

## Jwala And Anr. vs State on 4 November, 1953

**Equivalent citations: AIR1954ALL358**

ORDER

Agarwala, J.

1. This is an application in revision against an order dismissing the applicant's appeal which was directed against the order convicting the applicants under Sections 325 and 323, I.P.C. Jawala, applicant, has been sentenced to nine months' rigorous imprisonment under Section 325, I.P.C. and a fine of Rs. 50/- under Section 323, I. P. C. Badri, applicant, has been sentenced to six months' rigorous imprisonment under Section 325, I. P. C. and to a fine of Rs. 50/- under Section 323, I.P.C.

2. Sita Ram complainant, of village Jaswan-pur, and his uncle Bandi were watering their fields. After half the field had been watered they discovered that the water was not flowing normally. They suspected that it must have been stopped by somebody. Both of them proceeded up stream and found that Jawala had directed the water to his field, though it was the turn of Jaswanpur people to irrigate their fields. Sita Ram protested, and when his protest went unheeded, he tried to block the water channel which had been diverted by Jawala. Jawala then called other persons of the village to his aid including Badri, applicant, and then all of them beat Sita Ram, his uncle Bandi and one Min-ghani causing simple and grievous injuries to them. These facts have been found by both the Courts below, and so the applicants along with other persons were convicted under Sections 325 and 323, I. P. C. It could not be discovered as to which of the accused had inflicted injuries which resulted in grievous hurt.

3. The only point argued before me by the learned counsel for the applicants" is that since it could not be found as to who had inflicted grievous injuries none of them could be convicted under Section 325, I. P. C. and that they could be convicted under Section 323, I. P. C. alone. Reliance is placed upon a judgment of this Court delivered by me in -- 'Gorey v. Rex', AIR 1949 All 191 (A). This contention is not sound. In the present case it is clear that Jawala had called Badri, applicant, and other villagers to assault Sita Ram and other complainants. Therefore all of them had. a common intention of beating the complainants. When several persons combine with the object of inflicting blows upon others with lathis and grievous hurt is caused as a result of the blows thus inflicted, it may safely be presumed that the common intention of all was at least to inflict grievous injury. A case of this kind is to be distinguished from -- 'Gorey's case (A)'. Although the prosecution case there was that two of the accused instigated others to give a beating to the deceased the Court found that there was no satisfactory proof on the record to show that the accused had any preconceived plan of attacking one Hoti. It was held that because of the altercation and because of the action of Hoti in untying the cattle in the face of Ghanshiam and his sons the three persons beat him in a fit of anger all of a sudden. It was further held that Section 34, Penal Code, did not apply to the facts of the case. In those circumstances, it was held that the accused could be convicted only of causing simple hurt

and not under Section 325.

4. The distinction between the two classes of cases is obvious. When one person calls others to beat another, and in answer to that call others arrive on the scene and all of them beat that third person, a common intention of all of them to beat the third person must be presumed. The common intention required under Section 34, I. P. C. presupposes a pre-arranged plan which should precede the commission of the crime, but the pre-arranged plan need not precede the commission of the crime by any great length of time. All that is required is that the pre-arranged plan must have come into existence before the crime is committed. The pre-arranged plan can come into existence the moment one person calls another for attacking a third, may be that the length of time between calling and the commission of the crime was only a few seconds. And when both of them attack that third, a common intention has come into existence before the attack is made and both of them can be held guilty for the result achieved in pursuance of the beating. Learned counsel also referred to --'Dipa v. Emperor', AIR 1947 All 408 (B). That was also a case in which there was no common intention and it was definitely held that Section 34, I. P. C. did not apply to the facts of the case.

5. There is no force in this revision. It is dismissed.