

Karan Singh vs The State on 16 September, 1955

Equivalent citations: AIR1956ALL159, 1956CRILJ194, AIR 1956 ALLAHABAD 159, 1956 ALL. L. J. 203

JUDGMENT

Asthana, J.

1. In this case five persons, namely, Karan Singh, Subedar, Dalel, Lakhan and Ram Lal, were charged as follows:

"That you on or about 14-10-1950 at about 7 p. m. in village Sarai Jawaharpur committed culpable homicide not amounting to murder by causing the death of Ajeet.

"That you on the same day and time were members of an unlawful assembly and in prosecution of the common object of committing homicide not amounting to murder committed rioting, hence committed offence under Section 147, I. P. C., and thereby committed an offence punishable under Section 304/149, I. P. C....."

There was no separate charge against Karan Singh under S, 304 (I), I. P. C., apart from the charges which had been framed against him and the other four persons. The learned Sessions Judge after a consideration of the evidence pro-duced before him found four of the accused, namely, Subedar, Dalel, Lakhan and Ram Lal, not guilty of any of the charges framed against them. He, therefore, acquitted them.

He, however, found Karan Singh guilty under Section 304(1), I. P. C., on the ground that he was the person who had assaulted Ajeet and had caused his death. He, therefore, convicted him under Section 304(1), I. P. C., and sentenced him to 7 years' rigorous imprisonment. It may be mentioned here that in his examination also under Section 342, Criminal P. C. the accused Karan Singh was not questioned whether he alone had caused the death of Ajeet.

The only question which was put. to him on this point was whether he on 14-10-1950 at about 7 p. m. at Mauza Sarai Jawaharpur along with other persons armed with 'lathis' went with the common object to the field of Ajeet and assaulted him with 'lathis' as a result of which he died

2. It was contended on behalf of the appellant that his conviction under Section 304(1), I. P. C., was bad in absence of a specific charge against him under that section. In support of this contention reliance was placed on the case of --'Suraj Pal v. State of U. P.', (S) AIR 1955 SC 419 (A).

It was held in this case that a charge against a person as a member of an unlawful assembly in respect of an offence committed by one or the other of the members of that assembly in prosecution of its common object was a substantially different one from a charge against any individual for an offence directly committed by him while being a member of such assembly.

It was further held that the liability of a person in respect of the latter was only for acts directly committed by him, while in respect of the former, the liability was for acts which may have been done by any one of the other members of the unlawful assembly, provided it was in prosecution of the common object of the assembly or was such as the members knew to be likely to be so committed.

A charge under Section 149, I. P. C., puts the person on notice only of two alleged facts, viz., (1) that the offence was committed by one or other of the members of the unlawful assembly of which he is one, and (2) that the offence was committed in prosecution of the common object or was such that was known to be likely to be so committed.

Whether or not Section 149, I. P. C., created a distinct offence there could be no doubt that it created a distinct head of criminal liability which had come to be known as "constructive liability" a convenient phrase not used in the Indian Penal Code. There could, therefore, be no doubt that the direct individual liability of a person can only be fixed upon him with reference to a specific charge in respect of the particular offence.

The framing of a specific and distinct charge in respect of every distinct head of criminal liability constituting an offence, was the foundation for a conviction and sentence therefor.

3. In the aforesaid case a number of accused were committed to the sessions by the Magistrate by framing charges under Sections 147, 323/149, 307/149 and 302/149, Penal Code. There were no direct and individual charges against the accused for the specific offences under Sections 307 and 302, Penal Code. The Sessions Judge found all the accused guilty of the various offences as charged and sentenced them.

On appeal the High Court acquitted some of them and as regards one of the accused who was suspected of firing his pistol against the deceased, the High Court while setting aside the convictions and sentences of all the accused under Sections 307/149 and 302 convicted and sentenced him under Section 307 for transportation for life and to death under Section 302.

It was held that there were no direct and individual charges against the accused for the specific offences under Sections 307 and 302, Penal Code, and the absence of specific charges against the accused under SECTIONS 307 and 302 was a very serious lacuna in the proceedings and had materially prejudiced the accused, and hence the conviction and sentence under Sections 307 and 302 could not be maintained against the accused.

4. The facts of the present case are very similar to the case referred to above. In view of the aforesaid decision the appellant could not be convicted under Section 304(1), I. P. C., as there was no separate

and specific charge against him in respect of this offence.

He was sought to be convicted on the basis of his constructive liability but in view of the finding of the learned Sessions Judge that the other accused who were charged with him did not form an unlawful assembly the question of constructive liability did not arise.

5. I, therefore, allow this appeal, set aside the conviction and sentence of the appellant under Section 304(1), I. P. C., and remand this case to the lower court with the direction that the appellant shall be tried afresh after framing of proper charges against him. The case shall, how ever, not be tried by the learned Sessions Judge, Sri S. G. Alam, who has already decided the case.