Ajab And Ors. vs State Of Maharashtra on 24 February, 1989

Equivalent citations: AIR1989SC827, 1989CRILJ954, 1989(1)CRIMES725(SC), JT1989(1)SC395, 1989(1)SCALE488, AIR 1989 SUPREME COURT 827, 1989 (1) JT 395, 1989 ALL WC 464, (1989) ALLCRIR 224, (1989) 1 CRIMES 725

Bench: A.M. Ahmadi, S. Natarajan

JUDGMENT

Ahmadi, J.

1. In Sessions Case No. 13 of 1974, 23 persons were arraigned before the learned Additional Sessions Judge, Yavatmal for the commission of offences punishable under Sections 147, 201, 216, 332 and 395,, I.P.C. The learned Judge convicted accused Nos. 2 and 17 to 21 under the aforesaid provisions and sentenced them to varying terms of imprisonment on each count. All of them preferred an appeal to the High Court. Masodkar, J., who heard the appeal found that no error was committed by the Trial Court and dismissed the appeal. Against the said order, original accused Nos. 17 to 21 have approached this Court by special leave.

2. The facts giving rise to this appeal, briefly stated, are these. The incident in question occurred on December 26, 1972 between 2 p.m. and 5 p.m. in village Dahegaon. On that day, PW 1, Head Constable Bansi received information that certain persons were gaming by placing bets at a cock fight. Thereupon, PW 1 raided the place in the company of police constables PWs 2, 4, 5, 12 and others and two panchas, PW 6 Narayan and PW 9 Prahlad. Twelve persons were arrested for gambling and a seizure panchnama was prepared. Besides arresting the twelve persons who were found gambling, two dead cocks, ten live cocks, 12 kayaks and Rs. 50 were seized under the seizure memo. Other members of the crowd who had succeeded in fleeing on the arrival of the police party regrouped themselves and started pelting stones as the police party was escorting the apprehended persons. In the confusion that followed the attack, the twelve apprehended persons broke loose and ran away along with the cocks. One of them even removed the seizure memo and the currency notes from the pocket of the police constable who was in possession thereof. They too joined the crowd which was pelting stones. The police party, therefore, ran away and some of them reached the police station, Wadki and informed PW 3 Head Constable Kishan. (S.H.O.) about the incident. An entry was posted in the station diary about the incident but no offence was registered till P.S.I. fDahegaon returned on December 28, 1972. After registering the offence he went to Dahegaon on the 30th, drew up the panchnama, recorded statements of eye witnesses and arrested the accused including the twelve persons who were apprehended earlier and had escaped.

3 The injured policemen were sent for treatment. They were examined by PW 7 Dr. Khadse. On examination of PWs 1, 4, 5 and 12 on the evening of December 26, 1972 it was noticed that they had

certain trivial injuries which were possible by stones. PW 7 also examined some of the accused on December 31, 1972 but none of them had any visible injury. PW 8 Dr. Shankar Rao examined accused No. 17 on January 1, 1973 and noticed a healed scar 3/4" x 1/2" which was of little significance. In addition to this medical evidence the prosecution relied on the ocular evidence of PWs 1, 2, 4, 5, 6, 9 and 12 to prove the actual occurrence. The learned counsel for the appellants contended that the prosecution version as regards the actual occurrence was highly suspect, more so because of the delay in lodging of FIR. We were taken through the evidence of the material witnesses. On a perusal of their evidence we are not inclined to think that the courts below had committed any error in the appreciation of their evidence. We, therefore, do not think that this is a fit case for reappraisal of the evidence in exercise of jurisdiction under Article 136 of the Constitution.

4. It was next contended that in any case the entire blame for the incident could not lie at the doors of the appellants. According to the learned counsel, the statement of accused No. 18 disclosed that a few days before the incident PW 1 had visited the house of Bapurao Kisan, since deceased, and had demanded money. In reply, Bapurao Kisan paid the instalment of Rs. 40/- stating that he had already paid Rs. 16/to another Head Constable a day earlier, Since Bapurao Kisan was not amenable to meet the demand, the raid in question was carried out. As the police party interfered with their enjoyment, the spectators got annoyed and pelted stones at the police party. He, therefore, submitted that this was not a planned attack by the appellants but a mere sporadic event for which too serious a view was not called for. He lastly contended that in any event the conviction of the appellants under Section 216, I.P.C. was unsustainable.

5. Taking the last point first, we see merit in the contention that the conviction under Section 216 I.P.C. is wrong. Under that section a person who harbours or conceals an offender who has escaped from custody or whose apprehension is ordered is liable for punishment if he has done so to prevent the offender's apprehension. In the present case, although the 12 persons who were apprehended for gaming had escaped, there was no evidence to show that any of the appellants was guilty of harbouring any of them. We are, therefore, of the opinion that their conviction under Section 216 I.P.C. is not proper. The correct section to apply would be Section 224, I.P.C, which inter alia provides for punishment if a person escapes or attempts to escape from any custody in which he is lawfully detained. We are, therefore, of the opinion that the conviction under Section 216 I.P.C, is not proper and it ought to be under Section 224 I.P.C.

6. We agree with the learned counsel for the appellants that the case does not call for a severe punishment. The background in which the incident occurred, the minor injuries caused to some of the policemen and the circumstances in which the crowd pelted stones at the police party betray frustration for not being able to enjoy the cock-fight rather than any real desire to attack the police party. In the special circumstances of this case and having regard to the passage of time, we think that the ends of justice will be met if we reduce the substantive sentence awarded to each appellant under each count to punishment already undergone and increase the fine imposed under Section 395, I.P.C. to Rs. 750/- for each appellant and in default of payment of fine award rigorous imprisonment for four months. The appellants are given one months' time to pay the fine. On payment of fine their bail bonds will stand cancelled; otherwise they will surrender to their bail. The

appeal will stand allowed to this limited extent only.