Supreme Court of India
Dharam Pal & Ors vs The State Of U.P on 1 September, 1975
Equivalent citations: 1975 AIR 1917, 1976 SCR (1) 587
Author: M H Beg
Bench: Beg, M. Hameedullah

PETITIONER:
DHARAM PAL & ORS.

Vs.

RESPONDENT:
THE STATE OF U.P.

DATE OF JUDGMENT01/09/1975

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
BHAGWATI, P.N.
SARKARIA, RANJIT SINGH

CITATION:
1975 AIR 1917 1976 SCR (1) 587
1975 SCC (2) 596
CITATOR INFO :
R 1976 SC1084 (9,18)

ACT:
I.P.C. Sec . 302 read sec .149 and 34-Conviction of four accused and acquittal of rest -Whether unlawful assembly Whether conviction under common intention - Vicarious liability- U.P. Children Act, 1951-Sec. 29-Young accused -Recommendation of remission.

HEADNOTE:
The 4 appellants were tried along with 14 others for the offence of rioting in the course of which 2 murders were committed at 6-30 a.m on 7-1967. The prosecution revealed a long standing enmity between the tyo groups; one to which the appellants belonged and the other to which the deceased belonged. The defence case was that people belonging to the group of the deceased killed the deceased and that thereafter they attacked the 3 injured appellants. At the trial however, the defence witnesses stated that the 3 witnesses who were injured(l a(tempted to save the deceased and were therefore injured.

The prosecution evidence suffered from some quite obvious infirmitied. Each of the 4 injured eye witnesses

while naming each of the IX accused persons as participants in the occurrence and specifying their weapons without any contradiction had failed to assign any particular part of any of them. Each injured eye-witness said that all 18 accused persons were assaulting the injured. I his was hardly consistent with the medical evidence.

The Trial Court acquitted 11 accused giving them the benefit of doubt and convicted 7 including the 4 appellants under section 302 read with section 149.

The High Court gave the benefit of doubt to all the accused except the 4 appellants. The High Court came to the conclusion that the 4 appellants had taken part in The attack in view of the admission of the 4 accused about their participating in the occurrence corroborated by the injuries on the bodies of 3 of them.

On appeal by Special leave it was contended by the appellants that since 14 out of 18 accused persons were actually acquitted the Court must presume that total number of assailants was less than 5 and that they. therefore cannot be convicted under section t 49
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HELD: 1. It is true that the acquittal of an accused person does raise in the eye of law, a presumption that he is innocent even if he was actually guilty. but it is only the acquitted accused person and not the convicted accused person who can as a rule get the benefit of such a presumption. The effect of findings on questions of fact depends upon the nature of those findings 1 only five known persons are alleged to have participated in an attack; and the counts find that 2 of them were falsely implicated it would be quite natural and logical to infer or presume that the participants were less than 5 in number. On the other. hand if the court holds that the assailant were actually 5 in number but there could be a doubt as to the identity of 2 of the alleged assailants and therefore acquits 2 of them the others will not get the benefit of douht. so long as there is a firm finding based on good evidence and sound reasoning that the participants were 5 or more in number. Such a ease is one of doubt only as to identity of some participants and not as to total number of participants. [594A-C]

2. It is true that there are some unfirmities in the prosecution evidence However the impression of rustic witnesses sought to he conveyed through their statements cannot be interpreted as though they were made in carefully drawn up documents calling for a literal interpretation. [592 H]
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3. The number and location of injuries on both sides also indicate an attack by a group of persons which must have surrounded the party of the deceased persons travelling in the Buggi. Even is 2 persons are engaged in stopping the Buggi and there are 2 on each side of the Buggi then the

number would be 6. Again, even if one person Is assumed to be the assailant of each of the victims in a simultaneous attack upon them the number of such assailants alone would come to at least 6. The deceased had injuries with sharp edged weapons and lathis. It is therefore clear that each one was attacked by more than one person. These facts were enough to come to the conclusion that the total number of assailants could not conceivably have been less than 5. [593 C-E]

4. Even if the number of assailants could have been less than 5 (which can the facts stated was really not possible) we think that the fact that the attacking party was clearly shown to have waited for the Buggi to reach near the field of Daryao in the early hours shows pre-planning. Some of the assailants had sharp edged weapons. They were obviously lying in wait for the Buggi to arrive. A more convincing evidence of a pre-concert was not necessary. Therefor if necessary. we would not have hesitated to apply section 31 of I.P.C. also to this case. The principle of vicarious liability does not depend upon the necessity to convict the required number of persons but it depends upon proof of facts beyond reasonable doubt which makes such a principle applicable. [594 F-H 595-A]

Yeshwant & Anr. v. State of Maharashtra [1973] 1 S.C.R. 291 It 302-303 at and Sukh Ram v. State of U.P. [1974] 2 S.C.R. 518 distinguished.

5.The age of appellant Om Pal at the time of trial was IS years. Section 29 of the U.P. Children Act 1951 was applicable to the case. This question was not raised either before the Trial Court or before the High Court. Although Om Pal accused was said to be armed with a lathi no specific part was assigned to him by the prosecution witnesses He must have been misled by the bad example of his elders. No previous participation in such a case and no previous conviction was shown against him. The appropriate ac(ion under section 29 of the Children Act could have been taken in his case is the question had been raised in time. The Court recommended the remission of the remaining period of Om Pal to the authorities concerned. [548D H. 599A-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 108 of 1971.

Appeal by Special Leave from the Judgment and order dated the 20th November, 1970 of the Allahabad High Court in Criminal Appeal No. 495 of 1968.

D. Mukherjee, U. K. Jha and U. P. Singh: for the Appellant.

D. P. Unival and o. P. Rana for the Respondent. The Judgment of the Court was delivered by- BEG, J.-The four appellants Daryao Singh, aged 46 years. Birbal aged 50 years, Dharam Pal aged 29 years and Om Pal, aged 15 years, were tried, alongwith 14 others, for the offence of rioting in the course of which two murders were committed, on 7.6.1967, at about 6.30 a.m., on a path adjoining the field of the appellant Daryao Singh leading to village Parsoli from village Nirpura, in Police Station Doghat, in the District of Meerut. The Trial Court acquitted eleven accused persons giving them the benefit of doubt and convicted seven including the four appellants. Each of the accused persons was charged and convicted under Section 302, read with Sections 149, Indian Penal Code and sentenced to life imprisonment, in addition to charges and convictions under Section 149/324 and 149/34 I.P.C. and either under Section 147 or Section 148 I.P.C. depending upon the weapon alleged to have been used by an accused person.

The prosecution case revealed a long standing enmity between two groups of village Nirpura: one to which the appellants belonged and another to which Mukhtara and Raghubir, the murdered men, and the four other injured persons belonged. As is not unusual, the origin of the hostility between the two sides seems to have been a dispute over cultivable land between collaterals who had some joint Khatas. Asa Ram, P.W. 1, claimed to be in separate possession of some plots with his two brothers, including Raghubira (murdered), and his uncle Mukhtara (murdered) . It was alleged by Asa Ram (P.W. 1) that Daryao Singh appellant wanted to take forcible possession of some land cultivated by him. Daryao Singh and others had already filed partition suit which was pending at the time of the occurrence. It appears that Hargyan, the father of the appellant Daryao, a first cousin of Mukhtara, the murdered man, had also been murdered in 1923 over a similar dispute. Asa Ram (P.W.1), and Raghubira (deceased), Bija (P.W. 10) and Asghar (P.W 4) had been convicted and sentenced to life imprisonment. They had been released on parole after five years' imprisonment On the date of occurrence, Mukhtara, the murdered man, was said to be proceeding with Raghubir, who was also murdered, and Asa Ram, P.W.1, and Bija, P.W.10, all sitting in a buggi driven by Asghar, P.W.4, and Smt. Jahani, P.W.3, the wife of Asa Ram, P.W.1, was said to be following the buggi at a short distance with some food for the party. When this buggi reached the field of Daryao Singh, where a number of persons, said to be eighteen altogether, whose names are mentioned in the First Information Report lodged at Police Station Doghat at a distance of three miles from village Nirpura at 8.30 a.m., were sitting on the boundary. These persons are alleged to have surrounded the buggi and attacked its occupants with balams and lathies shouting that the whole party in the buggi should be killed. give occupants of the buggi, and, after that, Smt. Jahani, who soon joined them, were injured. Two of them, Mukhtara and Raghubir, died very soon after the attack. It was alleged that Dharam Pal, Birbal and Daryao, appellants, and Nahar, Ajab Singh, and Ram Kishan, acquitted persons, were armed with balams, one Salek Chand was armed with a spade, and the rest with lathis. A number of witnesses are said to have arrived in response to the shout of the injured occupants of the buggi. The following injuries are shown to have been sustained by the victims of the attack:

1. MUKHTARA:

"1. Vertical abrasion, 1 1/2 in. x 1/2 in. On the head, 4 in. above the middle of the left eye- brow

2. Transverse abrasion, 1 3/4 in.x3/4 in. On the head, 5 in. above the right eye-brow.

3. Round swelling" 2 in.x2 in. On the right side of the head, 1/2 in. above the ear, there was a depressed fracture 2 in.x2 in. underneath on the bone.

4. Transverse incised wound 1 1/2in.x1/2 in.xboneand brain deep on the head 1 in. behind the middle of the right car. Brain matter was coming out of the wound.

5. Transverse incised wound 1 1/4in.x 1/2 in. x bone deep on the A head 3 in. behind the upper part of the right car. The margins of injuries Nos. 4 and 5 were clear cut, smooth and well defined and angles on both the end were acute.

6. Round blue mark 2 in.x2 in. On the right shoulder portion. There was swelling all over the head. There was no reference of injuries Nos. 1 and 6 in the inquest report .

2. RAGHUBIRA

1. Transverse abrasion 1/4 in.x1/2. On the left ankle inner side.

2. Vertical punctured wound in.x1/3 in.x1/4 in.

On the back side, of the elbow, margins, clean cut. smooth and wall defined and angles were acute.

3. Transverse lacerated wound on the head, 1 1/2 in. x 2 in. bone deep on the right side 3 in above the car.

4. Round wound on the head 4 1/2 in. above the middle of the right eye-brow with margins clean cut".

3. ASA

1. Punctured wound 1/2 in.x1/4 in.x1/4 in. On the left side of the chest with abrasions on the margins, 64 in. below the axile.

2. Abrasion 1/2 in.x1/4 in. On the left shoulder.

3. Abrasion 1/2 in.x1/4 in. oblique, on the right side of the chest extending towards right shoulder from epigastrium.

4. Abrasion 1/4 in.x1/8 in. On the inner side of the left hand I in. above the wrist.

5. Abrasion 1/4in.x1/6 in. On the right arm back side 3 in. above the elbow.

6. Contusion 3/4 in.x1/2 in. On the right side 3 in. below the edge of the iliac crest.

7. Incised wound 1/2 in.x1/10 in. x skin deep 1/2 in. below the left eye."

4. SMT. JAHANI:

1. Lacerated wound 1 1/3 in. x 1/2 in. bone deep from front to backward 3 1/2 in. above the left ear.

2. Contusion 4 1/4 in.x1 in. On the left scapular region. 2 1/2 in. below the shoulder.

3. Contusion 1 1/2 in.x1/4 in. parallel to the earth extending from the upper and inner end of injury No. 2. These injuries were simple and had been caused by some blunt weapon, like lathi and were about 6 hours old (fresh). I had prepared the injury report Ex. Ka 16 at the time of examination. It bears my signature and is correct."

5. ASGHAR:

1. Contusion 2 in.x1/4 in.x1/4 in. going from front to back 31 in. above the nose.

2. Punctured wound 1 in.x ' in.x-4 in. On the left hand, outer side 2 in. below the elbow.

6. BIJAI SINGH:

1. Contused wound 1/2 in.x1/2 in. x skin deep at the part above the nail of the thumb of right hand with contusion 1 1/4 in. x1/2 in. in the inner part of the nail.

2. Contusion 2 1/4 in.x3/4 in. extending from the palm on the 1st and 2nd knuckles whereblood had clotted in an area of 1/2 in. x1/4 . On the palmer side.

3. Abrasion 1/2 in.x1/4 in. On the back and anterior side of right hand, 3 1/2 in. above the wrist."

Injuries were found on the side of the accused on 3 appellants only. They were as follows:

(1) OM PAL:

1. Lacerated wound 1/2 in.x4/10 in.x2/10 in. on the inner side of left forearm 3 1/2 in. above the left wrist.

2. Lacerated wound 2/10 in.x2/10 in.x6/10 in. On the inner side of left forearm.

3. Abrasion 3/10 in.X21 10 in. On the upper r side of left forearm, 3 1/2 in. above the left wrist."

2. DARYAO:

"1. Abrasion in.x3/10 in on the left shoulder in front side.

2. Wound with scab 4/10 in.x2/10 in. On the left are outer side, 6 in. below left shoulder". 3 . BIRBAL:

1. Lacerated wound 2 in.x3/10 in. bone deep on the front , side of head.

2. Abrased contusion 1 in.x2/10 in. On the left side of head, 3 in. above the left ear.

3. Contusion 1/2 in.x4/10 in. On the right side of head, 2 in. above the right ear.

4. Abrasion 1/4 in.x1/4 in. On the index finger of the right hand upper side on the middle phalux.

5. Abrasion 1/4 in.x1/4 in. On the upper side at the root of the middle finger of right hand.

6. Abrasion 1/2 in.x1/10 in. On the inner side of the lower portion of left fore-arm, 3 in. above the wrist.

7. Abrasion 3/10 in.x1/10 in. On the inner side of left wrist.

8. Lacerated wound 3/10 in.x1/10 in.x3/10 in. an the A right at a distance of 31 in. from side of thigh, anterior iliac spine".

It is significant that in answer to the last question put to Daryao Singh, appellant, in the Committing Magistrate's Court, under Section 342 Criminal Procedure Code, whether he had nothing else to say, the first thing that came to his mind was that Asa Ram P.W.1, and Bijai, P.W. 10 and Raghubir (deceased) had killed his father about 15 years ago.

The defense case seemed quite absurd. It was that, Asa Ram and Bijai and Asghar, after having killed Mukhtara and Raghubir, haul come and attacked the three injured appellants at the time and place given by the, prosecution. Their defense witness, however, in an obvious attempt to explain the injuries of the three appellants, put forward the entirely new version that, when Asa, Bijai, and Asghar, were killing Mukhtara and Raghubir, the three injuries appellants had attempted to save the murdered men and were injured as a consequence. The accused had even filed a First Information Report on these lines. They unsuccessfully tried to prosecute Asa and Bijai and Asghar who could not, as the Trial Court and the High Court had rightly observed, be expected to run berserk suddenly and attack persons on their own side for no explicable reason.

The prosecution had, in addition to examining injured witnesses, mentioned above, produced Rattan Singh P.W.2, Kalu, P.W.9, and Lakhi, P.W.7, whose testimony was discarded by it on two grounds: firstly, because each one was shown to have some enmity with some accused person; and, secondly, because they were said to have been standing at a Harat nearly 400 paces away from where` according to the High Court, they could not have seen the occurrence. If there was no obstruction to the range, of vision, and none was shown by evidence, these witnesses could at least make out the number of assailants from this distance as sunlight was there.

The prosecution evidence suffered from some quite obvious infirmities. Each of the four injured eye witnesses, while naming each of the eighteen accused persons as participants in the occurrence and specifying their weapons, without any contradiction, had failed to assign any particular part to any of them. Each injured witness said that all the eighteen accused persons, named in the First information Report, were assaulting the injured. This was hardly consistent with either the medical evidence or the very short time the whole occurrence was said to have lasted. It was physically impossible for all the eighteen accused persons to attack simultaneously each of the five victims. However, we cannot interpret the impressions of rustic witnesses, sought to be conveyed through their statements` as though they were made in carefully drawn up documents calling for a literal interpretation. It was likely that each of them had seen some acts of some assailants, but, due to natural discrepancies in their accounts, as each could only depose the part he had observed, each had been instructed to omit this part of his testimony. That may explain how each consistently stated that all the accused persons were attacking his or her party although he or she could not specify which accused attacked which victim. From the manner in which each witness could, without making any mistake, name each of the eighteen accused persons, almost in the same order, and specify the weapon each carried, without any discrepancy, some tutoring could be suspected. Nevertheless, both the Trial Court and the High Court had reached the definite conclusion that the party of assailants consisted of more than five persons. It also found that this party was sitting on the boundary of the field of Daryao, apparently waiting with their weapons for the buggi, carrying Raghubir and Mukhtara and others., to reach the spot where they surrounded it and attacked. It was clear, from the nature and number of injuries of both sides, which we have set out above in extenso, that the attacking party must have consisted of more persons than the party of the male victims who were five in number. Even if these five victims were sitting in the buggi they were not all empty handed. Some of them had lathis which they plied in self defence. The number and location of injuries on both sides also indicated an attack by a group of persons which must have surrounded the party traveling in the buggi. Even if two persons are engaged in stopping the buggi and there are two on each of the two sides of the buggi their number would be six. Again, even if at least one person is assumed to be the assailant of each of the victims, in a simultaneous attack upon them, the number of such assailants alone would come to at least six. It is, however, clear from the injuries on Mukhtara and Raghubir that each was attacked by more than one person because each had injuries with sharp edged weapons and lathis. these facts were enough to come to the conclusion that the total number of assailants could not conceivably have been less than five. The High Court however, after giving the benefit of doubt to four of the accused persons, on the ground that their cases did not differ from those of the others acquitted, came to the obviously correct conclusion that at least the four appellants before us must have taken part in the attack because they admitted their participation in the occurrence which took place at the time and place of the incident in which

Raghubir and Mukhtara had lost their lives. Three of the accused persons as already indicated, had received injuries. On their own version, these injuries were sustained in the same occurrence. If, therefore, the prosecution version about the broad character of the incident is correct, the only question which remained was: Against which accused person was the case of participation in the attack established beyond reason able doubt?

The High Court came to the conclusion that the admissions of the four accused, corroborated by the injuries on the bodies of three OF them, left no doubt whatsoever that they were, in any case, among the assailants. The others had merely been given the benefit of doubt lest some injustice is done by relying implicitly on partisan witnesses appearing in a type of case in which the innocent ale not infrequently sought to be roped in with the guilty who are, of course, not spared. This did not mean that the total number of assailants was actually less than five as the learned Counsel for the appellants asked us to presume from the fact that fourteen out of the eighteen accused persons were actually acquitted.

It is true that the acquittal of an accused person does raise, in the eye of law, a presumption that he is innocent even if he was actually. guilty. But, it is only the acquitted accused person and not the convicted accused persons who can, as a rule, get the benefit of such a presumption. The effect of findings on questions of fact depends upon the nature of those findings. If, for example, only five known persons are alleged to have participated in an attack but the Courts find that two of them were falsely implicated, it would be quite nature; and logical to infer or presume that the participants were less than five in number. On the other hand, if the Court holds that the assailants were actually five in number, but there could be a doubt as to the identity of two of the alleged assailants, and, therefore, acquits two of them the others will not get the benefit of doubt about the identity of the two accused so long as there is a firm finding, based on good evidence and sound reasoning, that the participants were five or more in number. Such a case is one of doubt only as to identity of some participants and not as to be total number of participants. It may be that a definite conclusion that the number of participants was at least five may be very difficult to reach whale the allegation of participation is confined to five known persons and there is doubt about the identity of even one. But, where a large number of known persons (such as eighteen, as is the case before us), are alleged to have participated and the Court acts on the principle that it is better to err on the side of safety, so that no injustice is done to a possibly wrongly implicated accused, and benefit of doubt is reaped by a large number, with the result that their acquittal, out of abundant caution, reduces the number of those about whose participation there can be no doubt to less than five, it may not be really difficult at all, as it not in she case before us, to recall the conclusion that, having laggard to undeniable facts, the number of participants could not possibly be less than five. We have, for the reasons given above, also reached the same conclusion as the learned Judges of the Allahabad High Court. We wish that the High Court had itself given such reasons, which are not at all difficult to find in this case, so that its conclusion on the number of participants may not have appeared ratter abrupt. Justice has not only to be done, but, as have been often said, must manifestly appear to be done.

Even if the number of assailants could have been less them five in the instant case (which, we think, on the facts stated above, was really not possible), we think that the fact that the attacking party was

clearly shown to have waited for the buggi to reach near the field of Daryao in the early hours of 7.6.1967, shows pre-planning. Some Of the assailants had sharp edged weapons. They were obviously lying in wait for the buggi to arrive. They surrounded and attacked the occupants shouting that the occupants will be killed. We do not think that more convincing evidence of a pre-concert was necessary. Therefore, if we had thought it necessary, we would not have hesitated to apply Section 34, I.P.C. also to this case. The principle of vicarious liability does not depend upon the necessity to convict a required number of persons. It depends upon proof of facts, beyond reasonable doubt which makes such principle applicable. (See: Yehwant & Anr. v. State of Maharashtra;(1) and Sukh Ram v. State of U.P.)(2). The most general and basic rule, on a question such as the one we are considering, is that there is no uniform, inflexible or invariable rule applicable for arriving at what is really an inference form the totality of facts and circumstances which varies from case to case. We have to examine the elect of findings given in each case on this totality. It is rarely exactly identical with that in another case. Other rules are really subsidiary to this basic verity and depend for their correct application OF the peculiar facts and circumstances in the context of which they are enunciated.

In Yeshwant's case (supra), the question was whether the acquit(ah of an alleged participant, said to be Brahmanand Tiwari, for the murder of a man called Sukal, could make it impossible to apply the principle of vicarious liability to convict, under Section 302/34 I.P.C., Yeshwant, the only other participant in under. This Court observed (at p.303):

> The benefit of this doubt can only go to the appellant Brahmanand Tiwari and not to the other accused persons 13 who were known well to each eye- witness."

Distinguishing Krishna Govind Patil v. State of Maharashtra (3) this Court said in Yeshwant's case (supra) (at p. 302):

> "We do not think that this decision which depends upon its own facts, as criminal cases generally do, lays down any general principle that, where the identity of one of the participants is doubtful, the whole case must end in acquittal. Such a question belongs to the realm of facts and not of law: ` The following cases were also cited before us: Dalip Singh & v. State of Punjab (4) Bharwad Mepa Dana & Anr. v.

State of Bombay;(5) Kartar Singh v. State of Punjab;(6) Mohan Singh v. State of Punjab;(7) Ram Bilas Singh & Ors. v. State of Bihar(8) In the case of Ram Bilas Singh (supra) previous decisions of this Court on the question argued before us have been considered at some length and a passage from Krishna Govind Patil's case (supra) was also quoted. In none of these cases was it decided that where, out of abundance of caution, a large number of accuse(l persons obtained an acquittal with the result that the number of those whose participation is established beyond reasonable doubt is reduced to less than five, but, at the same time, it is clear that the total number of assailants could not be less than five, the convicted accused persons must necessarily get the benefit of doubt arising in the case of the acquitted accused persons. A case like the one before us stands on the Same footing as any other case where there is certainty that the number of participants was not less than five but there is doubt only as to (1) [1973] I S.C.R. p. 291 @ 302 & 303. (2) [1974) 2 S.C.R. p. 518.

(3) [1964] (1) S.C.R. 678. (4) [1954] S.C.R. 145. (5) [1960] 2 S.C.R. 172. (6) [1962] 2 S.C.R. 395. (7) [1962] Suppl (3) S.C.R. 848. (8) [1964] (1) S.C.R. 775.

The identity of some of the participants. It has to be remembered that doubts may arise with regard to the participation of a particular accused person in circumstances whose benefit can only be reaped by the accused who raises such doubt. Doubts may also arise about the veracity of the whole prosecution version and doubts about the participation of individual accused persons may contribute to the emergence of such doubts which may cover and engulf the whole case. Never the less, if, as in the instant case, the Courts, whose duty is to separate the chaff from the grain, does hold that the convicted persons were certainly members of an unlawful assembly which must have consisted of more than five persons, we do not see any principle of law or justice which could stand in the way of the application of Section 149 J.P.C. for convicting those found indubitably guilty of participation in carrying out of the common object of an unlawful assembly.

The only remaining question arises from the age of Om Pal Which, at the time of trial, was found by the Trial Court to be about 15 years. This means that Section 29 of the Uttar Pradesh Children Act, 1951, was applicable to the case. This Section reads as follows:

> "29. Commitment of child to approved school (1) Where a child is found to have committed an offence punishable with transportation or imprisonment, the Court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to an approved school for such period of stay as will not exceed beyond the time when the child will attain the age of 18 years or for a shorter period, the reasons for such period to be recorded in writing. (2) Where prior to the commencement of this Act a youthful offender has been sentenced to transportation Or imprisonment, the State Government may direct that in lieu of undergoing or completing such sentence he shall, if under the age of sixteen years, be sent to an approved school, and thereupon the offender shall be subject to all the provisions of this Act as if he had been originally ordered to be detained in such school."

This question was not raised earlier so that the Trial Court or the High Court may take the action it was open to the Courts to take after due inquiry. Such action, if considered expedient, could only be to send the appellant to an approved school. We may observed that, although the appellant om Pal was said to be armed with a lathi, no specific part was assigned to him by any prosecution witnesses. He was bound, with the background of hostility between two sides and the events mentioned above, to have been misled by the bad example of his elders. No previous participation in such a case and no previous conviction was shewn against him. We, therefore, think that appropriate action under Section 29 of the Children's Act could have been taken in his case if the question had been raised in time. We hope that the punishment he has already undergone has had a salutary effect in making him conscious of the gravity of the consequences of joining an unlawful assembly. All that we can do now, in the circumstances of Om Pal's case, is to recommend the remission of the remaining period of om Pal's sentence to the authorities concerned.

Subject to the observations made above with regard to om Pal, we affirm the convictions and sentences and dismiss this appeal.

P.H.P. Appeal dismissed