

Supreme Court of India

Wakil Yadav And Anr. vs State Of Bihar on 31 July, 1997

Equivalent citations: 1999 CriLJ 5000, (2000) 10 SCC 500

Bench: M Punchhi, S Kurdukar

ORDER

1. This appeal would have to be allowed on the strength of the decision of this Court in Joseph Kurian Philip Jose v. State of Kerala, wherein the following statement of law has been made:

Section 109, I.P.C. is by itself an offence though punishable in the context of other offences. A-4 suffered a trial for substantive offences under the Indian Penal Code and Abkari Act. When his direct involvement in these crimes could not be established, it is difficult to uphold the view of the High Court that he could lopsidedly be taken to have answered the charge of abetment and convicted on that basis. There would, as is plain, be serious miscarriage of justice to the accused in causing great prejudice to his defence. The roles of the perpetrator and a better of the crime are distinct, standing apart from each other.

2. Out of the two appellants before us, Guru Charan Yadav, the main accused has since died. His appeal therefore abates and is disposed of as such. The other Wakil Yadav was originally charged along with 6 others for offence under Section 302/149, I.P.C. and for some lesser offences as part of the same constructive liability. The Court of Session convicted all the 7 accused for the offences charged. The High Court in appeal acquitted 5 persons, convicting Guru Charan Yadav substantively for offence under Section 302, I.P.C. sentencing him to life imprisonment (whose appeal has abated) and convicting Wakil Yadav, appellant, for offence under Section 302 read with Section 109, I.P.C. It is undisputed that no charge was framed against the appellant with the aid of Section 109, I.P.C. This Court's view above-stated is that Section 109, I.P.C. is a distinct offence. The afore-extracted statement of law is clear on the point. The appellant having faced trial for being a member of an unlawful assembly which achieved the common object of killing the deceased, could in no event be substituted convicted for offence under Section 302, I.P.C. with the aid of Section 109, I.P.C. There was obviously thus not only a legal flaw but also a great prejudice to the appellant in projecting his defence. He on such error committed by the High Court, has rightly earned his acquittal. There is no cross-appeal by the State for restoration of the status quo ante.

3. For the foregoing reasons, this appeal is allowed. The convictions and sentences of the appellant are set aside and he is set at liberty.