
(1968) 07 MP CK 0016
In the Madhya Pradesh High Court

The State of Madhya Pradesh

APPELLANT

Vs

Rukman and Others

RESPONDENT

Date of Decision : 05-07-1968

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (1969) CriLJ 80 : (1971) ILR (MP) 153 : (1968) JLJ 1050 : (1968) 13 MPLJ 700 : (1968) MPLJ 700

Hon'ble Judges : Surajbhan, J;P.K. Tare, J

Bench : Division Bench

Judgement

Surajbhan, J.

All the accused repondents, residents of village Kasdol, police station Tamnar, were prosecuted by the police for offences under Sections 148, 324 and 325, Indian Penal Code. The learned Magistrate First Class, Raigarh, charged accused Rukman with the offences under Sections 149, 324 and 325/149, Indian Penal Code, and the rest of the accused with the offenses of rioting, hurt and grievous hurt with the common object of beating the complainant Karunasindhu under Sections 147, 323 and 325 read with Section 149, Indian Penal Code, All the accused pleaded not guilty to the charges framed against them. After the close of evidence of the prosecution and the defence an application was filed by the complainant on 23.3.1964 for permission to com. pound the offences under Sections 324 and 325, Indian Penal Code and the learned Magistrate granted the same by his order dated 4.5.1964 and in consequence an order of acquittal was passed in respect of the charges framed against the accused under Sections 323, 324 and 325, Indian Penal Code. The learned Magistrate relying on the ruling in Ramphal Gope v. State of Bihar 1964 2 CriLJ 111 (Pat) came to the conclusion that as the object of the accused was to beat Karunasindhu and the offences under Sections 323, 324 and 325 read with Section 149. Indian Penal Code had already been allowed to be compounded u/s 345 of the Criminal Procedure Code, the accused are entitled to be acquitted of the charges under Sections 147 and

148, Indian Penal Code, though they are not compoundable. Accordingly, he passed an order of acquittal so far as the offences under Sections 147 and 148, Indian Penal Code are concerned.

The State has now come up in appeal u/s 417 of the Criminal Procedure Code against the order of acquittal.

Shri Chansoria, the learned Deputy Government Advocate, has contended before us that the learned Magistrate has fallen into an error in acquitting the accused of the offenses under Sections 147 and 148, Indian Penal Code on the ground that the offences against the accused under Sections 323, 324 and 325 read with Section 149, Indian Penal Code have been compounded. He has stressed that the offences under Sections 147 and 148 are distinct and separate offences which are not compoundable and therefore the order of acquittal passed by the learned Magistrate is illegal. In support he has cited the rulings in *Agha Nazarwali v. Emperor* AIR 1941 Sin 186; *Gurunarayan Das v. Emperor* AIR 1948 Pat 58 and *The Grown v. Mohammad Husain* AIR 1950 Lah 121.

Shri Shukla, the learned Counsel for the accused respondents has, on the other hand, argued that the common object of the members of the unlawful assembly was to beat the complaining Karunasindhu and the offences under Sections 323, 324 and 325 read with Section 149, Indian Penal Code having been compounded with the permission of the Court, it automatically entailed acquittal of the accused of the offences under Sections 147 and 148, Indian Penal Code, as the object being the same, these offences could not exist separately. He has cited *Basireddi v. Khyrat Ali* (1913) 20 Ind Cas 618 (Cal); *Gayadin v. Emperor* 1984 35 CriLJ 804 and 1964-2 Cri LJ 111 (Pat).

We have given our careful consideration to the contentions raised before us and we are of the view that the order of acquittal passed by the learned Magistrate is wrong and the case has got to go back for trial in accordance with law in respect of the offences under Sections 147 and 148, Indian Penal Code for the reasons mentioned hereinafter.

"Unlawful assembly" is defined in Section 14 of the Indian Penal Code. Section 146 of that Code defines "rioting" as "every member of the unlawful assembly is guilty of the offence of rioting when force or violence is used by the assembly or by any member thereof in prosecution of the common object of such assembly". Section 147 of the Code deals with the punishment for rioting and Section 148 is an aggravated form of the offence u/s 147, Indian Penal Code. Offences under Sections 147 and 148, Indian Penal Code are not compoundable even with the permission of the Court and the reasons for the same are obvious that they are offences not only against person and property but also against the State. By reading Sections 235(1) and 403(2), Criminal P.C., it is quite clear that an acquittal u/s 345, Criminal P.C., of offences under Sections 324 and 325 read with Section 149, Indian Penal Code constitutes no bar to the subsequent trial of the accused on a charge under Sections 147 and 148 of the Penal Code. It is a

different matter if after carefully considering the evidence on record the learned Magistrate would have come to the conclusion that there is no case as regards accusation under Sections 147 and 148, Indian Penal Code, but he could not have legally acquitted the accused of these charges simply by virtue of the compromise effected between the parties. We are supported in this view by the ruling in AIR 1950 Lah 121. In that case a similar question arose for consideration before the Division Bench and the learned Judges came to the conclusion that a case under Sections 147 and 148, Indian Penal Code would not end in acquittal simply because a case for hurt and grievous hurt was compounded with the permission of the Court. A similar view was taken by a Division Bench in the case reported in AIR 1943 Pat 58 wherein it was held that the offences under Sections 147 and 148, Indian Penal Code are not compoundable at all and no acquittal could be allowed by reason of the compromise in regard to the convictions under these sections. In AIR 1941 Sindh 186 also same view was taken.

It will suffice to say that the case reported in AIR 1934 124 (Oudh) is distinguishable from the facts of the present case. The learned Judge therein held that when the major portion of the prosecution evidence is found to be false and is full of exaggerations, it is impossible to build up a case u/s 325, Indian Penal Code and when the common object of the accused as alleged by the prosecution was not proved, a charge u/s 147, Indian Penal Code could not have been legally sustained.

The case reported in (1913) 20 Ind Case 618 (Cal) also is distinguishable from the instant case on its own facts. It was a case where the accused were prosecuted for committing house trespass, causing grievous hurt and also for being members of an unlawful assembly. The Magistrate charged the accused only of grievous hurt and in the course of the trial a petition for compromise was filed and the compromise was sanctioned. Subsequently an application was filed with a view to revive the case on the ground that the terms of the compromise had not been carried out. It was held that so far as the case for the offence of house-trespass was contoured, it could be compromised without the sanction of the Court and as regards the offence of causing grievous hurt, it was compromised with the permission of the Court and as there was no other object of the unlawful assembly, the question did not arise to prosecute the accused farther.

The learned Magistrate relied on the ruling reported in 1964 2 Cri LJ 111 (Pat) and acquitted the accused of offences under Sections 147 and 148, Indian Penal Code on the ground that as the common object of the assembly was to assault and the offences under Sections 323, 324 and 325 read with Section 149, Indian Penal Code, have already been compounded, the question of further trial did not arise and the accused were acquitted thereby. The facts of this case were that one Ramdeo Gope was beaten by the accused at his house on some dispute regarding the payment of price and in the trial Court a petition for compromise

was filed with regard to the offence u/s 323 Indian Penal Code, which was accepted. In the appellate Court the accused were found guilty under Sections 323 and 323/34, Indian Penal Code and the learned Judge in revision held that the compromise could be put into effect. As regards the charge u/s 147, Indian Penal Code, the learned Judge was of the view that though it is not compoundable, it appears that the common object of the unlawful assembly was to assault and as the offences under Sections 323 and 323/84, Indian Penal Code have been compromised, the charge u/s 147, Indian Penal Code also must fail because the common object was to assault.

The instant case is distinguishable firstly on the ground that there was charge against one of the accused (viz. Rukman) u/s 148, Indian Penal Code and against others u/s 147 Indian Penal Code in addition to other charges regarding which the compromise had been effected. We have already held that the charges under Sections 147, and 148, Indian Penal Code are distinct and separate and they being not compoundable, the accused were not entitled to an acquittal merely on the ground that the charges under Sections 323, 324 and 325 read with Section 149, Indian Penal Code had been compounded and further more, the offence of rioting does not of itself connote the causing of hurt. Therefore, with great respect to the learned Judge, we do not agree with the view held by the Patna High Court in the aforesaid case.

We are, therefore, of opinion that the order of acquittal passed by the learned Magistrate in respect of offences under Sections 147 and 148, Indian Penal Code is illegal and we set it aside. The case will go back to the learned Magistrate for trial according to law.