon the limbs

of the three men, who died of bleeding, but infection of injuries on vital parts of the body was deliberately avoided, an intention of anybody to

murder was not established. The learned Sessions Judge appears to have overlooked the various clauses of Section 300 I.P.C. An intention to kill

is not required in every case. A knowledge that the natural and probable consequences of an act would be (sic) death will suffice for a conviction u/s

302 I.P.C.

7. The question on which we entertain serious doubts, after examining the nature of the case and the relevant evidence on record is whether the

killing of any of the three men who died was within the common object of the large number of persons who took part in the riot in various ways in

a fairly wide-spread area. It may well be that those who actually inflicted the injuries on the three men who died could be held liable for causing

death in a particularly cruel manner. The question, nevertheless, remains whether each of the large number of other rioters in the village, who took

part in various ways, in what appeared to be an upsurge of resentment and hostility against a party three of which lost their lives, shared the

common object to kill them or to do acts whose natural and probable results would be their deaths.

8. A reference made to *Chikkarange Gowda and Others Vs. State of Mysore*, would show that each member of a mob need not be necessarily

be held liable for the actions of every other member of that mob. It may be easier in some respects, to prove a common object as a basis for a

vicarious liability u/s 149 I.P.C, then to establish a common intention within the

meaning of Section 34 I.P.C. Nevertheless, as was pointed out by this Court in Chikkarange Gowda's, case (supra), the principle has been well recognised, since the decision in 1873 in Queen v. Sabed Alt 20 Sut. W.R. (Crl.) 5 (A) that every offence which may be committed by a member of an unlawful assembly will not be necessarily ascribed to or vicariously fastened upon every other member of that assembly by using Section 149 I.P.C. The likelihood of causing of death by the nature of the actions of the members of the assembly must be shown to be within the knowledge of a member who is to be made vicariously liable for a death. Such knowledge may be inferred from the nature of the actions committed by others in an unlawful assembly which the member held vicariously liable continues to associate himself with despite these actions seen by him or known to him.

9. In a case such as the one before us, in which there were two factions in a village, one of the oppressors and the other of the oppressed, smarting under the pain of injuries inflicted by their oppressors, the intention of a member of an assembly could be initially quite lawful. His object may not go beyond joining a procession for purposes of protest. We are convinced, on the evidence on record, that the participation of the Appellant before us went beyond exhibiting a mere intention to protest. It not only embraced knowledge of likelihood(sic) of hurt of some kind to members of the party attacked, but it included an attack by the Appellant on Baliram, P.W.1. The nature of that attack was, however, relatively mild. At most, from the concerted action of so many men a member of the unlawful assembly, on the facts and circumstances of the case before us, could be reasonably held to be aware that grievous hurt would result.

10. After examining all the evidence relating to the participation of the Appellant and others in the riot we are left in grave doubt whether the assembly had a common object of killing any one at all, even if such was really the object of any particular member or members of the unlawful assembly. It may be that those who cut the limbs of man who lost their lives due to bleeding could reasonably be held liable for murder. But, it seems to be unlikely that each member, considering the nature of the riot and the different acts of different members of the riotous assembly, had such an object. This was exactly the view adopted by this Court in Chikkarange

Gowda's case" (supra).

11. As we are doubtful whether the Appellant could be held guilty of participation in an unlawful assembly which had the common object of killing

or even maiming the three men who lost their lives, we think that the Appellant could not be convicted u/s 302/ 149 I.P.C. We also think that the

learned Sessions" Judge was in error in holding that the Appellant could be convicted u/s 304(1)/149 I.P.C. For a conviction u/s 304(1) I.P.C it

has to be known that the case of the convicted person falls within one of the five Exceptions found in Section 300 I PC- It is obvious that the case

of the Appellant does not fall under any of these Exceptions. If it is doubtful whether the common object of the unlawful assembly joined by the

Appellant was to commit any acts which were either intended to cause death, or, from which knowledge of likelihood of death could be inferred,

we think that persons other than those who actually committed the acts resulting in death could not be held vicariously liable for murder.

12. The result is that we allow this appeal to the extent that we set aside the convictions and sentences of the Appellant u/s 302/ 149 I.P.C. We

maintain his convictions and sentences under Ss.147, 323/149 and 325/149 I.P.C. Subject to the modification indicated here this appeal is

dismissed. We understand that the appellant has already undergone imprisonment longer than the longest one imposed for the convictions sustained

by us. We therefore, direct that he be released forth with unless wanted in some other connection.