
(1986) 10 ACR 394

Allahabad High Court (Lucknow Bench)

Case No: Cr Revision No. 564 of 1982

Ramji Tiwari and
Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Oct. 7, 1985

Acts Referred:

Penal Code, 1860 (IPC) " Section 147, 149, 323

Citation: (1986) 10 ACR 394

Hon'ble Judges: P. Dayal, J

Bench: Single Bench

Advocate: B.P. Srivastava and S.S. Awasthi, for the Appellant;

Judgement

P. Dayal, J.

The facts giving rise to this petition are that the revisionists are alleged to have beaten Ram Kumar on 26-11-80 at about 10

a.m. in Itaunja, P.S. Itaunja, district Lucknow. The informant Rajendra Prasad Nigam went to their rescue and he was also beaten. He lodged a

FIR. It is further alleged that the police personnel reached there and arrested Jai Prakash Pandey and Ramji Tripathi.

2. The revisionists were prosecuted for offences punishable under Sections 147, 323, 149 IPC. Some of the witnesses had turned hostile and only

Rajendra Prasad Nigam who was the informant gave his statement in support of the prosecution.

3. The learned Magistrate acquitted the revisionists for an offence punishable u/s 323 IPC and convicted and sentenced them u/s 147 IPC each to

pay a fine of Rs. 80/- and in default to undergo ten days" imprisonment.

4. Section 147, laying down the punishment for rioting, provides that whosoever is guilty of rioting, shall be punished with imprisonment of either

description for a term which may extend to two years, or with fine or with both.

5. The term "rioting" has been defined that whenever force and violence is used by an unlawful assembly or by any member thereof, all such

assembly or any member thereof is guilty of offence punishable u/s 147 IPC.

6. Thus it is evident from the definition of word ""rioting"" that force or violence should be applied and then only Section 147 comes into play. In the

instant case, the learned Magistrate acquitted the revisionists of an offence punishable u/s 323 IPC which meant that any force or violence was not

applied by them. Consequently they could not be convicted and sentenced for an offence punishable u/s 147 IPC also, with the result that this

revision succeeds.

7. The revision is allowed and the judgment and order, passed by the learned lower court against the revisionists, are set aside. The amount of fine,

if realised, should be refunded to the revisionists.

Revision allowed.