

STATE OF U.P.

v.

MAHENDRA SINGH & ORS.

October 15, 1974

[Y.V. CHANDRACHUD AND R.S. SARKARIA, JJ.]

*Indian Penal Code (Act 45 of 1860)—ss. 141 and 149, Scope of.**Practice—Sentence—Interference by Supreme Court with order of acquittal of High Court.*

Eighteen persons were charged with various offences arising out of five murders. The trial court found, that there was dispute between the party of the accused and the party of the deceased regarding the right to take water from a tubewell; that one of the accused party was appointed as Thokdar to regulate the distribution of water; that on the day of the occurrence the accused party consisting of over 20 armed persons, went to the field and the Thokdar ordered his companions to divert the water from the field of one of the members of the deceased party; that on an objection being raised by members of the deceased party the accused opened fire as a result of which four persons died instantaneously and a fifth was injured, that the four dead bodies were then dragged to some distance, the injured person was forced to walk, the dead bodies were decapitated and limbs severed, the injured person was hacked to death, a fire was lit, and the five dead bodies were thrown into the fire; and that the severed heads were carried away by the accused as trophies. On these findings the trial court convicted nine accused for offences under ss. 302 and 201 read with s. 149 I. P. C., another accused under s. 201 read with s. 149 I. P. C., and acquitted the other eight. On appeal, the High Court, on the basis that the Thokdar could regulate the distribution of water and was entitled to enforce his authority in such manner and by such means as he thought proper, held, that the common object of the assembly was to divert the water if necessary by use of force and that the Thokdar and his followers had armed themselves with guns and other weapons only for carrying out that object and not for the purpose of committing murder, and that therefore, they did not form an unlawful assembly. The High Court accepted the evidence of motive and found that the actual number of persons who took part in the incident must have been considerably more than five and that all those who took part in the incident also took part in dragging the dead bodies and in the attempt to do away with the evidence of murder, but convicted only one out of the nine persons convicted by the trial court for murder, and convicted five others for offences under s. 201 read with s. 149 I. P. C.

In the appeal to this Court,

HELD : (1) Under s. 149, every member of an unlawful assembly is liable for the offence committed by any member of the assembly in prosecution of its common object. Such vicarious liability is not limited to the acts done in prosecution of the common object of the assembly, but extends even to acts which the members of the assembly knew to be likely to be committed in prosecution of that common object. On the findings of the High Court the assembly was undoubtedly an unlawful assembly as provided by s. 141, fourth paragraph, I. P. C. Under the Explanation to s. 141, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly. The conclusion is also unavoidable that the members of the assembly knew that the prosecution of even the limited object of the assembly was likely to result in the murder of the members of the opposite party. If the accused were members of the unlawful assembly and had taken a leading part either in the first or the final stage of the incident they cannot escape their liability for the five murders. There was but one unlawful assembly and its members were animated by a unity of purpose. Whether one did this or that act, there was identity of interest among the members of the unlawful assembly and they were actuated by a common object. Hence the five accused, who were convicted by the High Court of the offences under s. 201 read with s. 149 should also be convicted under s. 302 I. P. C. read with s. 149. [421 H-423 E]

A (2) As regards sentence, three of them had taken part in the decapitation and throwing the dismembered bodies into the fire. They were the more prominent members of the unlawful assembly and without their active participation the assembly could not have achieved its common object. In respect of them, the sentence of death imposed by the trial Court must, therefore, be restored. As regards the other two, there was no evidence as to how they were armed and therefore the trial Court was justified in imposing the lesser sentence and that sentence should be confirmed. [423 F-424 C]

B (3) As regards the three others convicted by the trial court and acquitted by the High Court, it is possible to take a view different from that of the High Court but that would not justify the setting aside of the High Court's order of acquittal, when the finding of the High Court could not be said to be perverse or against the weight of evidence. [424 C-E]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 10 & 11 of 1971.

C Appeals by Special Leave from the Judgment & Order dated the 19th February, 1970 of the Allahabad High Court in Criminal Appeals Nos. 20, 194 and 582 of 1969.

O.P. Rana for the appellant.

J. P. Goyal, for respondent Nos. 3-5 (In CrI. A. No. 10/71) and respondents (In CrI. A. No. 11 of 1971).

D The Judgment of the Court was delivered by

E CHANDRACHUD, J.—Eighteen persons were tried by the Additional Sessions Judge, Agra, for various offences arising out of the murders of five persons : Gajraj Singh, Bhairon Singh, Budh Singh, Pancham Singh and Amar Singh. The learned Judge acquitted eight persons and convicted the remaining ten. Nine out of these ten were convicted under sections 302 and 201 read with section 149 of the Penal Code. Seven out of these nine were sentenced to death and the remaining two to imprisonment for life. The tenth to be convicted was held guilty under section 201 read with section 149 and was sentenced to imprisonment for seven years.

F In appeals filed by the accused, the High Court of Allahabad substantially modified the judgment of the trial court. It convicted only one accused, Dev Chand, under section 302 and upheld the sentence of death imposed on him by the trial court. It also upheld his conviction and sentence under section 201 read with section 149. The conviction and sentence of eight of the accused under section 302 read with section 149 was set aside by the High Court. It however, upheld the conviction and sentence of five out of those under section 201 read with section 149.

H These appeals by special leave are filed by the State of Uttar Pradesh against the judgment of the High Court acquitting eight out of the nine accused who were convicted by the trial court under section 302 read with section 149. Thus, the main questions to be considered in this appeal are whether the respondents were members of an unlawful assembly, whether the common object of that assembly was to commit the murder of the five persons and whether the respondents or any of them can be held vicariously liable for those murders.

A
The incident leading to the prosecution of the respondents occurred on November, 5, 1967 at Pilwa, District Agra, U.P. There were disputes between the villagers regarding the right to take water from a tube-well as the revenue authorities were unable to fix the turns for taking water, Mahipat Singh—the absconding accused was appointed as a Thokdar to regulate the distribution of water.

B
On or about November 1, 1967 the deceased Gajraj Singh cleared the channel leading to his field in an attempt to take water from the well. The Thokdar, Mahipat Singh, asked Gajraj Singh to postpone taking the water until he himself had finished his turn. Two days before the incident, Mahipat Singh told Gajraj Singh that he could take water for irrigating his field from the evening of Saturday the 4th November. Gajraj Singh accordingly started irrigating his field on Saturday but Mahipat Singh objected once again. Gajraj Singh and his companions affirmed their intention to take water at all costs whereupon Mahipat Singh is alleged to have left the field uttering some threats.

C
D
A little after sunrise on the next day, the 5th November, an armed group of over twenty persons including the respondents went to Gajraj Singh's field. Mahipat Singh ordered his companions to divert the water from the field of Sarnam Singh who, it seems, was taking water from the well after Gajraj Singh had finished irrigating his field. On an objection being raised by Gajraj Singh and his companions, the accused are alleged to have opened fire as a result of which at least four out of five persons died instantaneously. Those four are Gajraj Singh, his brother Bhairon Singh, his nephew Budh Singh and a person called Pancham Singh. Amar Singh, the son of Gajraj Singh, was also injured by a gun-shot, but according to the prosecution he survived for some time.

E
F
The dead bodies of four victims were then dragged by the accused over a distance of about a furlong. Amar Singh was forced to walk the distance. At a spot near a cattle-shed, six of the accused who were armed with *Gandas* beheaded Amar Singh and severed his arms and legs. Thereafter, they decapitated the four dead bodies and severed their limbs. They smashed two nearby huts, collected a little wood, asked one Nanney Khan (since acquitted) to lend petrol from his jeep, sprinkled the petrol on the wood and after setting fire there to threw the five dead bodies into the fire. The severed heads were carried away as souvenirs. So gruesome is the manner of murder.

G
H
The prosecution led the evidence of two eye-witnesses Punjab Singh (P.W. 1) and Sant Ram (P.W. 2). While Amar Singh was being hacked to death, Punjab Singh asked Sant Ram to give information of the incident to a member of the Armed Constabulary who was posted at Noorpur, a distance of 3 miles. Punjab Singh himself went to the Firozabad police station and lodged the First Information Report at about 8 a.m. After receiving the report from Sant Ram, a Head Constable of the Armed Constabulary rushed to the place of occurrence with three other Constables and found the dead bodies burning. He extinguished the fire and recovered parts of the bodies from the fire.

A Out of the twenty-four accused named in the First Information Report, six had absconded. The remaining eighteen were put up for trial with the result stated earlier.

B We see great difficulty in understanding the approach and reasoning of the High Court. The High Court accepted the evidence of motive and held that the village was divided into two factions, one headed by the deceased Gajraj Singh and the other by Mahipat Singh. The High Court also found, specifically, that on the morning of November 5, 1967 the party of the accused, under the leadership of Mahipat Singh, went to the field of Gajraj Singh "armed with gun and other weapons". According to the High Court, considering the number of persons who were murdered, the distance over which the dead bodies were dragged and the manner in which those bodies were thrown into the fire, there could be no doubt "that the actual number of accused who took part in the incident must have been considerably more than five".

C On the basis of these findings the High Court proceeded to consider whether the accused could be said to be members of an unlawful assembly. It answered this question in the negative on the ground that Mahipat Singh and his partymen had gone with guns and *Gandasas* to Gajraj Singh's field in order to prevent Gajraj Singh from taking the water of the well and not for the purpose of committing the murders. This is how the High Court explains its point of view:

E "As Gajraj Singh and his partymen were waiting in fields armed with spears and *Lathis*, so Mahipat Singh and his partymen had also equipped themselves with guns and other weapons. But it could not be assumed that they had themselves collected there to commit murders and therefore, were members of an unlawful assembly."

F The High Court seems to have thought that as a Thokdar, Mahipat Singh could regulate the distribution of water and was entitled to enforce his authority in such manner and by such means as he thought proper.

G In coming to this conclusion the High Court fell into a grave error. Section 141, Penal Code, provides by its Fourth Paragraph that an assembly of five or more persons is designated as an "unlawful assembly" if the common object of the persons composing it is, *inter alia*, to deprive any person of the use of water or to enforce any right or supposed right, by means of criminal force. The High Court found that Mahipat Singh and his followers went to Gajraj Singh's field with guns and *Gandasas* in order to enforce the right of Mahipat Singh to regulate the distribution of well-water. Mahipat Singh may be assumed to have an unqualified right to regulate the distribution of water but when he collected a gang of twenty odd people and marched to Gajraj Singh's field to enforce that right, real or supposed he was clearly collecting an unlawful assembly. The only question which the High Court had then to consider was as to what was the object of that unlawful assembly.

The High Court did advert to this question but it again fell into the error of supposing that if there was "a regular confrontation" between the rival factions, it could not be said that the common object of the unlawful assembly was to commit the murders. On this aspect the High Court has expressed its view thus:

"They no doubt went heavily armed in order to use force if necessary to carry out their common object. After they carried out their common objects, it appears, there was confrontation between the parties which led to the main incident resulting in the five deaths."

If the accused went to Gajraj Singh's field heavily armed and if they were determined to carry out their object by the use of criminal force, it is difficult to appreciate how it could be said that the limited object of the assembly was to re-divert the water from the field of Gajraj Singh. Evidently, the attention of the High Court was not drawn to the Explanation to section 141, Penal Code, by which "An assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly". Assuming for the sake of argument that there was some slender justification for the view that the assembly was initially not actuated by an unlawful object, it is impossible to agree that the assembly did not even subsequently become an unlawful assembly. The savage shooting, the decapitation, the consignment of dead bodies to the fire and the flight back with the severed heads as trophies, are circumstances too glaring to justify the merciful findings of the High Court that the five murders arose out of a confrontation, that the common object of the assembly was not to commit the murders and that therefore none of the accused can be held vicariously liable for the acts committed by the other members of the assembly.

The High Court missed the essence of section 149. That section has two facets. Every member of an unlawful assembly is by that section rendered liable for the offence committed by any member of the assembly in prosecution of its common object. That fixes vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of the assembly. But such liability is not limited to the acts done in prosecution of the common object of the assembly. It extends even to acts which the members of the assembly "knew to be likely to be committed in prosecution of that object." The High Court having found that the common object of the assembly was to re-divert the water by use of force, if necessary, and that Mahipat Singh and his followers had armed themselves with guns and *Gandas* for carrying out that object, the conclusion was unavoidable that the members of the assembly knew that the prosecution of even the limited object of the assembly was likely to result in the murder of the opposition. This latter aspect was overlooked by the High Court.

There can thus be no doubt that Mahipat Singh and such of the respondents whose presence is established formed an unlawful assembly, that the common object of the unlawful assembly was to commit the murders of Gajraj Singh and his men, that even assuming that the

- A** common object was to re-divert the water, if necessary by the use of force, the members of the assembly knew that in prosecution of such an object, murders of the opponents were likely to be committed and therefore, every member of the unlawful assembly would be vicariously liable for the acts committed by any member of that assembly.
- B** Three of the respondents: Niwedan Singh, Bhikham Singh and Nawab Singh have been convicted by the High Court under section 201 read with section 149 on the basis of evidence showing that they beheaded the victims, severed their limbs and threw their bodies in the raging fire. Two more, Karam Singh and Arjun Singh, have been convicted similarly as their presence was clearly established. The former had a spear injury on his chest while the clothes of the
- C** latter were stained with human blood. If these accused were members of the unlawful assembly and had taken a leading part either in the first or the final stage of the incident, they cannot escape their liability for the quintuple murders. There was but one unlawful assembly and its members were animated by a unity of purpose. Some fired the fatal shots, some severed the limbs of the victims, some threw the dead bodies into the fire and some led the victory march parading the heads of victims as prizes. But whether one did this or that act,
- D** there was identity of interest among the members of the unlawful assembly and they were actuated by a common object. Their varying participation in the different stages of the incident was directed at achieving the common object—first the murders and then the destruction of evidence establishing the murders. The steps and therefore the acts in prosecution of the common object were manifold, but the
- E** incident was one.

- The High Court has itself found that : “all those who took part in the incident along with Dev Chand, Karan Singh, Arjun Singh and the Gandasa-men also took part in taking the dead bodies to the field of Bedari and tried to do away with the evidence of the murders by removing the heads and burning the dead bodies.” We are unable
- F** to appreciate how in view of this finding the High Court could say in the very next sentence that their conviction “under section 302 read with section 149, I.P.C., has to be set aside”.

- This part of the High Court’s judgment therefore requires to be reversed. In addition to their conviction under section 201 read with section 149 and for the other minor offences, the five respondents
- G** mentioned above shall stand convicted under section 302 read with section 149, Penal Code.

- As regards sentence, a plausible distinction may be made between the cases of Niwedan Singh, Bhikham Singh and Nawab Singh on the one hand and of Karan Singh and Arjun Singh on the other. The three first named are proved to have been armed with *Gandasas*. The
- H** High Court has found in agreement with the view taken by the trial court that there was “reliable corroboration” to the evidence of the eye-witnesses in regard to the part played by these three persons. They decapitated the dead bodies and threw the dismembered bodies

into the fire. Decapitation of a dead body is of course not murder, for section 300 of the Penal Code shows that only 'homicide' though culpable homicide, can be murder. But considering the grisly behaviour of these three respondents there can be no doubt that they were the more prominent members of the unlawful assembly and without their active participation the assembly could not have achieved its common object. We therefore restore the order of the Sessions Court imposing the sentence of death and the other concurrent sentences on Niwedan Singh, Bhikham Singh and Nawab Singh.

Karan Singh and Arjun Singh were undoubtedly members of the unlawful assembly but the evidence is not clear enough to show how they were armed or if at all. The Sessions Court was therefore justified in imposing the lesser sentence of life imprisonment on them. We confirm that sentence and the other concurrent sentences imposed on them by the Sessions Court.

As regards the remaining three respondents, Mahendra Singh, Malkhan Singh and Bachan Singh, the High Court appears to have felt considerable doubt about their presence. Some of the absconding accused were also armed with guns and the evidence is not clear either regarding the presence of these three accused or about the acts alleged to have been committed by them. The two eye-witnesses were so placed that they may not have been in a position to notice that Mahendra Singh, Malkhan Singh and Bachan Singh came along with Mahipat Singh and others or that they were armed with guns. Left to ourselves, a different view of the evidence may not be ruled out but that is not enough justification for interfering with the order of acquittal passed by the High Court. The finding of the High Court in regard to the three respondents cannot be characterised as perverse or against the weight of evidence. We therefore confirm the order of acquittal passed by the High Court in their favour.

In the result, Criminal Appeal No. 10 of 1971 is partly allowed. The acquittal of respondents 1 to 3 therein (Mahendra Singh, Malkhan Singh and Bachan Singh) is confirmed. Respondents 4 to 6 therein (Niwedan Singh, Bhikam Singh and Nawab Singh) are sentenced to death for the offence under section 302 read with section 149, Penal Code. The sentences imposed on them by the Trial Court for other offences shall run concurrently.

Criminal Appeal No. 11 of 1971 is allowed to the extent that the respondents therein, Karan Singh and Arjun Singh, are sentenced to imprisonment for life for the offence under section 302 read with section 149, Penal Code. The other sentences imposed on them by the Trial Court shall run concurrently with the sentence of life imprisonment.

V.P.S.

Appeals partly allowed.