SUKHAN RAUT AND ORS. A

v.

STATE OF BIHAR

NOVEMBER 28, 2001

[R.P. SETHI AND Y.K. SABHARWAL, JJ.] B

Criminal Law :

Penal Code, 1860—Sections 149, 34, 302, 147 and 148—Commission of offence by unlawful assembly in prosecution of common object—Liability of— Murder committed pursuant to the common object of forcibly dispossessing the deceased and others by members of unlawful assembly—Such members cannot be said to have the common object of committing murder. C

Common object and common intention—Distinction between.

D

According to the prosecution, deceased alongwith one 'H' was ploughing land when the accused appellants including appellant No. 1 armed with weapons came on the spot and started ploughing. 'H' protested and on the direction of appellant No. 1, one 'B' gave a blow on the head of the deceased in consequence of which he died. Thereafter the appellants alongwith 'B' were convicted under Section 302 read with Section 149 and also Sections 148, 147 and 323 of the Penal Code and were sentenced to imprisonment for life. High Court confirmed the order. Hence the present appeal. E

F

Appellants contended that the common object was only with respect to forcibly dispossessing the deceased and others and not for committing murder.

Respondent submitted that as murder was committed in furtherance of the common object of dispossessing the deceased it has to be inferred that the appellants were aware of the ultimate offence of murder. G

Disposing of the appeal, the Court

HELD : 1. Section 149 IPC makes the members of an unlawful H

A assembly vicariously liable where it is proved that the offence is committed in pursuance of the common object of the unlawful assembly which the members of the unlawful assembly knew that such offence was likely to be committed in prosecution of the object of the unlawful assembly. Once it is established that the unlawful assembly had common object, it is not B necessary that all persons forming the unlawful assembly must be shown to have committed some overt act for the purposes of incurring the vicarious liability for the offence committed by a member of such unlawful assembly. [362-F-H]

C 2. Appellant No. 1 is proved to have instigated 'B' for giving the blow to the deceased in consequence of which he died. It is established beyond any doubt that Appellant No.1 and 'B' shared the common intention though not common object at the time when the blow was caused on the head of the deceased. Therefore, Appellant No. 1 is guilty of common of offence punishable under Section 302 read with Section 34 of the Code and D is sentenced to undergo imprisonment for life. [364-E; F]

3. 'B' on being instigated by appellant No. 1 inflicted injury on the person of the deceased despite the fact that all the members of the unlawful assembly were allegedly armed with weapons like lathis. When, after E receiving the blow the deceased started fleeing towards south, then also no member of the unlawful assembly prevented him or in any another way facilitated the accomplishment of the crime of murder committed by 'B' on the orders of appellant No. 1. One of the appellants is stated to have thrown a stone on the chest of the deceased but the allegation stands belied F from the injuries found on the person of the deceased. Thus there is no basis to hold in view of the attending circumstances at the time of commission of the offence that the members of the unlawful assembly had the common object of committing the murder of the deceased in prosecution of the common object of committing the criminal trespass. Also there G is no sufficient evidence produced by the prosecution to prove the same beyond reasonable doubt. Therefore, the other appellants are convicted only for the offences punishable under sections 147, 148, 323 read with section 149 of the Code and sentenced to imprisonment already undergone by them.

H [363-F; G; H; 364-A; C; D; G; H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 135 of 2000. A

From the Judgment and Order dated 23.4.99 of the Patna High Court in Crl. A. No. 511 and 518 of 1986.

P.S. Mishra, Vishnu Sharma, Chandrashekhar Singh, Upendra Mishra, Tathagat Harshvardhan, Deba Prasad Mukherjee for the Appellants. B

Saket Singh, for D.B. Singh for the Respondent.

The Judgment of the Court delivered by

C

SETHI, J. Appellants along with one Bhaiya Mani Raut @ Babu Muni Raut were convicted under Section 302 read with Section 149 of the Indian Penal Code (hereinafter referred to as "the Code") and sentenced to undergo imprisonment for life. They were also convicted under Section 148, 147 and 323 of the Code but no separate sentences were passed against them. The appeals filed by the convicts were dismissed vide the judgment impugned in this appeal. D

Special Leave Petition filed by Bhaiya Mani Raut was rejected by this Court vide order dated 6.9.1999.

Mr. P.S. Misra, learned Senior Counsel appearing for the appellants has E submitted that there was no evidence against the appellants for holding them guilty under Section 302 read with Section 149 of the Code. It is contended that the common object, as alleged and proved by the prosecution, was only with respect to forcibly dispossessing the deceased and others and not for committing the ultimate crime of murder. According to the learned counsel, the F appellants, at the most can be convicted and sentenced for their individual acts. Per contra it is submitted that as the murder was committed in furtherance of the common object of dispossessing the deceased it has to be inferred that the appellants were aware of the ultimate offence of murder likely to be committed in pursuance of the common object for which they had joined together. As the G murder was the consequence of the common object of forcibly dispossessing the deceased, the appellants are presumed to be aware of the commission of the ultimate offence.

To appreciate the rival contentions it is necessary to note the facts of the case which resulted in the murder of one person and injuries to the others H

A including some of the PWs. According to the prosecution the occurrence took place on 21st July, 1981 at about 8 p.m. when Sardari Raut and Hakim Raut were ploughing the land comprising of Plot No. 369. All the accused persons armed with weapons came on spot with two pairs of bullocks and started ploughing the field in possession of Sardari Raut. When Hakim Raut protested B against the action of the appellants, he was abused and threatened. Tarni Raut (PW 3) asked Sat Narain (PW 5) to call the Sarpanch and directed Hare Krishna Raut (PW 9) to inform the police. At this point of time Sukham Raut, appellant who was armed with spade and lathi directed Bhaiya Mani Raut to attack Sardari Raut. Bhaiya Mani Raut gave a Tangi blow on the head of Sardari Raut C who started fleeing towards South but fell down in the nearby field whereafter Dewan Raut is alleged to have thrown a stone weighing about 4 kgs on the chest of Sardari Raut resulting in his instantaneous death. Bal Krishnan Raut (PW 1), Hakim Raut (PW 8), Tarni Raut (PW3) were assaulted by the appellants and inflicted injuries. After commission of the crime all the accused ran away from the spot. First Information Report was lodged by Hare Krishna Raut D (PW 9) at Police Station Sarawan which was registered as FIR No. 54 of 1981. After investigation, the charge-sheet was submitted against all the appellants. The prosecution examined 12 witnesses in support of its case.

The appellants pleaded not guilty and stated that they were falsely E implicated in the case and that the occurrence had not taken place in the manner as alleged by the prosecution. According to them the land where the occurrence took place was in their possession and that the deceased and the prosecution witnesses were the aggressors. In the free fight, which is alleged to have ensued, some of the accused-appellants are stated to have also sustained the F injuries. As already noticed, the trial court convicted the accused persons and their appeal was dismissed by the High Court.

Section 149 of the Code makes the members of an unlawful assembly vicariously liable where it is proved that the offence is committed in pursuance of the common object of the unlawful assembly which the members of the G unlawful assembly knew that such offence was likely to be committed in prosecution of the object of the unlawful assembly. Once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act for the purposes of incurring the vicarious liability for the offence committed by a member of such unlawful assembly. Under this section the liability of H

the other member of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. Common object has to be distinguished from the common intention. There is no question of common intention in Section 149 of the Code. Where no injury is inflicted pursuant to the common object to kill the deceased, but caused only when provoked by one of the witnesses, the members of the unlawful assembly cannot be held guilty for the commission of the offence of murder.

In the instant case the prosecution alleged a common object which the trial court held proved was : "Now from the evidence of the PWs it is sufficiently established that the accused persons were aggressors and went to the field of the informant and his family members in order to take the possession of the land forcibly. So it is apparent that the accused person formed an unlawful assembly the common object of which was to commit criminal trespass and to take possession of the land of the informant by means of criminal force". The trial court, however, held that:

> "It is also evident from the circumstances and the conduct that the members of the unlawful assembly were knowing that the murder was likely to be committed in prosecution of the said common object and in the prosecution of the common object the murder of Sardari Rout was committed by Babumani @ Bhaiya Muni Rout who was member of unlawful assembly."

The High Court also found that the common object of the unlawful assembly was to commit trespass to take possession of the land of the informant and his family members by force.

Learned Senior Counsel appearing for the appellants submitted that there was no basis for the trial court to hold that the members of unlawful assembly knew that the murder was likely to be committed in prosecution of the common object of committing criminal trespass. We find substance in this argument of the learned counsel. It is admitted that no member of the unlawful assembly except Bhaiya Mani Raut, inflicted any injury on the person of the deceased despite the fact that they were allegedly armed with weapons like lathis. It is also not disputed that when, after receiving the tangi blow the deceased started

A fleeing towards south, no member of the unlawful assembly prevented him or in any other way facilitated the accomplishment of the crime of murder committed by Bhaiya Mani Raut on the orders of Sukhan Raut. Dewan Raut is stated to have thrown a stone on the chest of the deceased but such allegation stands belied from the injuries found on the person of the deceased. The post
B mortem revealed the following injuries on the person of the deceased :

> "(i) One incised wound on frontal area of scalp 2"x3/4" bone deep with crack fracture of the frontal bone.
>
> (ii) One abrasion on left leg near ankle 1/4"x1/4"."

C

No injuries on the chest was noticed at the time of post mortem. Injury No. 2, an abrasion on left leg near ankle cannot be attributed to the appellant Dewan. There is no sufficient evidence produced by the prosecution which could prove beyond reasonable doubt that all the appellants had a common
D object of committing the crime of murder. The atending circumstances at the time of commission of the offence do not indicae that all the accused had the common object of committing the murder of Sardari Raut.

However, the position of Sukhan Raut, the appellant is different. He is proved to have instigated Bhaiya Mani Raut for giving a tangi blow to the
E deceased in consequence of which he died. Though not common object, yet common intention is proved against Sukhan Raut. It is established beyond any shadow of doubt that Sukhan Raut and Bhaiya Mani Raut shared the common intention at the time when the blow was caused on the head of Sardari Raut in consequence of which he died. Sukhan Raut is, therefore, guilty for the
F commission of the offence punishable under Section 302 read with Section 34 of the Code.

Learned counsel appearing for the appellants has fairly conceded that all other appellants have rightly been held guilty and convicted for the commission of offences punishable under Sections 147 148, and 323 read with Section 149
G of the Code. All the aforesaid accused persons are liable to be convicted for the aforesaid offences. They are stated to have undergone the imprisonment ranging from a periods of more than one year. Interests of justice would be served if they are sentenced to the imprisonment already undergone by them.

H Accordingly, the appeal is disposed of by holding guilty and convicting

Sukhan Raut under Section 302 read with section 34 of the Code. He is sentenced to undergo imprisonment for life. Other appellants, namely, Sattan Raut, Jitendra Raut, Umesh Raut, Binod Raut, Deven Raut @ Deb Narain Raut, Bhuneshwar Raut and Suchit Raut, are convicted for the offences punishable under Sections 147, 148, 323 read with Section 149 of the Code and sentenced to imprisonments already undergone by them. A B

N.J. Appeal disposed of.