

Supreme Court of India

Shamsher Singh And Others vs State Of U.P on 15 January, 1993

Equivalent citations: 1994 SCC, Supl. (1) 512

Author: K J Reddy

Bench: Reddy, K. Jayachandra (J)

PETITIONER:

SHAMSHER SINGH AND OTHERS

Vs.

RESPONDENT:

STATE OF U.P

DATE OF JUDGMENT 15/01/1993

BENCH:

REDDY, K. JAYACHANDRA (J)

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REDDY, K. JAYACHANDRA (J)

SINGH N.P. (J)

CITATION:

1994 SCC Supl. (1) 512

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. There are five appellants. The appeal is filed under the provisions of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. These five appellants (A-1, A- 2, A-4, A-5 and A-7) along with seven others were tried for offences punishable under Sections 148, 302 read with Section 149 and Section 307 read with Section 149 IPC. The trial court acquitted all of them. The State preferred an appeal. The High Court while confirming acquittal of the other seven convicted the present appellants under Section 302 IPC read with Section 149 and sentenced them to imprisonment for life in respect of the death of Jeet Bahadur Singh the deceased in the case. They are further convicted under Section 307 read with Section 149 IPC and sentenced to undergo four years RI for attempting to commit the murder of Ram Bahadur Singh, PW 1, in the case. They are also convicted under Section 143 IPC and sentenced to one year RI while Shamsher Bahadur Singh, A-1, is further convicted under Section 147 IPC and sentenced to one year RI. All the sentences were directed to run concurrently. The prosecution case is as follows.

2. All the accused and the deceased and the material witnesses belong to village Chandipur, District Faizabad. The deceased was real brother of PW 1. Six of the accused are related to each other. The six others were members of the party of A-1. There was enmity between the accused on one hand and the deceased and PW 1 on the other. There were number of instances preceding the occurrence which created ill feelings between the two groups. There were cases pending. The deceased was the Pradhan of his village since a long time. In 1972 the election was held and he contested it and one Ram Deo was the rival candidate and the accused was supporting him. The voting took place on May 20, 1972 in the Primary School. Upto 1.30 p.m. on that day the deceased is stated to have polled more votes and was likely to succeed. All the accused formed an unlawful assembly with the common object of committing the murder of the deceased and PW 1 and others concealed themselves in the culvert which is about 100 paces to the north of the Primary School. It is further alleged that at 4.30 p.m. the deceased and PW 1 and others left the polling booth for their village after casting their votes. When they were at a distance of about 20 paces to the south of the culvert A- 1 and A-5 came out from the culvert and challenged them. A- 1, Shamsher Singh, was armed with a lathi and Bansraj Singh had a spear. Thereupon the other accused also came out. Out of them, A2 was armed with a gun; A-4 with a country- made pistol and A-7 with a gun and others were armed with lathis. They rushed towards the deceased and seeing them the latter ran away. In order to save themselves PW 1 concealed himself behind a Mahua tree and the deceased took shelter of a charan (cattle trough). The accused continued the chase and A-7 fired a shot from his gun at PW 1 and he received the injuries. A-2 and A-4 then fired one shot each from their country-made pistol and gun respectively and caused serious injuries to the deceased. Thereafter, all the accused made good their escape. One Kapil Deo Singh and others removed the corpse of the deceased and placed it at the door of Lurkhur. PW 1 wrote a report and went to the police station and delivered the report on the basis of which crime was registered. The investigation was taken up by the Station House Officer and he recorded the statement of PW 1, reached the scene of occurrence, sent PW 1 for treatment and held the inquest on the dead body and sent the dead body for postmortem.

3. On PW 1 the doctor found six cut wounds and abrasions. He found burning, tattooing or singeing of the hair in or around the injuries. Injuries were simple and approximate duration was one day. These injuries could be caused by pellets fired from a shotgun, from a fairly long range. No pellet could be detected in the wound. The doctor who conducted the postmortem on the deceased found seven gunshot wounds. He also found that brain matter was coming out through the Wounds. There was fracture of the anterior fossa (sphenoid was fractured). Stomach was empty and two ozs. of liquid was present. Small intestines were empty. He also found fracture of right frontal and parietal bones and sphenoid bones. In his opinion the death was due to shock and on account of the injuries to the head. He further opined that the injuries on the head were caused by gunshot and that they were sufficient in the ordinary course of nature to cause death. Two large pellets were recovered from the brain and were handed over in a sealed envelope to the constable. After completion of the investigation the charge-sheet was laid. The prosecution mainly relied on the evidence of PWs 1, 2, 3 and 7 who figured as eyewitnesses. The accused denied the charges framed against them and pleaded not guilty. However, A-1 admitted the factum of occurrence but stated that the occurrence took place in a different manner. He stated that he was going to the village Chamruati to bring voters on the date of polling and when he was passing by the side of the house of Lurkhur, Jeet Bahadur, Ram Bahadur and one Saheb Ali armed with spears and two others, Shanker and Lurthur

armed with lathis accosted him and made an attempt to cause injuries to him; he ran away and when he reached towards the north of the Mahua tree he saw Ram Lakhan Singh coming from the west armed with a gun. He immediately snatched the gun and some cartridges from him and fired at the deceased and the others. In support of his defence he also examined PWs 1 to 3.

4. The trial court after examining the evidence of these witnesses came to the conclusion that the witnesses have not come out with whole truth and the manner of occurrence is not correctly stated by him. He also points out that there was no immediate motive of the accused to kill the deceased and the motive alleged by the prosecution was not established and acquitted all the accused. The High Court examined the reasons given by the trial court and found that they do not stand scrutiny and the High Court, however, convicted the five appellants on the grounds that the evidence of the eyewitnesses is established and that the five appellants formed into an unlawful assembly armed with various weapons and proceeded to attack the deceased and PW 1 and that the injuries were caused by A-2, A-4 and A-7. The High Court, however, held that A-] and A-5 also formed an unlawful assembly along with the three others who attacked the deceased and PW 1 and in that view of the matter made them also constructively liable and convicted all the five as stated above.

5. The learned counsel for the appellants submitted that the defence version appears to be more probable and having regard to the tempo of the atmosphere prevailing on the day because of the election both rival groups were moving out briskly and in that atmosphere it is possible that the persons belonging to the deceased party tried to attack A- 1 and A- 1 attacked the deceased and PW 1.

6. We have gone through the evidence of the defence witnesses and the plea taken by the accused and we are of the view that the same cannot be accepted. Admittedly none of the accused was injured. The prosecution story is that A-2, A-4 and A-7 were armed with firearms and that they used the same and to that extent the medical evidence corroborates the same. We have carefully gone through the evidence of the eyewitnesses particularly that of PW 1 who is an injured witness. His presence at the scene of the occurrence cannot be doubted. He has given a cogent and acceptable evidence and has accounted for the death of the deceased as well as the injuries found on him and has clearly attributed overt acts to A-2, A-4 and A-7.

7. The learned counsel, however, submitted that even accepting that much of the prosecution evidence as has been done by the High Court the further case that all the five appellants were members of unlawful assembly is not made out and at least benefit of doubt should be given to A- 1 and A-5 and the remaining can be convicted for individual overt acts.

8. Section 149 IPC has been examined in many cases. In its scope it is wide. In applying Section 149 the Court has to be satisfied about the common object and fix the membership of the accused in the alleged unlawful assembly, In the instant case on the day of occurrence an election had taken place and one can see as to how the atmosphere could have been prevailing in view of the long standing enmity between the two rival groups. Admittedly the factions of two rival groups were moving out briskly in the village. Therefore, it is difficult to say that even if four or five members were moving that all of them could have been members of unlawful assembly with a particular object. The

prosecution case is that A-1 and A-5 armed with lathis and spears cannot be accepted inasmuch as neither of them used any such weapon and therefore a doubt arises of their being armed with those weapons. In such circumstances, we find it difficult that A-1 and A-5 also were members of unlawful assembly and consequently the application of Section 149 becomes difficult in respect of their case. However, A-2, A-4 and A-7 should be held liable for their individual acts. The evidence of eyewitnesses particularly that of PW 1 proves beyond all reasonable doubt that A-2 and A-4 used their firearms and caused death of the deceased and, therefore, they committed an offence of murder punishable under Section 302 IPC. So far as A-7 is concerned, he attempted to commit murder of PW 1 and in those circumstances the offence committed by him is one punishable under Section 307 only. The conviction under Section 302 read with Section 149 and Section 307 read with Sections 149, 147 and 148 IPC and the sentences awarded therein are also set aside. We convict A-2 and A-4 under Section 302 simpliciter and sentenced each of them to undergo imprisonment for life. A-7 is however convicted under Section 307 IPC and sentenced to four years RI. A-1 and A-5 are acquitted of all the charges and they be set at liberty if not required in any other cases.

9. The appeal is partly allowed to the extent indicated above.