Supreme Court of India
State Of West Bengal & Anr vs Laisalhaque & Ors. Etc on 12 September, 1988
Equivalent citations: 1989 AIR 129, 1988 SCR Supl. (2) 870
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
STATE OF WEST BENGAL & ANR.

Vs.

RESPONDENT:
LAISALHAQUE & ORS. ETC.

DATE OF JUDGMENT12/09/1988

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
SHARMA, L.M. (J)

CITATION:
1989 AIR 129 1988 SCR Supl. (2) 870
1988 SCC (3) 166 JT 1988 (4) 32
1988 SCALE (2)1090

ACT:
Criminal Procedure Code, 1973--Sections 215, 218, 221, 374, 386(b), 464; Separate trial of each accused person for every distinct offence--There must not be any doubt as to 'a single act or series of acts'--Only when there is error in stating the offence of the particulars required and it has occasioned a failure of justice is accused entitled to relief:

HEADNOTE:
The respondents, sixteen in number, were members of a riotous mob comprising 40/50 persons who were armed with deadly weapons. They along with others, went inside the complainant's oil mill where respondent No. 1, Laisal Haque, opened fire with his pipegun at Gulam Rabbani which ultimately resulted in his death. They also assaulted other persons inside the mill.

Forty-two persons were arraigned to stand their trial under s. 148 and ss. 302 and 324, read with s. 149 I.P.C. The Additional Sessions Judge also framed a separate charge against respondent No. 1, Laisal Haque, under s. 302 simpliciter, and convicted him under s. 148 as well as under s. 302. The Additional Sessions Judge convicted the other

respondents under s. 147 or s. 148 and s. 324 read with s. 149, and acquitted the remaining 26 accused persons.

The High Court, in appeal, directed retrial of the respondents on the ground of material defect in the framing of the charges which had occasioned a failure of justice. The High Court held that there was no warrant of framing a separate charge against respondent No. 1 under s. 302 simpliciter without making that charge as an alternative charge .

Allowing the appeals and remitting the appeals to the High Court for a decision afresh on merits, it was,

HELD: (1) The High Court was wrong in its view that there was a fundamental defect in the framing of the charges. This was clearly a case to which s. 221 of the Code of Criminal Procedure, 1973 which is an exception to s. 218 of the Code, applies. [875G-H]

PG NO 870
PG NO 871

(2) Section 218 embodies the general rule as to the trial of accused persons which provides for separate trial of each accused person for every distinct offence and is based on the fundamental principle of criminal law that the accused person must have notice of the charge which he has to meet. Section 221 applies to a case only when from the evidence led by the prosecution it is doubtful which of several offences has been committed by the accused person. There must not be any doubt as to 'a single act or series of acts' which constitutes the transaction, that is to say, there must not be any doubt as to the facts. The doubt must be as to the inference to be deduced from these facts, thus making it 'doubtful' which of several offences the facts which can be proved will constitute. In the instant case, there is no doubt as to the facts. [875H, 876A-B]

(3) There are serious infirmities in the order rendered by the High Court. Section 215 of the Code provides that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it had occasioned a failure of justice. There is no material on record in the instant case on which the High Court could have reached to such a conclusion.[878A-B]

(4) In judging a question of prejudice, as of guilt, the Court must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be as to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself. That test is clearly fulfilled in the facts and circumstances of the instant case. [878F-H]

Willie (William) Slaney v. State of Madhya Pradesh, [1953] 2 SCR 1140; K.C. Mathew & Ors. v. State of Travancore-Cochin, [1955] 2 SCR 1057; Gurbachan Singh & Ors. v. State of Punjab, AIR 1957 SC 623; Eirichh Bhuian & Ors. v. State of Bihar, [1963] Suppl. 2 SCR 328 and State of Maharashtra v. Ramdas Shrinivas & Anr., [1982] 2 SCC 463, referred to.

(5) The High Court failed to appreciate that in an appeal by the respondents under s. 374(2) of the Code, the order of acquittal passed by the Additional Sessions Judge as against the 26 other accused could not be interfered with. [879B-C].

PG NO 872

(6) The High Court also failed to appreciate that there cannot be a piecemeal trial. The retrial directed by the High Court must necessarily revise the prosecution and must result in a trial de novo against the 42 accused. The 26 other accused acquitted by the Additional Sessions Judge were not impleaded as parties to the appeals before the High Court. In the absence of an appeal preferred by the State Government against their acquittal, the High Court could not under s. 386(b), on an appeal by the respondents against their conviction, alter the acquittal nor can there be a splitting up of the trial. [879C-E]

State of Karnataka v. Narsa Reddy, [1987] 4 SCC 170, referred

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 284-285 of 1988.

From the Judgment and Order dated 14.8.86 of the Calcutta High Court in Criminal Appeal No. 118 and 130 of 1985.

Amal Datta, D.K. Sinha, J.R. Das and N.A. Choudhary for the Appellants.

Gobind Mukhoty, U.R. Lalit, A.K. Cianguli, R.P. Gupta. Shakeel Ahmed Syed and A. Mariarputhanl for the ResPondents. The Judgment of the Court was delivered by SEN, J. The State Government of West Bengal and the complainant Mohd. Abu Bakkar Siddique Molla have come up in appeal by way of special leave, from the judgment and order of a Division Bench (Sukumar Chakravarty & Gobinda Chandra Chatterjee, JJ.) of the High Court of Calcutta dated August 14, 1986 setting aside the finding and sentences recorded by Shri S.K. Mitra, Additional Sessions Judge, 24 Paraganas, 14th Court. Alipore dated April 4, 1985 in Sessions Trial No. 3(8) of 1983 directing retrial of the respondents before us, 16 in number, on the ground of material defect in the framing of the charges which, according to the learned Judges, had occasioned in failure of justice. The High Court held that (1) it appears from the heads of the charges framed by the learned Additional Sessions Judge that the principal accused Laisal Haque was charged along with other accused persons under s. 302

read with s. 149 of the Indian Penal Code, 1860 alleging that in furtherance of the common obJect of killing the deceased Gulam Rabbani and injure others, all the rioters committed the murder of Gulam PG NO 873 Rabbani. If such a charge was framed against all the accused persons including Laisal Haque, there was no warrant of framing a charge against the accused Laisal Haque under s. 302 simpliciter, without making that charge as an alternative charge . (2) The charge framed by the learned Additional Sessions Judge as against the accused persons was materially defective inasmuch as it was a rolled up charge, the common object of the unlawful assembly being to murder Gulam Rabbani and injure others. The use of the words injure others without specifically mentioning the names of the persons who were injured made the charge vague and indefinite. lnstead the Iearned Additional Sessions Judge ought to have framed separate and distinct charges for the assault and causing of grievous hurt in respect of each of the persons assaulted. (3) The judgment of the learned Additional Sessions Judge suffers from a serious infirmity in that he had in a slipshod manner not discussed at all the evidence separately under different heads of the charges framed against each of the accused persons. While convicting the accused persons under s. 324 read with s. 149 he had not discussed which of the accused persons caused hurt to whom. In the course of the judgment the learned Judges have quoted a portion of the judgment of the learned Sessions Judge recording a finding of guilt, and observed:

It is, therefore, clear that while arriving at the aforesaid finding, the learned trial Judge has not discussed about the common object although he convicted the aforesaid accused persons under Section 148 I.P.C. and under s. 147 I.P.C. It also appears that while convicting the accused persons under Section 324 I.P.C. the learned trial Judge has not discussed which of the accused persons caused hurt to whom.

Another serious material irregularity in framing the charge under s. 302 of the Indian Penal Code simpliciter against the accused Laisal Haque has been shown by Mr. Roy. It appears from the heads of the charges that this Laisal Haque was charged along with other accused persons under s. 302/149 of the Indian Penal Code stating that in furtherance of the common object of killing Gulam Rabbani and injure others, all the rioters committed the murder of Gulam Rabbani. If such a charge is framed against all the accused persons including Laisal Haque, then it does not stand to PG NO 874 reason why again this Laisal Haque has been charged under s. 302 simpliciter without making that charge as an alternative charge. Both Mr. Roy and Mr. Dutta (learned counsel appearing for the respondents accused who preferred appeals in the High Court) have submitted that because of the aforesaid irregular charges and rolled up charges, the respective accused persons have been seriously prejudiced at the trial and the same has caused the failure of justice. The learned Advocate appearing for the State also shares the same view.

The learned Judges then concluded:

On due consideration of the charges and the materials on record, we also agree to the view as taken by the learned Advocates for the appellants and shared by the learned Advocate for the State. Further, the conviction and sentence under s. 324 or u/s. 323 I.P.C. simpliciter without framing the charges does not appear to be legal, and have caused the failure of justice.

The learned Judges accordingly held that the case required a retrial against the accused respondents alone as against 16 out of 42 persons arraigned by both the learned Additional Sessions Judge on reframing Of charges. This was done without disturbing the order of acquittal recorded by the learned Additional Sessions Judge and 26 other accused. The learned Judges were pleased to add that no observation made by them in the impugned order of retrial shall be treated as an expression of opinion on the merits of the case.

It would be convenient at this stage to set out the charges framed by the learned Additional Sessions Judge which were in these terms:

First--That you all on or about the 5th September 1980 at Najarnagar alias Sankarpore Ferryghat and P.S. Haroa were members of an unlawful assembly and did in prosecution of the common object of which assembly viz. to murder Gulam Rabbani and injure others, commit the offence of rioting and at that time were armed with deadly weapons such as bombs, pipeguns, iron rods, brickbats etc. and thereby committed an offence punishable under s. 148 of the Indian Penal Code and within the cognizance of the Court of Sessions.

PG NO 875 Secondly--That you all on the same date and place were members of an unlawful assembly and did in prosecution of the common object of such assembly viz. to murder Gulam Rabbani and injure others, some of you did commit murder by intentionally causing the death of the said Gulam Rabbani by gun shot injury, which offence you know likely to be committed in prosecution of the common object and thereby committed an offence punishable under s. 302/ 14 I.P.C. and within the cognizance of the Court of Sessions. Thirdly--That you all on the same date and place were members of an unlawful assembly and did in prosecution of the common object of such assembly viz. to murder Gulam Rabbani and injure others some of you voluntarily caused hurt to Mokbul Molla, Mr. Akbar Ali Molla, Abu Molla, Yasin Molla, Abdul Wahed Ahed Bux Molla, Daulat Ali Molla, Jaid Molla & Ors. by gun iron rod, bombs, lathi etc. which used as weapons of offence were likely to cause death which offence you knew likely to be committed in prosecution of the common object and thereby committed an offence punishable under s. 324/149 I.P.C. and within the cognizance of the Court of Sessions.

The learned Sessions Judge also framed a separate charge against the respondent Laisal Haque for the substantive offence of culpable homicide amounting to murder punishable under s. 302 of the Indian Penal Code, which is in the following terms:

That you, on or about the 5th September, 1980 at Najarnagar alias Sankarpore Ferryghat, under Police Station Haroa did commit murder by intentionally causing the death of Gulam Rabbani and thereby committed an offence punishable under s. 302 of the Indian Penal Code and with him the cognizance of the Court of Sessions. And I hereby direct that you be tried by the said Court on the said charges. We are unable to subscribe to the view of the High Court that there was a fundamental defect in the framing of the charges. This was clearly a case to which s. 221 of the Code of Criminal Procedure, 1973 which is an exception to s. 218 of the Code viz. that for every distinct offence there should be a separate charge and every charge should be tried separately, applies Sec. 218 embodies the general rule as to the trial of accused persons which provides for separate PG NO 876 trial of

each accused person for every distinct offence and is based on the fundamental principle of criminal law that the accused person must have notice of the charge which he has to meet. Sec. 221 applies to a case only when from the evidence led by the prosecution it is doubtful which of several offences has been committed by the accused person. There must not be any doubt as to a single act or series of acts which constitutes the transaction, that is to say, there must not be any doubt as to the facts. The doubt must be as to the inference to be deduced from these facts, thus making it doubtful which of several offences the facts which can be proved will constitute. In the present case, there is no doubt as to the facts. It is uncontroverted from the facts found by the learned Additional Sessions Judge that the sylvan surroundings of Shankarpore Ferryghat at Najarnagar on the banks of the river Bidyadhari which otherwise are peaceful and calm, witnessed a tumultuous occurrence on the morning of September 5, 1980 resulting in a grisly tragedy. The facts are that PW 1 Mohd. Abu Bakkar Siddique Molla is a man of easy circumstances, owning an oil mill, a saw mill and a flour mill besides cultivation of his own. All of a sudden, the atmosphere of Shankarpore was surcharged with turmoil and violence when a marauding crowd of 40/50 miscreants including the respondents armed with deadly weapons such as pipeguns, bombs, spears, tangis, iron rods, lathis etc. let loose their fury on the oil mill of the complainant. The armed mob caused considerable damage to the complainant s car WBE 1227 parked in front of the oil mill. Seeing the riotous mob the deceased Gulam Rabbani, an employee of the complainant, who was inside the oil mill along with other employees and the customers, pulled down the shutters of the mill but could not escape the wrath of the armed mob. They effected a forcible entry into the mill by lifting the shutters. The respondent Laisal Haque, the principal accused, who was armed with a pipegun, fired a shot at the deceased Gulam Rabbani who fell down on the spot and later succumbed to his injuries at the hospital. His associates then assaulted some of the customers inside the mill who were awaiting their turn as well as some of the employees with their weapons. After the deceased Gulam Rabbani was gunned down and several others received multiple bleeding injuries, the armed mob retreated to the direction from which it came.

Forty-two persons were arraigned to stand their trial before the learned Additional Sessions Judge for the aforesaid offences with which they were charged, namely, under s. 148, and ss. 302 and 324, both read with s. 149. As already stated, the learned Additional Sessions Judge also PG NO 877 framed a separate charge against the respondent Laisal Haque under s. 302 simplicter for having committed the murder of the deceased Gulam Rabbani.

On a careful consideration of the evidence adduced by the prosecution and the circumstances attendant, the learned Additional Sessions Judge came to the definitive finding that the respondents who are 16 in number, were members of a riotous mob comprising 40/50 persons armed with deadly weapons, that they along with others went inside the mill and then respondent No. 1 Laisal Haque opened fire with his pipegun at Gulam Rabbani which ultimately resulted in his death, and further that they were the persons who assaulted the persons inside the oil mill and caused injuries to the servants of the complainant and others, namely, PW 7 Ahed Bux Molla, PW 8 Sanai Molla, PW 9 Fakir Ali Sardar, PW 10 Rambilas Thakur, PW 15 After Molla, PW 16 Gulam Molla, PW l9 Debiruddin Molla, PW 20 Md. Yasin Molla, PW 21 Motiar Rahman and PW 22 Afsar Ali Molla. He accordingly convicted respondent No. 1 under s. 148 as well as under s. 302 of the Indian Penal Code and sentenced him to rigorous imprisonment for a terms of three years and imprisonment for

life respectively. He convicted some of the respondents who were armed with deadly weapons under s. l43 and S. 324 read with s. 149 and sentenced them to undergo rigorous imprisonment for a period of three years on both counts. Some other respondents were however convicted under s. 147 and sentenced to suffer rigorous imprisonment for two years. Presumably, the learned Additional Sessions Judge proceeded upon the basis that the act of respondent No. 1 Laisal Haque in opening fire with his pipegun at the deceased Gulam Rabbani was covered by clause thirdly of s. 300 and therefore he was guilty of culpable homicide amounting to murder punishable under s. 302. But as regards others, he was of the view that the common object of the unlawful assembly was not to commit the murder of the deceased Gulam Rabbani but to voluntarily cause the servants of the complainant and others hurt by dangerous weapons and thus convicted them of the offence under s. 148 and s. 234 read with s. 149. We refrain from expressing any opinion on the merits as to the legality and propriety of the conviction recorded as against these respondents. That is a matter for the High Court and it must come to the conclusion as to their guilt or otherwise on a proper appreciation of the evidence. We regret to find that there is complete non- application of mind on the part of the High Court and instead of considering the appeals preferred by the respondents, it has passed an order for retrial which is totally unwarrnated. It was nobody's case that were, in fact, misled by any error or defect in the charges framed PG NO 878 nor has the High Court explained as to how there has been a failure of justice. The High Court was clearly in error in directing a remand for retrial of the respondents. There are serious infirmities in the impugned order rendered by the High Court. Sec. 2 15 of the Code provides that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice. There is no material on record on which the High Court could have reached to such a conclusion. We may next refer to s. 221 of the Code which provides by sub-s. (1) that if a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. Sub-s. (2) thereof provides that if in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-s. (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it. Next, Sec. 464 of the Code provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has, in fact, been occasioned thereby.

In the celebrated case of Willie (William) Slaney v. State of Madhya Pradesh, [1955] 2 SCR 1140, Vivian Bose, J. speaking for the Court after an elaborate discussion observed that in judging a question of prejudice, as of guilt, the Courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself. That test is clearly fulfilled in the facts and circumstances of the present case. The

principles laid down by that very eminent Judge in Slaney's case have throughout been followed by this PG NO 879 Court. See: K.C. Mathew & Ors. v. State of Travancore- Cochin, [1955] 2 SCR 1057, Gurbachan Singh v. State of Punjab, AIR 1957 SC 623, Eirichh Bhuian & Ors. v. State of Bihar, [1963] Suppl. 2 SCR 328 at pp. 336-37 and State of Maharashtra v. Ramdas Shrinivas Nayak & Anr., [1982] 2 SCC

463. Lastly, we are constrained to observe that the High Court has not examined the merits of the case at all. If it had done so, it could not have come to the conclusion that there was any material defect or omission in the framing of the charges or giving the particulars thereof or any failure of justice was occasioned thereby. It failed to appreciate that in an appeal by the respondents under s. 374(2) of the Code, the order of acquittal passed by the learned Additional Sessions Judge as against the 26 other accused could not be interfered with. The High Court also failed to appreciate that there cannot be a piecemeal trial. The retrial directed by the High Court must necessarily revise the prosecution and must result in a trial de novo against the 42 accused. The 26 other accused acquitted by the learned Additional Sessions Judge were not impleaded as parties to the appeals before the High Court. In the absence of an appeal preferred by the State Government against thir acquittal, The High Court could not under s. 386(b) on an appeal by the respondents against their conviction, alter the acquittal nor can there be a splitting up of the trial. See: State of Karnataka v. Narsa Reddy, [1987] 4 SCC 170. Accordingly, the appeals must succeed and are allowed. The judgment and order passed by the High Court are set aside and the appeals are remitted to the High Court for a decision afresh on merits after notice to the parties. R. S . S . Appeals allowed .