
(1960) 07 GUJ CK 0021
In the Gujarat High Court

Sepai Bhaimiya Nathu and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-07-1960

Acts Referred:

Penal Code, 1860 (IPC) — Section 141, 147, 148, 149, 302

Citation : AIR 1960 Guj 13 : (1960) CriLJ 1329

Hon'ble Judges : V.B. Raju, J;J.M. Shelat, J

Bench : Division Bench

Judgement

Raju, J.—This is an appeal by six persons who are accused Nos. 1 to 6 in Sessions Case No. 14 of 1959 against their conviction by the Sessions Judge at Surendranagar u/s 302 read with Section 149 I, P. C. Accused No. 1 was also convicted u/s 147 I, P. C, and accused Nos. 2 to 6 u/s 148 IPC Accused No. 2 was also convicted u/s 324 IPC

(2 9) (Omitted).

10. It is next contended that even the six accused may not have shared the common object and that their object may have been similar and not common, Mr. Shah wants to make the same distinction between similar object and common object which their Lordships of the Privy Council have made between similar intention and common intention. Section 34 IPC deals with common intention and Sections 141 and 149 I. P, C, deal with common object of an unlawful assembly. There are no doubt important points of distinction between Section 34 which deals with common intention and Section 149 which deals with constructive liability for offences committed by any member of an unlawful assembly in prosecution of the common object of the assembly or such as the members of that assembly knew to be likely to be committed. It is not necessary in this case to set out the points of difference between Section 34 and Section 149, But although there is a distinction between Section 34 which deals with common intention and Section 149 which deals with constructive liability based on common object, there may not be much difference between intention and

object, because if there is common intention to commit an offence it must also be assumed that the common object was to commit that offence. Similarly if the common object of a group of persons be to do an act that would be a case of the group of persons having a common intention to do that act although the act may be such that Section 141 would apply to an assembly of five or more persons with the common object of doing that act, but Section 34 would not apply. That is so because for the application of Section 34, the common intention must be to do a criminal act whereas the common object falling u/s 141 need not necessarily be a criminal act. For instance, the common object of an unlawful assembly may be to take or obtain possession of any property or to deprive any person of the enjoyment of right of way or of the use of water of which he is in possession or enjoyment although in such cases the common object must be to do so by means of criminal force or show of criminal force. But if the common object of a group of persons be to do a criminal act, their common intention would also be to do that criminal act. But if some members of an assembly share a common intention to commit an offence, it can also be assumed that their common object was to commit that offence. In this view, it may be possible to make a distinction between similar object and common object just as a distinction has been drawn between similar intention and common intention. But in this particular case, it is clear that this is not a case of merely a similar object of the six accused but a case of common object namely to assault and cause the death of Koli Moti Natha. Of the six accused, accused Nos. 1, 4 and 9 are brothers and they are also the first cousins of accused Nos. 3 and 4 who are full brothers. They had a common motive to attack the deceased Koli Moti Natha, the Sarpanch of Jagdishan, and they actually surrounded the deceased and caused him numerous injuries. In these circumstances, it cannot be said that the object was merely similar and not common and that the object was not shared in common by the six accused.

(11-12) (Omitted).