Mithai Lal And Ors. vs State on 13 April, 1954

Equivalent citations: 1954CRILJ1450, AIR 1954 ALLAHABAD 689

ORDER

Agarwala, J.

1. The applicants were prosecuted under Sections 147 and 325 read with Section 149, I.P.C. and each of them was sentenced to pay a fine of Rs. 100/- under Section 147, I.P.C., and to undergo rigorous imprisonment for six months and to pay a fine of Rs. 100/- under Section 325 read with Section 149, I.P.C.

On appeal the conviction was set aside and the case was sent for retrial. During the pendency of the appeal, however, before the applicants were granted bail they had to go to jail for two or three days. But they were released on bail. On retrial the applicants were again convicted under Sections 147, 325 and 323, I.P.C. They were ordered to pay a fine of Rs. 100/- under Section 147, I.P.C. and to undergo a sentence of six months rigorous imprisonment under Section 325 read with Section 34, I.P.C. and to pay a fine of Rs, 25/- under Section 323. The sentences of the applicants were made to run concurrently.

On appeal their conviction under Section 147 has been confirmed and they have been sentenced under Section 323 read with Section 149, I.P.C., but they have been acquitted of the offence under Section 325, I.P.C. Jawahar Lal applicant being 17 years of age was, however, given the benefit of the provisions of Section 4 of the U. P. First Offenders Probation Act and Section 5 of the U.P. Borstal Act, 1938.

2. Two points have been argued before me. It has been urged that simultaneous convictions under Sections 147, I.P.C. and Section 323 read with Section 149, I.P.C., were not authorised by law. There is no substance in this point. The offences under Section 323 read with Section 149, I. P. C, and under Section 147, I.P.C. are quite different. Under Section 147, I.P.C. the offence is committed as soon as five or more persons assemble with some unlawful object. The gravamen of the charge consists in the assembly of the offenders while the offence under Section 323 read with Section 149, I.P.C. can be made out only when some one or another of that assembly commits an offence which can be punished under Section 323, I.P.C. No doubt, a member of the assembly, who did not himself participate in the infliction of the injuries to the complainant, actually did nothing else except being a member of the assembly. But as soon as the other members of the assembly committed an offence under Section 323, the former member, who did not himself participate in the commission of the offence, is saddled with the vicarious liability of the offence committed by the latter because of the state of knowledge of the former or because of the offence was committed in pursuance of the common object of the assembly. There is, therefore, a vital distinction between a conviction under Section 147 and a conviction under Section 323 read with Section 149, I.P.C. It cannot, therefore, be

said that a person cannot be convicted of both these offences.

3. The second point urged is that since the applicants served the sentences in jail for about two or three days on the first conviction their subsequent retrial and conviction was contrary to Article 20, paragraph (2) of the Constitution. This contention also has no force.

What the Article contemplates is a double prosecution and punishment. No person shall be prosecuted and punished for the same offence more than once. In order that this Article may be attracted there must be a second prosecution and punishment. Where a person has been convicted and punished for an offence and the conviction has been set aside and retrial ordered the retrial is a continuance of the same prosecution. The order setting aside the conviction washes out the effect of the previous conviction. A conviction on retrial is a conviction in the same prosecution. It is neither a second prosecution nor a second punishment. It is unfortunate that the applicants served a sentence in jail for two or three days on account of the first conviction which was later on set aside. But this conviction does not render the conviction and punishment imposed upon retrial as a second punishment upon a second retrial.

A similar view was taken by my learned brother Harish Chandra in Ganesh Prasad v. State of Uttar Pradesh . On the facts also there is no force in the revision application. It is dismissed.