State Of Bihar vs Mathu Pandey & Ors on 23 April, 1969

Equivalent citations: 1970 AIR 27, 1970 SCR (1) 358, AIR 1970 SUPREME COURT 27, 1970 ALL. L. J. 1, 1970 (1) SCR 358, 1969 SCD 743, 1969 2 SCJ 858, 1969 MADLJ(CRI) 856, 1970 BLJR 91, 1970 SC CRI R 235

Author: R.S. Bachawat

Bench: R.S. Bachawat, S.M. Sikri, V. Ramaswami

PETITIONER:
STATE OF BIHAR

Vs.

RESPONDENT:
MATHU PANDEY & ORS.

DATE OF JUDGMENT:
23/04/1969

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
SIKRI, S.M.
RAMASWAMI, V.

CITATION:
1970 AIR 27 1970 SCR (1) 358
1969 SCC (2) 207
CITATOR INFO :
R 1971 SC1834 (4)

ACT:
Indian Penal Code, 1860, s. 302 read with s. 149 and Ss. 103, 99-Party of accused persons preventing theft from land by another group-Causing death of two persons in attacking party-If unlawful assembly and committed offence under s. 3O2 read with s. 149-Whether entitled to exercise right of private defence under s. 103 and causing death.

HEADNOTE:
In proceedings against the accused respondents the prosecution case was that on certain land belonging to one B where some of his men were gathering fruits, the respondents, armed with bhallas, lathis, etc., attacked

these men killing two of them and injuring others. The trial court convicted the respondents under s. 302 read with s. 149 I.P.C. of the murder of the two deceased persons and of offences for inflicting injuries on other persons. The respondents' appeal to the High Court was allowed and that Court set aside all the convictions and sentences. The High Court found that the land in question was in the possession of one of the respondents and that on the date of occurrence, the members of the prosecution party including the murdered victims committed thefts of fruits on the land and that the respondents had the right of private defence of property against the theft; the theft of the fruits was committed under such circumstances as might reasonably cause apprehension that death or grievous bodily hurt would be the consequence if the right of private defence was not exercised. Accordingly, the respondents' right of private defence of property extended under s. 103I.P.C. to voluntarily causing death of the two murdered victims subject to the restrictions mentioned in s. 99.

In appeal to this Court against the acquittal of the respondents, it was contended that they were members of an unlawful assembly prosecuting the common object of forcibly preventing the two deceased from collecting 'fruit from the land in question and if necessary in causing the murder of the said two persons for the purpose; that some of them caused the murder of the two victims and that thereby all of them committed offences under s. 302 read with s. 149.

HELD : The respondents could not be convicted under s. 302 read with s. 149 I.P.C., nor was it possible to convict them under s. 302 read with s. 34.

In order to attract the provisions of s. 149 the prosecution must establish that there was an unlawful assembly and that the crime was committed in prosecution of the common object of the assembly. Under the fourth clause of s. 141 an assembly of five or more persons is an unlawful assembly if the common object of its members is to enforce any right or supposed right by means of criminal force or show of criminal force to any person. Section 141 must be read with Ss. 96 to 106 dealing with the right of private defence. Under s. 96 nothing is an offence which is done in the exercise of the right of private defence. The assertion of a right of private defence within the limits prescribed by law cannot fall within the expression "to enforce any right or supposed right" in the fourth clause of s. 141. [362-C]

359

As it had been found 'in the present case that the land in question was in the possession of one of the respondents, the object of the respondents' party was to prevent the commission of theft of the fruits in exercise of their right of private defence of property. This object was not un-lawful. Nor was it possible to say that their common object was to kill the two deceased victims. Those who killed them exceeded the right of private defence and may be

individually held responsible for the murders. But the murders were not committed in prosecution of the common object of the assembly or were such as the members of the assembly knew to be likely to be committed in prosecution of the common object. The accused respondents could not be made constructively responsible for the murders under s. 302 read with s. 149. [363-B]
Kapildeo Singh v. The King, [1949-50] F.C.R. 834; Kishori Prsad & Ors. v. State of Bihar Cr. Appeal No. 191 of 1966 decd. on 5-12-1968; and. Gurudittamal v. State of U.P. A.I.R. 1965 S.C. 257; referred.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 203 of 1966.

Appeal by special leave from the judgment and order dated April 5, 1966 of the Patna High Court in Criminal Appeal No. 602 of 1963.

D. P. Singh, for the appellant.

Nur-ud-din Ahmed and D. Goburdhun, for the respondents. The Judgment of the Court was delivered by Bachawat, J. The prosecution case was that Bhaiya Ramanuj Pratap Deo was the proprietor of village Phatpani and owned and possessed bakasht and gairmazura lands therein including plot no. 1311 and the mahua trees standing thereon. On April 10, 1962 at 3 p.m. his employee PW 33 Bindeshwari Singh was in charge of collection of mahua fruits in plot no. 1311 and the victims Ram Swarup Singh and Ramdhari Singh were supervising the collection. PW 1 Dhaneshwari, PW 2 Deokalia, PW 3 Dewal, PW 4 Rajmatia, PW 6 Udal Singh, PW 7 Border Singh, PW 8 Meghan Chamar, PW 9 Ram Dihal Kharwar, PW 10 Ram Torai Kharwar, PW 11 Manan Singh and PW 13 Jhagar Kharwar were collecting mahua fruits when suddenly accused Mathua Pandey, Kundal Pandey and Muneshwardhar Dubey armed with garassas, Chandradeo Pandey, Dayanand Pandey and Nasir Mian armed with bhalas and Bife Bhogta, Thegu Bhogta, Nageshwardhar Dubey and Uma Shankar Dubey armed with lathis surrounded Ramswarup and Ramdhari and assaulted them with their weapons. Dewal also was assaulted by Bife and Thegu and suffered minor injuries. Ramdhari died on the spot. Ramswarup died while preparations were being made to carry him to the hospital.

Bindeshwari lodged the first information report at 8 p.m. on the same date. On April 14, 1962 'accused Mathu gave a report at Nagaruntari hospital. He said that on April 10, 1962 at 3 p.m. while he was returning home, he was assaulted with lathis, garassas and bhalas by the employees of the Bhaiya Saheb.

The following injuries were found on the dead body of Ram- swarup Singh : "(1) abrasion 1 1/2"x 1 1/4" with ecchymosis on anterior aspect of right knee joint,, (2) another abrasion 1/2" x 1/4 " with ecchymosis on anterior aspect of right leg, (3) a small abrasion with ecchymosis on anterior aspect

of left knee joint, (4) an incised wound 4" x 1" x scalp on anterior aspect of the left side of the head, (5) a lacerated wound 31" X 1/3" X scalp with ecchymosis on right side of head and' (6) a penetrating wound with clean cut margins 2 1/2" X 1" X abdominal cavity placed transversely on right hypochondrium just right to mid line with stomach and loop of large bowel bulging out of it." On opening the abdominal wall it was found that the peritoneum was con- gested and the stomach was perforated on its anterior wall. Injuries 1, 2, 3 and 5 were caused by hard and blunt substance such as lathi. Injury no. 4 was caused by sharp cutting weapon such as garassa. Injury no. 6 on the abdominal cavity was caused by some sharp pointed weapon with sharp cutting margin such as bhala. The death was due to shock and internal haemorrhage caused by the abdominal wounds.

The following injuries were found on the dead body of Ramdhari Singh : "(1) the helix of left ear was cut; (2) a lacerated wound 1/2" x 1/10" x 1/10" with ecchymosis on the outer part of the left eye brow, (3) a punctured wound with clean cut margins 2 1/2"X I" X 1 1/2" on left thigh below its middle, (4) a punctured wound with clean cut margin 1" X 1/4" X 1" on posterior aspect of the left thigh in its middle, and (5) a penetrating wound with clean cut margins 2 1/4" x 3/4" x abdominal cavity on right side of the abdomen. The loops of intestines were bulging out of this opening. Injury no. 2 was caused by hard and blunt substance such as lathi. The other injuries were caused by a sharp pointed weapon with sharp cutting edge such as bhala. Death was due to shock and internal haemorrhage caused by injury no. 5 the abdominal wound.

The trial court convicted the accused-respondents Mathu, Chandradeo, Kundal, Dayanand, Bife, Thegu, Nasir, Munesh- wardhar, Nageshwardhar, Umashankardhar under S. 302 read with s. 149 of the Indian Penal Code for the murders of Ram- dhari and Ramswarup and sentenced them to rigorous imprison- ment for life each. Bife, Thegu, Nageshwardhar and Umashan- kardhar were convicted under s. 147 of the Indian Penal Code and sentenced to rigorous imprisonment for six months each. The remaining respondents were convicted under S. 148 of the Indian Penal Code and sentenced to rigorous imprisonment for one year each. Bife and Thegu were convicted under s. 323 of the Indian Penal Code for causing hurt to Dewal and sentenced to rigorous imprisonment for six months each. The sentences of each respondent were to run concurrently. The trial court held that (1) Bhaiya Saheb was in possession of plot no. 1311; (2) while Ramswarup and Ramdhari were collecting mahua on the plot, the respondents armed with bhalas, garassas and lathis inflicted fatal injuries on them with a view to forcibly prevent them from collecting the mahua, (3) Thegu and Bife assaulted Dewal with lathis, (4) the accused persons knew that there was likelihood of murders being committed in prosecution of the common object, and (5) the assailants inflicted the injuries on Ramswarup and Ramdhari with the intention of murdering them.

The respondents filed an appeal in the High Court of Patna. The High Court allowed the appeal and set aside all the convictions and sentences. The High Court, found that (1) respondent Chandradeo was the thikadar of plot no. 1311 and was in possession of the mahua trees standing thereon, (2) on the date of the occurrence,, the members of the prosecution party including Ramdhari and Ramswarup committed theft on the fruits of the mahua trees, and the respondents had the right of private defence of property against the theft; (3) Ramswarup carrying a tangi and Ramdhari carrying a danta caused severe injuries to respondent Mathu on his head, leg, and that while doing so they were not defending themselves; Mathu became unconscious. He regained consciousness on

April 14, 1962. (4) the theft of mahua fruits was committed under such circumstances as might reasonably cause apprehension that death or grievous hurt would be the consequence if the right of private defence was not exercised. Accordingly, the respondents' right of private defence of property extended under s. 103 of the Indian Penal Code to voluntarily causing death to Ramdhari and Ramswarup subject to the restrictions mentioned in s. 99; (5) the person or persons who caused the two deaths exceeded the right of private defence as they inflicted more harm than was necessary for the purpose of defence. These findings are based on adequate evidence and are not shown to be perverse. In this appeal under art. 136 of the Constitution from an order of acquittal passed by the High Court, we are not inclined to interfere with the above findings. The question is whether in these circumstances the High Court rightly acquitted the appellants., The fatal wounds on the abdominal cavities of Ramdhari and Ramswarup were caused by bhalas. The prosecution case was that Chandradeo, Dayanand and Nasir were armed with bhalas. The High Court rightly held that the prosecution failed to established that Chandradeo was armed with a bhala. The prosecution witnesses said generally that all the respondents surrounded Ram-

dhari and Ramswarup and. assaulted them. The prosecution case has been found to be false in material respects. It is not possible to record the finding that Chandradeo, Dayanand and Nasir were armed with bhalas. Some of the respondents were armed with bhalas but it is not possible to say which of them were so armed and which of them inflicted the fatal wounds on Ramdhari and Ramswarup. Accordingly we cannot convict any of the respondents under s. 302. The only question is whether they can be convicted under s. 302 read with either s. 149 or s. 34.

In order to attract the provisions of s. 149 the prosecution must establish that there was an unlawful assembly and that the crime was committed in prosecution of the common object of the -assembly. Under the fourth clause of s. 141 an assembly of five or more persons is an unlawful assembly if the common object of its members is to enforce any right or supposed right by means of criminal force or show of criminal force to any Person. Section 141 must be read with ss. 96 to 106 dealing with the right of private defence. Under s. 96 nothing is an offence which is done in the exercise of the right of private defence. The assertion of a right of private defence within the limits prescribed by law cannot fall within the expression "to enforce any right or supposed right" in the fourth clause of s. 141. In Kapildeo Singh v. The King(1) the High Court had affirmed the appellant's conviction and sentence under s. 147 and s. 304 read with s. 149, without considering the question as to who was actually in possession of the plot at the time of the occurrence. The High Court observed that the question of possession was immaterial and that the appellants party were members of an unlawful assembly, "as both sides were determined to vindicate their rights by show of force or use of force." The Federal Court set aside the conviction and sentence. It held that the High Court judge stated the law too loosely "if by the use of the word 'vindicate' he meant to include even cases in which a party is forced to maintain or defend his rights". The assembly could not be designated as an unlawful assembly if its object was to defend property by the use of force within the limits prescribed by law. The charges against the respondents were that they "were members of an unlawful assembly in prosecution of the common object of which, viz., in forcibly preventing Ramdhari Singh and Ramswarup Singh from collecting mahua from Barmania field of village Phatnapi and if necessary in causing the murder of the said two persons, for the purpose, "that some of them caused the murders of Ramdhari and Ramswarup and that thereby all of them committed offences under s. 302

read with s. 149. We have found that respondent Chandradeo was in possession of plot (1) [1949-50] F.C.R. 834.

no. 1311 and the mahua trees standing thereon. The object of the respondent's party was to prevent the commission of theft of the mhua fruits in exercise of their right of private defence of property. This object was not unlawful. Nor is it possible to say that their common object was to kill Ramdhari and Ramswarup. Those who killed them exceeded the right of private defence and may be individually held responsible for the murders. But the murders were not committed in prosecution of the common object of the assembly or were such as the members of the assembly knew to be likely to be committed in prosecution of the common object. The accused respondents cannot be made constructively responsible for the murders under s. 302 read with s. 149.

In Kishori Prasad & Ors. v. State of Bihar(1) the High Court convicted the appellants under s. 326/149 of the Indian Penal Code though the appellant Hirdaynarain was in lawful possession of the western portion of plot no. 67 and the attempt by the prorecution party to cultivate the same was high-handed. This Court set aside the conviction and sentence. Ramaswami J. observed "In a case where the accused person could invoke the right of private defence it is manifest that no charge of rioting under s. 147 or s. 148, Indian Penal Code can be established for the common object to commit an offence attributed in the charge under s. 147 or s. 148, Indian Penal Code is not made out. If any accused person had exceeded the right of private defence in causing the death of Chitanu Rai or in injuring Gorakh Prasad it is open to the prosecution to prove the individual assault and the particular accused person concerned may be convicted for the individual assault either under s. 304, Indian Penal Code or of the lesser offence under s. 326, Indian Penal Code. The difficulty in the present case is that the High Court has not analysed the evidence given by the parties and given a finding whether any or which of the appellants are guilty of causing the death of Chitanu Rai or of assaulting Gorakh Prasad. As we have already said, none of the appellants can be convicted of the charge of rioting under s. 148 or of the constructive offence under s. 326/149, Indian Penal Code." We accordingly hold that the respondents cannot be convicted under s. 302 read with s. 149, Indian Penal Code. Nor is it possible to convict them under s. 302 read with s. 34. The High 'Court rightly found that the respondents wanted to prevent the (1) Cr. App. No. 191 of 1966 decd. on 5-12-1968.

collection of mahua fruits and that a common intention of all of them to murder Ramdhri and Ramswarup was not established.

The case of Gurudittamal v. State of U.P.(1) is distinguish- able. In that case the Court found that (1) the accused persons who were in possession of a field had exceeded the right of private defence of property by murdering four persons who were peacefully harvesting the crops standing on the field and (2) each of the four appellants killed one member of the prosecution party and each of them individually committed an offence under S. 302 (see paragraph 6 and end of paragraph 14). In these circumstances, the Court upheld their conviction and sentence under s. 302. The Court also found that the appellants had the common intention to kill the victims and could be convicted under s. 302 read with s. 34 (see paragraph 12 and 9). In the present case, none of the respondents can be convicted under s. 302. As a common intention to murder Ramdhari or Ramswarup is not established, they cannot be convicted under s. 302 read with s. 34.

In the result, the appeal is dismissed.

R.K.P.S. Appeal dismissed.

(1) A.I.R. 1965 S.C. 257.