
Jwala and Another Vs State

Criminal Revision No. 669 of 1952

Court: Allahabad High Court

Date of Decision: Nov. 4, 1953

Acts Referred:

Penal Code, 1860 (IPC) " Section 323, 325, 34

Citation: AIR 1954 All 358

Hon'ble Judges: Agarwala, J

Bench: Single Bench

Advocate: B. Mukerji and A. Banerji, for the Appellant; T.N. Madan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Agarwala, J.

This is an application in revision against an order dismissing the applicant's appeal which was directed against the order

convicting the applicants under Sections 325 and 323, I.P.C. Jawala, applicant, has been sentenced to nine months" rigorous imprisonment u/s

325, I.P.C. and a fine of Rs. 50/- u/s 323, I. P. C. Badri, applicant, has been sentenced to six months" rigorous imprisonment u/s 325, I. P. C.

and to a fine of Rs. 50/- u/s 323, I.P.C.

2. Sita Ram complainant, of village Jaswan-pur, and his uncle Bandi were watering their fields. After half the field had been watered they

discovered that the water was not flowing normally. They suspected that it must have been stopped by somebody. Both of them proceeded up

stream and found that Jawala had directed the water to his field, though it was the turn of Jaswanpur people to irrigate their fields. Sita Ram

protested, and when his protest went unheeded, he tried to block the water channel which had been diverted by Jawala. Jawala then called other

persons of the village to his aid including Badri, applicant, and then all of them beat Sita Ram, his uncle Bandi and one Min-ghani causing simple

and grievous injuries to them. These facts have been found by both the Courts below, and so the applicants along with other persons were

convicted under Sections 325 and 323, I. P. C. It could not be discovered as to which of the accused had inflicted injuries which resulted in

grievous hurt.

3. The only point argued before me by the learned counsel for the applicants"" is that since it could not be found as to who had inflicted grievous

injuries none of them could be convicted u/s 325, I. P. C. and that they could be convicted u/s 323, I. P. C. alone. Reliance is placed upon a

judgment of this Court delivered by me in -- Gorey and Another Vs. Rex, . This contention is not sound. In the present case it is clear that Jawala

had called Badri, applicant, and other villagers to assault Sita Ram and other complainants. Therefore all of them had. a common intention of

beating the complainants. When several persons combine with the object of inflicting blows upon others with lathis and grievous hurt is caused as a

result of the blows thus inflicted, it may safely be presumed that the common intention of all was at least to inflict grievous injury. A case of this kind

is to be distinguished from -- "Gorey"s case (A)". Although the prosecution case there was that two of the accused instigated others to give a

beating to the deceased the Court found that there was no satisfactory proof on the record to show that the accused had any preconceived plan of

attacking one Hoti. It was held that because of the altercation and because of the action of Hoti in untying the cattle in the face of Ghansham and

his sons the three persons beat him in a fit of anger all of a sudden. It was further held that Section 34, Penal Code, did not apply to the facts of the

case. In those circumstances, it was held that the accused could be convicted only of causing simple hurt and not u/s 325.

4. The distinction between the two classes of cases is obvious. When one person calls others to beat another, and in answer to that call others

arrive on the scene and all of them beat that third person, a common intention of all of them to beat the third person must be presumed. The

common intention required u/s 34, I. P. C. presupposes a pre-arranged plan which should precede the commission of the crime, but the pre-

arranged plan need not precede the commission of the crime by any great length of time. All that is required is that the pre-arranged plan must have

come into existence before the crime is committed. The pre-arranged plan can come into existence the moment one person calls another for

attacking a third, may be that the length of time between calling and the commission of the crime was only a few seconds. And when both of them

attack that third, a common intention has come into existence before the attack is made and both of them can be held guilty for the result achieved

in pursuance of the beating. Learned counsel also referred to --"Dipa v. Emperor AIR 1947 All 408 (B). That was also a case in which there was

no common intention and it was definitely held that Section 34, I. P. C. did not apply to the facts of the case.

5. There is no force in this revision. It is dismissed.