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State of U.P. Vs Phool Mian and Others

Government Appeal No. 339 of 1989

Court: Allahabad High Court

Date of Decision: April 17, 1998

Acts Referred:
Constitution of India, 1950 â€" Article 21#Evidence Act, 1872 â€" Section 107, 108, 110#Penal Code, 1860 (IPC) â€" Section 147, 148, 149, 302, 307#Public Gambling Act, 1867 â€" Section 3

Citation: (1998) 2 ACR 1250

Hon'ble Judges: M.C. Agarwal, J

Bench: Single Bench

Advocate: A.G.A, for the Appellant;

Judgement

M.C. Agarwal, J.
This is an appeal by the State against a judgment and order dated 23.9.1988 passed by the Special Judge (Gangsters)

Act, Agra whereby the Respondents Phool Mian, Munshi Rameshwar, Harpal Tyagi, Anil Kumar and Kalu Sharma were acquitted of the charge

u/s 2(b) read with Section 3(1) of the U. P. Gangsters and Anti-social Activities (Prevention) Act, 1986 (hereinafter referred to as "the Act").

2. During the pendency of the appeal, the Respondent No. 1 Phool Mian and Respondent No. 4 Anil Kumar have died. Therefore, the appeal

against them has become infructuous.

3. I have heard Sri Syed Mahmood, learned Additional Government Advocate. The three remaining Respondents have not appeared and they

could not be served with notice nor could they be traced.

4. The prosecution case was that these persons formed a gang within the meaning of Section 2(b) of the Act. In the charge framed against Harpal

Tyagi Respondent, the specific instances sought to be relied against him were two offences. One was that on 13.10.1987 at about 7.30 in the

evening, he along with his companions looted a passenger bus in respect of which Crime No. 279/87 u/s 395/397, I.P.C. was registered at police

station Bagpat. The other was that on 18.11.1987 at about 5.30 in the evening, he looted bus No. U.H.Q. 445 during which one Professor

Ravindra Gupta was killed and a Crime No. 76/87 u/s 396, I.P.C. was registered. Against the other Respondents also, the two instances

mentioned above were relied upon. In addition they were alleged to have committed a dacoity in the night between 6/7 February, 1986 in village

Sohrad police station Shahjahanpur in respect of which Crime No. 29/86 u/s 395/397, I.P.C. was registered. The other instance was that on

19.9.1987 at about 10 in the night they committed murder of one Sukhbir in village Hadiyana P. S. Chapar and a case Crime No. 180/87 for

offences u/s 147/148/149/302, I.P.C. was registered. Another instance was that on 12.9.1987 at about 5.45 p.m. they looted one Awadh Bihari

Lal in respect of which case Crime No. 101/87 u/s 394/307, I.P.C. was registered at police station Shahpur. Then it was alleged that on

12.11.1987 at about 1.00 p.m. they looted Bus No. U.H.N. 9731 in respect of which case Crime No. 223/87 u/s 392, I.P.C. was registered at

police station Mavana. Then it was alleged that on 21.11.1987 at about 8.15. p.m. at sabzi mandi Lohiya Bazar, Muzaffarnagar they looted one

Om Prakash in respect of which case Crime No. 615/87 u/s 392, I.P.C. was registered at Police station Kotwali, Muzaffarnagar. The last incident

was alleged to be an attempt to kill police personnel at about 10.00 p.m. on 15.12.1987 in respect of which case Crime No. 338/87 for offence

u/s 147/148/149/307, I.P.C. was registered at police station Civil Lines, Muzaffarnagar.

5. At the trial, the prosecution examined Laxmi Narain Sharma P.W. 1 who was not an eye-witness to any of the aforesaid incidents. He only

stated that the various cases as stated above have been registered at various police stations. He only investigated Crime No. 76 of 1987 u/s 396,

I.P.C. and stated that none of the aforesaid cases had resulted in conviction by the time he appeared as a witness in the case. P.W. 2 Kishan Singh

was examined to prove the last incident dated 15.12.1987. He stated that on receipt of information that some persons are trying to block the

Circular Road by placing stones thereon, he reached the spot and arrested Kalu Sharma, Munshi Rameshwar and Ors.. The third witness was S.

I. Baljeet Singh who stated that he investigated Crime No. 180 of 1987 u/s 147/148/149/302, I.P.C. and submitted a charge-sheet against Kalu

Sharma and Munshi Rameshwar. P.W. 4 Tara Chandra stated that he investigated Crime No. 338 of 1987 u/s 147/148/149/307, I.P.C. and

submitted a charge-sheet against accused Kalu Sharma, Munshi Rameshwar and Anil Kumar. P.W. 5 is S.I. Natthu Singh who also investigated

the present case and ultimately submitted a charge-sheet Exhibit Ka-3. He stated that the cases in respect of all the crimes referred to above were

pending and that no person gave it in writing that these accused formed a gang and are dangerous criminals. The learned Sessions Judge on

considering the aforesaid evidence held that the evidence led by the prosecution is of a formal nature and does not prove the charges against them.

He, therefore, acquitted the accused.

6. Sri Syed Mahmood, learned Additional Government Advocate contended that it was not necessary that the prosecution should have established

the actual participation of each of the accused in the aforesaid acts to establish that they formed a gang and were punishable as gangsters u/s 3 of

the Act. According to him, P. Ws. 1 and 2 had established that the various offence referred to above were registered against the accused and that

this was sufficient to prove that they indulged in anti-social activities as contemplated in Section 2(b) of the Act.

7. Section 3 of the Act prescribes that a gangster shall be punished with imprisonment of either description for a term which shall not be less than

two years and which may extend to ten years and also with fine which shall not be less than five thousand rupees. Thus, Section 3 punishes a

person for being a gangster and not for committing any overt act which may amount to an offence. Section 2(c) defines ""gangster"" to mean a

member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in Clause (b), whether

before or after the commission of such activities or harbours any person who has indulged in such activities. Section 2(b) defines "gang" as under :

(b) ""Gang"" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or

coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for

himself or any other person, indulge in anti-social activities, namely--

(i) offences punishable under Chapter XVI, or Chapter XVII, or Chapter XXII of the Indian Penal Code (Act No. 45 of 1860), or

(ii) distilling or manufacturing or storing or transporting or importing or exporting or selling or distributing any liquor, or intoxicating or dangerous

drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U. P. Excise Act, 1910 (U. P. Act

No. 4 of 1910), or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), or any other law for the time being in

force, or

(iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims for title or possession

of immovable property whether in himself of any other person, or

(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or

(v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. 104 of 1956), or

(vi) offences punishable u/s 3 of the Public Gambling Act, 1867 (Act No. 3 of 1867), or

(vii) preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any Government

department, local body or public or private undertaking, for any lease or rights or supply of goods or work to be done, or

(viii) preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity

connected therewith, or

(ix) offences punishable u/s 171E of the Indian Penal Code (Act No. 45 of 1860), or in preventing or obstructing any public election being lawfully

held, by physically preventing the voter from exercising his electoral rights, or

(x) inciting others to resort to violence to disturb communal harmony, or

(xi) creating panic, alarm or terror in public, or

(xii) terrorising or assaulting employees or owners or occupiers of public or private undertakings or factories and causing mischief in respect of

their properties, or

(xiii) inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall

be provided to him in such foreign country, or

(xiv) kidnapping or abducting any person with intent to extort ransom, or

(xv) diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course.

8. As stated above, the learned Additional Government Advocate contended that the word "indulge" does not mean that the person concerned

should be proved to have committed any of the acts mentioned in Clauses (i) to (xv) of Section 2(b) and that it merely means involved and that the

involvement can be established by merely saying that he is accused of certain acts. Such an interpretation would endanger the life and liberty of a

citizen and any law that says that mere registering a crime would amount to proof of the indulgence of person concerned in that crime would be

violative of the right to life granted by Article 21 of the Constitution of India. The word "indulge" means that the person concerned should be

proved by cogent evidence to have actually done the act complained of. The word "indulge" came for interpretation before this Court in Ajai Rai v.

State of U. P. 1995 ALJ 1027 in a different context, it was held that the word "indulge" does not mean habitually commits. The case does not deal

with the question of the nature of proof required to prove the indulgence of the accused in anti-social activities referred to in Section 2(b). The

definition of "gang" refers to indulgence in anti-social "activities". In the same manner, the definition of "gangster" in Section 2(c) also uses the word

"activities". The use of the plural "activities" clearly indicates that a single act of anti-social activity cannot turn a person into a gangster. There have

to be atleast two acts and the commission of those Act by the accused has to be established beyond reasonable doubt according to rules of

evidence as applicable to criminal trials. Section 4 of the Act contains some special rules of evidence. The said section reads as under :

4. Special Rules of Evidence.--Notwithstanding anything to the contrary contained in the Code or the Indian Evidence Act, 1872, for the purposes

of trial and punishment for offences under this Act or connected offences :

(a) the Court may take into consideration the fact that the accused was--

(i) on any previous occasion bound down u/s 107 or Section 108 or Section 110 of the Code, or

(ii) detained under any law relating to preventive detention, or

(iii) externed under the Uttar Pradesh Control of Goondas Act, 1970 (Act No. 8 of 1971), or any other such law ;

(b) where it is proved that a gangster or any person on his behalf is or has at any time been, in possession of movable or immovable property

which he cannot satisfactorily account for, or where his pecuniary resources are disproportionate to his known sources of income, the Court shall,

unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his activities as a gangster ;

(c) where it is proved that the accused has kidnapped or abducted any person, the Court shall, presume that it was for ransom ;

(d) where it is proved that a gangster has wronglfully concealed or confined a kidnapped or abducted person, the Court shall presume that the

gangster knew that such person was kidnapped or abducted, as the case may be ;

(e) the Court may, if for reasons to be recorded it thinks fit so to do, proceed with the trial in the absence of the accused and record the evidence

of any witness, provided that the witness may be recalled for cross-examination if the accused so desires but recording his examination in chief

afresh in presence of the accused shall not be necessary.

9. Therefore, in respect of facts other than those covered by Section 4, the standard of proof has to be the same as in any other criminal trial. As is

evident, in the present case the prosecution had led no evidence to prove the various acts mentioned in the charges framed against the accused.

The evidence of the actual commission of an offence was only in respect of one incident narrated by Kishan Singh P.W. 2 that on information that

some persons were creating an obstruction on the road, he reached there and arrested three persons Kalu Sharma, Munshi Rameshwar and

Harpal Tyagi. The copy of the first information report of that case was not even filed at the present trial. No direct evidence was led to prove the

other incidents nor were copies of the first information reports of those crimes as well filed and proved during the trial. In my view, therefore, the

learned Sessions Judge was right in holding that the charge against the Respondents was not established. The present appeal, therefore, has no

force and is hereby dismissed.