HUKUM SINGH AND OTHERS

v.

THE STATE OF UTTAR PRADESH

(K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

1961

March 28.

Criminal Trial—Criminal Trespass—Right of private defence of property—Degree of—Trespasser, if must abide by the directions of the aggrieved party—Common object—Conclusion of—Indian Penal Code (Act 45 of 1860), s. 149.

The appellants one of whom was armed with hatchet and others with lathis, on being prevented by one 'H' and his supporters through whose field they were committing criminal trespass with the common object to reach a public passage with two loaded carts, are alleged to have attacked 'H' and his supporters, as

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a result of which 'H' died. The defence was that on 'H's protest the appellants asked to be excused and pleaded to be allowed to cross the remaining small portion of the field to reach the public passage, whereupon they were attacked and in self defence they attacked back. The appellants' case was that H's right of private defence of the property had ceased for the reasons that the criminal trespass was over on the appellants having indicated their intention to do so, and they were no more an unlawful assembly as their common object had ceased and thereafter all were not responsible for acts of another.

Held, that when a criminal trespass had been committed it did not come to an end on the trespasser's expressing regret and then pleading to be allowed to proceed further with a view to end such a trespass. The aggrieved party had the right to prevent the trespasser from continuing to commit such further criminal trespass, and his directions had to be abided by by the trespasser, whatever be the degree of patience required; the trespasser had no right to insist on proceeding further even if not allowed to move in any direction in order to leave the field.

Held, further, that when several persons were with lathis and one of them was armed with hatchet and were agreed to use these weapons in case they were thwarted in the achievement of their object, it would be concluded that they were prepared to use violence in prosecution of their common object and that they knew that in the prosecution of such common object it was likely that some one might be so injured as to die as a result of those injuries.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 165 of 1960.

Appeal by special leave from the judgment and order dated December 19, 1958, of the Allahabad High Court in Criminal Appeal No. 1010 of 1956.

Jai Gopal Sethi, C. L. Sareen and *R. L. Kohli*, for the appellants.

G. C. Mathur and *C. P. Lal*, for the respondent.

1961. March 28. The Judgment of the Court was delivered by

Raghubar Dayal J.

RAGHUBAR DAYAL, J.—This appeal, by special leave, is by four persons against the order of the High Court of Judicature at Allahabad dismissing their appeal and confirming their conviction for several offences including one under s. 302 read with s. 149, I.P.C., by the Sessions Judge, Saharanpur.

These appellants, along with three other persons, were alleged to have forcibly taken two carts loaded with sugarcane from the field of Suraj Bhan through the field of Harphool, in transporting the sugarcane from the field, about a furlong and a half away, to the public passage running by the side of Harphool's field, and to have beaten Harphool and others on Harphool's protesting against the conduct of the appellants' party at the damage caused to his wheat and gram crop. Ram Chandar, one of the appellants, was armed with a hatchet (kulhari) and the others were armed with lathis. Harphool and others who came to his help struck the appellants' party also in self-defence. Harphool died as a result of the injuries received in this incident.

The appellants admitted their taking the carts through Harphool's field and alleged that at Harphool's protest they asked to be excused, promised not to take the carts through the fields in future and pleaded for the carts being allowed to cross the very small portion of the field which remained to be covered before reaching the public passage. The accused state that in spite of all this meek conduct on their part, Harphool and his companions attacked them and that then they also struck Harphool and others in self-defence.

Both the learned Sessions Judge and the learned Judges of the High Court arrived at concurrent findings of fact and held that (i) there was no passage through or along the boundary of Harphool's field; (ii) when the carts were near the passage and Harphool protested, the appellants' party began the attack; and (iii) the appellants' party had no right of private defence of person but had formed an unlawful assembly with the common object of committing criminal trespass over Harphool's field and using force to the extent of causing death, if necessary, in case they were prevented from taking the carts through the fields. They accordingly convicted the appellants of the various offences.

Mr. Sethi, learned counsel for the appellants, has raised four contentions: (i) Any right of private

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defence of property which Harphool had against the offence of criminal trespass committed by the appellants' party, had ceased when the criminal trespass was over or when the trespassers indicated their intention to cease the criminal trespass; (ii) If one of the rioters causes injury for which the other rioters are to be liable under s. 149, I.P.C., the injury must have been caused in prosecution of the common object; (iii) An assembly ceases to be an unlawful assembly after the completion of its common object and only that member of the unlawful assembly would be liable for any criminal act committed later, who has actually committed it; and (iv) The learned Judges of the High Court mis-directed themselves in raising certain inferences from the facts found.

It is clear, from the first three contentions raised, that they are all based on the supposition that the criminal trespass which the appellants' party was committing had come to an end when Harphool is said to have prevented them from committing criminal trespass and that it was Harphool who began the attack. There is no such finding recorded by the High Court. The two carts had not left Harphool's field and reached the public passage. They were inside the field when the incident took place. They were near the boundary of Harphool's field. They must, in the circumstances, have been several yards inside the field. Criminal trespass had not therefore come to an end and therefore Harphool had the right to prevent the appellants' party from continuing to commit criminal trespass for whatever short distance they had still to cover before reaching the public pathway. It is true that the appellants' party had to get out of the field and that this they could not have done without committing further criminal trespass. But it does not follow that this difficult position in which the party found itself gave them any right for insisting that they must continue the criminal trespass. They had to abide by the directions of Harphool, whatever be the degree of patience required in case they were not allowed to move in any direction in order to leave the field. If Harphool had started the attack in the

circumstances alleged by the appellants, there may have been some scope for saying that he acted unreasonably in taking recourse to force in preference to taking recourse to public authorities or to such action which a less obstinate person would have taken and had therefore lost any right of private defence of property against the offence of criminal trespass. We are therefore of opinion that the three propositions of law which, as abstract propositions of law, are sound to some extent, do not arise in the present case.

The fourth contention is really directed againt the view of the High Court that the common object of the appellants' party was to force their way through the fields of Harphool and to use force to the extent of causing death, if necessary, and that the death of Harphool was caused in prosecution of that common object. We do not agree with the contention. It is clear from the site plan, and has been so held by the Courts below, that the appellants' party could have taken their carts to the same public passage by going northwards from Suraj Bhan's sugarcane field. In so doing, they would have had to cover a shorter distance up to the public pathway and would have had the necessity to trespass through one field only, and that too, of one of their own community Sandal Rajput. The other fields lying on the way were of Suraj Bhan himself. Their choosing a longer route which made them take their carts through the fields of several *Sainis* including Harphool, could not be justified. It must have been obvious to them that in so doing they would cause damage to the crops growing in the number of fields through which they would have to pass. Such damage must give rise to protests by the persons to whom loss is caused. It could be expected that some such persons might object to the passing of the carts and that unless they be prepared to cover back the distance to their own field, they would have to insist on proceeding through the objector's field. Such instances must lead to a clash and to the use of violence. The objector is not expected to be prepared for such a conduct of the appellants' party and therefore for using force.

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The appellants' party consisted of a number of persons one of whom was armed with a hatchet. It is therefore not unreasonable to conclude that the appellants' party was prepared to use force against such an objector to achieve their object of taking the carts to the public pathway by a short-cut. The northern route, previously mentioned, was certainly shorter to reach the public passage, but that route, along with the longer portion of the public passage to be covered before reaching the spot near which the incident took place, was longer than the westerly route through the field which the party had taken. When several persons are armed with lathis and one of them is armed with a hatchet and are agreed to use these weapons in case they are thwarted in the achievement of their object, it is by no means incorrect to conclude that they were prepared to use violence in prosecution of their common object and that they knew that in the prosecution of such common object it was likely that some one may be so injured as to die as a result of those injuries. Harphool did receive seven injuries one of which was an incised wound, bone deep, on the right side of the head. Another injury consisted of a contused wound, bone deep, on the left side of the head. Harphool died within twenty-four hours of his receiving injuries. The death was due to shock and haemorrhage caused by the injuries of the skull bone and brain on account of the wounds on the head. The offence made out on account of the death of Harphool caused by the concerted acts of the members of the appellants' party has been rightly held to be the offence of murder.

In view of what we have stated we do not see any force in this appeal. It is accordingly dismissed.

Appeal dismissed.