Khacheru Singh And Ors. vs State Of Uttar Pradesh on 10 November, 1955

Equivalent citations: AIR1956SC546, 1956CRILJ950

Author: B.K. Mukherjea

Bench: B.K. Mukherjea

JUDGMENT

Imam, J.

1. The real question in this appeal is whether the conviction of the appellants under Sections 323 and 326 read with Section 34, Penal Code is legal in the circumstances of the present case. The Magistrate, who tried the appellants framed a charge under Sections 148, 323 and 326 read with Section 149, Penal Code. He found them and seven others guilty of this charge and convicted them accordingly. The Second Additional Sessions Judge of Meerut, in appeal, acquitted all the accused except the appellants whose conviction ho maintained but reduced their sentence.

The appellants moved the High Court of Allahabad in its revisional jurisdiction and the High Court held that as a result of the Additional Sessions Judge's judgment the appellants could not be convicted under Section 148 or Sections 323 and 326 read with Section 149, Penal Code as the ingredients to establish the existence of an unlawful assembly were absent. The High Court, however, convicted the appellants under Sections 323 and 326 read with Section 34, Penal Code and it is against this decision that the appellants obtained special leave to appeal to this Court.

2. There were two versions of the occurrence before the Courts below and that of the prosecution, except as to who had participated in it, was accepted and the defence version was rejected. The case of the prosecution as accepted shows that the complainant Randhir Singh was passing the 'Chari' field of the appellants with his bullocks when he was asked by them as to why his bullocks had grazed the 'Chari.' The complainant denied this, whereupon after some altercation, he was assaulted by the appellants with lathis and a spear. He received injuries from the lathi blows but was able to run away raising an alarm. He was followed by the appellants.

After he had gone some distance, some persons came to his help. The complainant and these persons were assaulted by the appellants who had come up by then. The story of the prosecution which had not been accepted is this that previous to this 8 other persons had also come and they and the appellants together assaulted the complainant and his men.

3. Mr. Isaacs for the appellants, has argued that the occurrence which took place on 15-10-1949 consisted of 2 incidents -- one near the 'Chari' field of the appellants and the other some distance away, when the complainant is said to have been assaulted by several persons including the appellants who are said to have been members of an unlawful assembly. All those persons had been acquitted except the appellants and there was nothing to show that there was any previous concert between the appellants and the acquitted accused. At the second incident several persons had come up suddenly and there was nothing to show that the assault took place as a result of a prepared plan between them and the appellants.

Accordingly the appellants could not be convicted by the application of Section 34, Penal Code. He relied upon the decision of the Privy Council in -- 'Mahbub Shah v. King Emperor', as well as, on the decision of this Court in --Pandurang v. State of Hyderabad', . He urged that before the provisions of Section 34, Penal Code could apply the prosecution had to prove that there was a common intention and that it was insufficient to show that the appellants had the same or similar intention. He also urged that as the prosecution case had been substantially rejected in that 8 out of the 11 accused had been acquitted, the appellants should not have been convicted on the same evidence which was unreliable so far as the rest of the accused were concerned.

4. In an appeal by way of special leave this Court usually does not interfere with the findings of fact arrived at by the Courts below and nothing substantial has been shown to persuade us to go behind the findings of fact arrived at by them.

5. It is unnecessary to refer to the various decisions of this Court and of the Privy Council cited by Mr. Isaacs, which deal with Section 34, Penal Code, because on the findings in this case, there can be no doubt that the provisions of Section 34, Penal Code apply. As between the version of the prosecution and that of the defence, the version of the prosecution had been accepted by the Courts below. It is true that so far as individual participation is concerned, most of the accused had been acquitted. Nonetheless, the version of the occurrence as given by the prosecution had been accepted. According to that Version it was the three appellants who attacked Randhir Singh in the first incident.

In this incident certain injuries were suffered by Randhir Singh, although no injury was caused by a spear. Randhir Singh ran away followed by the appellants. Whether he or his companions were or were not attacked by a large number of persons at the second incident, the findings make it clear that they were attacked by the 3 appellants. It seems, therefore, that the appellants were actuated by a common intention to assault the complainant and his men and this inference is justified from the circumstances. They did assault the complainant in the first incident. They pursued the. complainant and they persisted in assaulting him and those who had come to his help. The clear implication of this is that the assault in the second incident was the result of previous concert.

The High Court found that the common object charged was identical with the common intention and it seems that the evidence to prove the common intention was the same which would have proved the. common object, if it had been established that there had been an unlawful assembly. In our opinion, the decision of this Court in --"'Karnail Singh v. State or Punjab', 1954 SC 204 (AIR V

41) (C) and the observations of Fazl Ali J. in -- 'Lachman Singh v. The State', entirely cover the present case.

6. It is true that out of 11 accused persons 8 have been acquitted and this may support the argument that the prosecution witnesses were unreliable. It was, however, for the Courts of fact to determine as to whether they would accept the prosecution evidence concerning the part played by the appellants in the occurrence in spite of this. As to whether the witnesses should or should not be believed is prima facie a mutter for the courts of fact to determine.

As already stated there is nothing exceptional in the circumstances of the present case to justify us in supposing that any miscarriage of justice has taken place. Whatever doubts there might have been about the participation of other persons in the occurrence, the participation of the appellants in the occurrence was proved beyond reasonable doubt.

7. The appeal is accordingly dismissed.