AIR 1972 SC 209 : (1972) CriLJ 42 : (1972) 4 SCC 812 : (1972) 4 UJ 226

Supreme Court of India

Case No: Criminal Appeal No. 179 and 180 of 1969

Gokul and Others	APPELLANT
Vs	
The State of Rajasthan Kanhaiya Vs The State of Rajasthan	RESPONDENT

Date of Decision: Nov. 17, 1971

Acts Referred:
Constitution of India, 1950 â€" Article 136#Criminal Procedure Code, 1898 (CrPC) â€" Section 342#Penal Code, 1860 (IPC) â€" Section 141, 147, 148, 149, 302

Citation: AIR 1972 SC 209 : (1972) CriLJ 42 : (1972) 4 SCC 812 : (1972) 4 UJ 226

Hon'ble Judges: I. D. Dua, J; D. G. Palekar, J

Bench: Division Bench

Advocate: Sobhagmal Jain and H.K. Puri, for the Appellant; K.Baldev Mehta, for the Respondent

Final Decision: Allowed

Judgement

I.D. Dua, J.
These two connected appeals by special leave, Crl. A. 179 of 1989 being by five appellants and Crl. A. 180 of 1969 by one,

arising out of one criminal trial, are directed against the judgment and order of the Rajasthan High Court dated April 9, 1969. Facts giving rise to

these appeals may now be stated :

2. 29 accused persons, including the six appellants before us, were committed by the sub-Divisional Magistrate, Rajgarh to stand their trial for

various offences, broadly stated, under Sections 302, 332, 324 read with Section 149, I.P.C. and u/s 307 or in the alternative u/s 307 read with

Section 149, I.P.C. Some of them were also charged u/s 148, I.P.C. and the remaining u/s 147, I.P.C. It is unnecessary for the purpose of the

present appeal to give more precise details about the charges. The occurrence giving rise to the trial took place on April 12, 1967 at about 10.30

a.m. near the thrashing floor of Kanhaiya, appellant, against whom a money decree had been secured by Shyamlal (P.W. 12). In execution of that

decree Shyamlal had obtained a warrant of attachment on April 11, 1967 in respect of the crop belonging to Kanhaiya and lying at his thrashing

floor On the morning of April 12, 1967 Raghubir Saran (P.W. 16) Nazar of the court of Munsiff, Lachmangarh and Ghasi Singh (P.W. 10) peon

of the same court, along with Jawaharlal, police, constable and Shyamlal, decree-holder, went to the thrashing floor of the judgment-debtor,

Kanhaiya. On seeing them Kanhaiya, appellant, warned Raghubir threatening them that if they did so they would get killed. Raghubir Saran, (P.W.

16) having become conscious of the danger arising out of the threat given by the judgment-debtor, sent Ghasi Singh (P.W. 10) to request the

Munsiff to provide police assistance. As a result, Shrilal, head constable (P.W. 11), along with four more police constables arrived at the spot. In

the meantime Kanhaiya, judgment-debtor, also collected a large number of persons armed with Pharsis and lathis and they all threatened the Nazar

and police officials with dire consequences if they did not leave the place. Apparently, there was some hue and cry, hearing which Sampat Meena

(the deceased) and his son Girraj (P.W. 1) came out of their house and on learning of the dispute between Kanhaiya on the one side and the Court

Nazar and the policemen on the other, they, along with some other persons proceeded to the spot. Girraj, it may be pointed out, had been elected

Sarpanch in 1961. In 1964, however, he was not elected as Sarpanch but his father Sampat Meena was elected Panch in that year On reaching

Kanhaiya''s thrashing floor Sampat Meena entreated with Kanhaiya and his associates not to quarrel with the Government servants and advised

them to settle the matter peacefully and amicably. On this intervention on the part of Sampat Meena. Kanhaiya, Judgment-debtor, shouted to his

companions that he (Sampat Meena) was the root cause of the whole trouble and should, therefore, be first done away with. Having thus

addressed his associates Kanhaiya, along with Mangal and Lehman, pounced upon Sampat Meena and gave him blows with Pharssis on his head.

Shrilal, head constable, in his attempt to rescue Sampat Meena advice the latter to run away. Sampat Meena thereupon tried to leave the place.

But the assailants chased him crying ""marlo, marlo"" and caught him as he stumbled in his attempt to escape. Dhanna, and Sheodan, accused,

surrounded him and gave him further pharsi blows on his head as a result of which he fell down on the ground. Ramsahai, accused, also gave

Sampat Meena a pharsi blow on his chest. Girraj (P.W. 1) requested the assailants not to beat his father but it only served to provoke the accused

Gulla, Gokul and Kalyan to beat him (Girraj) as well. During the course of occurrence Shrilal, head constable (P.W. 11) Kanhaiyalal (P.W. 15)

Shyamlal, decree-holder (P.W. 12, Girraj (P W I) Prahlad Singh, police constable, Sampat son of Bhoma jat, Arjun jogi Kanhaiya (appellant) and

Devi Ram and Sheodan, accused, received injuries. First information report was lodged by Shyamlal, Head Constable (P.W. 11) at about 11.45

a.m. at the police station Lachmangarh the same day. As Sampat Meena''s condition became precarious he was immediately removed to the

hospital at Lachmangarh but he could not survive the injuries and expired by the time he reached Lachmangarh.

3. In the trial court all the accused, except Kanhaiya, judgment-debtor, had denied the prosecution story by merely pleading ignorance and

Laxman had pleaded alibi and produced two witnesses in support thereof. Kanhaiya, appellant, had, to quote from the judgment of the trial court,

admitted that the Nazir and the police officials had come for the attachment and that he told them that he would not allow them to effect the

attachment, whereupon they went away from the spot and he also went away to his other field. The police came and arrested him"". The learned

Sessions Judge convicted Kanhaiya, Mangal, Ramsahai, Dhanna, Sheodan, Prabhati, Gokul, Kalyan, Gulla and Deviram for offences under

Sections 303/149 IPC and sentenced each of them to imprisonment for life. They were further convicted under Sections 332/149, IPC and

sentenced to rigorous imprisonment for a year and half.

4. It is unnecessary for the purpose of the present appeals to refer to the conviction of the various accused persons for other offences as no

specific point was sought to be made here with respect to those offences. All the sentences were, however, directed to run concurrently. All the

accused were acquitted of the charge u/s 307 and of the alternative charge u/s 307/149, IPC. It may be pointed out that the charge ""under Section

307 or Section 307 read with Section 149 IPC"" was framed with respect to the injuries said to have been inflicted on Girraj. According to Dr S.B.

Mathur (P.W. 5) out of the five injuries found on the person of Girraj, fracture of the left index finger was grievous whereas the remaining four

injuries were simple, one of them being a mere bruise. Considerating the nature of these injuries charge u/s 307 or Section 307 read with Section

149 IPC was held unsustainable.

5. Three appeals were presented in the High Court by the accused convicted at the trial. All the accused were acquitted of the charge under

Sections 332/149, IPC. Dhanna, Shivdan, Kalyan and Deviram were acquitted of all the other charges as well. The convictions and sentences of

the present appellants for the offence under Sections 362/149, IPG and for other offences except for one under Sections 332/149, IPC were

upheld. The direction that all the sentences should run concurrently was also affirmed. The High Court, believing the version of the occurrence

given by Girraj (P.W. 1) which was held to have been corroborated by all the eye-witnesses in regard to its broad features, observed that :

In the circumstances, even if it be assumed that the persons who assembled at the thrashing floor in response to the beckoning made by Kanhaiya,

did not constitute an unlawful assembly at the inception despite the numbers and despite the arms possessed by them they definitely turned into an

unlawful assembly the moment they, at the invitation of Kanhaiya, accused, started inflicting injuries to Sampat Meena who was chased,

surrounded and beaten even when he was running away to save himself. There is thus no doubt in our mind that even if the assembly may be lawful

when it assembled in response to the call made by accused Kanhaiya, it became unlawful subsequently at the state when its members began to

assault Sampat Meena.

6. The conviction of Kanhaiya and Mangal was upheld on the basis of the testimony of (P.W. 1) Girraj, (P.W. 2), Chajju, (P.W 3) Kalu, (P.W.

10) Ghasi Singh, (P.W. 11) Shyamlal, (P.W. 13) Chaji, (P.W. 14) Gokul, (P.W. 15) Kanhaiyalal, (P.W. 16) Raghubir Saran who were the eye-

witnesses to the occurrence. The learned Counsel on behalf of these accused persons, according to the High Court, was not able to point out any

ground for disbelieving the testimony of so many eye-witnesses. The only criticism against their conviction leveled by their counsel in that court was

that Ghasi Singh (P.W. 10) and Raghubir Saran (P.W. 16) had been declared hostile and should, therefore, not be believed. About the other

witnesses it was contended that their evidence having not been accepted with regard to the 10 accused persons, who were acquitted by the trial

court, with respect to those convicted also their evidence should be discarded as untrustworthy. The High Court did not accept these contentions.

The testimony of Ghasi Singh and Raghubir Saran was held to be fully corroborated by the medical evidence. Kanhaiya''s presence was further

held to be corroborated by injuries on his person, the duration of which, according to medical evidence, was such as to synchronise their inflation

with the time of the occurrence. With regard to Ramsahai also the High Court considered the evidence of P Ws. 1 to 3 and P.Ws. 13 and 14 to be

acceptable. Their evidence was held to be corroborated by the medical evidence In regard to Dhanna and Shivdan, however, the High Court gave

them bent fit of doubt because the medical evidence did not seem to support the version of these two accused having given blows to the deceased,

as alleged. Whether or not benefit of doubt was rightly given to them does not arise for consideration in the present appeal. Prabhati, Gokul and

Gulla had also been convicted by the trial court on the basis of the evidence of Girraj (P.W. 1.) Chhajju (P.W. 2) and Kalu (P.W. 3) and the High

Court did not find any cogent ground for disbelieving or doubting their testimony as against them.

7. In this Court the main, as indeed, the only serious argument urged by Shri S.M. Jain in Crl. A. No. 179 of 1069 was founded on the following

observations of the High Court in the impugned judgment.

The above facts clearly reveal that in fact no occasion arose to give effect to the initial common object of the assembly. But suddenly at the nick of

the time there arose a different common object viz: to assault sampat Meena. In the circumstances, it cannot be said that all the persons who

assembled at the spot at the initial stage shared the common object which suddenly arose later on. In our opinion, there came into existence two

assemblies at that place, one with the common object to prevent attachment of the crop and the other with the common object to assault Sampat

Meena and those who attempted to save him. We are not concerned with the former assembly as no occasion arose for it to do any act in

furtherance of its common object. The latter assembly formed at the nick of the time was certainly an unlawful assembly as its common object fell

within the purview of the provisions of Section 141, I.P.C. In the circumstances, the only safe criterion in the matter of finding out whether or not

any particular accused was the member of the suddenly constituted unlawful assembly, is to see what other act he did in prosecution of the

common object of the said unlawful assembly.

8. The argument developed at the bar of this Court was that there is no evidence to show that the present appellants were members of the second

unlawful assembly which was suddenly constituted at the nick of the time with the common object to assault Sampat Meena and to kill him. These

appellants, so proceeded the submission, could by no stretch have considered fatal assault on Sampat Meena as likely because this, even

according to the prosecution case, was not the common object of the first unlawful assembly. According to the prosecution, the counsel added, the

first unlawful assembly was only concerned with the object of preventing attachment of Kanhaiya''s crop lying in his thrashing floor by resisting the

party of the court Nazar and there was no plan or even remote thought of assaulting Sampat Merna. The object of assaulting Sampat Meena may

have suddenly developed when he pleaded with Kanhaiya not to quarrel with the court Nazar but to settle the matter amicably and peacefully. This

argument of two different assemblies with different common objects may Prima facie appear to be attractive; but we do not think ii can bear

scrutiny. Kanhaiya, appellant, indisputably knew that the decree holder, along with the Nazar of the Court and the police constables, had come to

attach his crop on the thrashing floor pursuant to an order of the court. The police aid had been secured because he had threatened resistance to

the Nazar and in the meantime had also gathered together a large number of his supporters to resist and prevent the attachment of the crop by use

of force and it was pursuant to this basis common object that when Sampat Meena reached the spot and requested the judgment-debtor not to

quarrel with the Nazar and the policemen but settle the matter amicably that Kanhaiya and his supporters feeling irritated and provoked, attacked

Sampat Meena in order to accomplish the same common object of resisting and defeating every effecting in the direction of effecting the

attachment of his crop, The call given by Kanhaiya sparked off the use of force by the members of the assembly for achieving the common object

of preventing the attachment of the crop. The mere fact that Sampat Meena who was not one of those who had originally accompanied the court

Nazar happened to be the first target of use of violence in accomplishing the common object, did not, in our view, imply that the members of the

assembly participating in the assault on the deceased had a different common object from that of the original assembly. This is clear from the fact

that the deceased was attacked only when he had asked Kanhaiya not to quarrel with the court Nazar and the police party but settle the matter

amicably and peacefully. Indeed, even those members of the group who had earlier accompanied Shyamlal were not spared and they also suffered

injuries at the hands of Kanhaiya and his supporters. Our attention was not drawn to any provision of law nor was any principle or precedent cited

in support of the appellant''s argument that on the facts and circumstances of this case the appellants could not be considered to be members of the

assembly which assaulted and injured Sampat Meena, his son and others. The High Court was thus not strictly justified in upholding the theory of

two distinct unlawful assemblies having two different common objects, namely, to prevent attachment of Kanhaiya''s crop which was imputed to

the first assembly and to kill Sampat Meena, which was imputed to the second.

9 However, granting that there were technically two assemblies as assumed by the High Court, in our opinion, when Kanhaiya incited his

companions to do away first with Sample Meena who was stated to be the real root cause of the trouble, all those who in response to Kanhaiya''s

call joined in the assault on the deceased and also in causing injuries to others must be held to have entertained the common object of assaulting all

those who appeared to be siding with the party which came to attach the crop. The common object of assaulting Sampat Meena and others was

actually adopted and shared by all the appellants in this Court, as their conduct, according to the judgment of the High Court, clearly shows.

10. Shri Jain, learned Counsel in Cr. A. No 179 of 1969 and Shri H.K. Puri learned Counsel in Crl. A. No. 180 of 1969 both, however, strongly

contended that no charge was framed against their respective clients with regard to the common object of the second assembly to kill Sampat

Meena and this commission is fatal to their conviction. Shri Puri in this connection relied on 281414 The ratio of that decision appears in the head-

note which reads:

When a person has been charged along with others u/s 302 and 307 of the Indian Penal Code each, only as read with Section 149 of the Code,

his convictions and sentences for the substantial offences under Sections 302 and 307 of the Code are erroneous. The absence of specific charges

in this behalf is a serious lacuna in the proceedings, inasmuch as the framing of a specific and distinct charge in respect of every distinct head of

criminal liability constituting an offence is the foundation for a conviction and sentence therefore. The conviction in these circumstances u/s 302 and

307 of the Code and sentences of death and transportation for life cannot be maintained unless the Court is satisfied, on the facts of the case, that

the accused has not been prejudiced in his trial. Whether or not in such a situation the questioning of the accused during the course of his

examination u/s 342 of the CrPC in relation to the offences under Sections 302 and 307 of the Indian Penal Code can be relied upon as obviating

the likelihood of prejudice has to be determined with reference to the facts and circumstances of each case. All the circumstances of the case and

the evidence and materials on the record should be looked into on the question arising in such a situation as to whether a retrial should be ordered

or not.

11. The law laid down in that decision is unexceptionable but we consider it wholly unhelpful to the appellants. We do not find any distinction

between Kanhaiya''s case and that of the other appellants. In Kanhaiya''s case one of the charges relates to the offence of Sampat Meena''s

murder and it refers to the ""offence u/s 302, I.P.G. or in the alternative Section 302/149, I.P.G."" In the case of the other appellants also there was

a specific charge with respect to Sampat Meena''s murder u/s 302/149. I.P.C. All the appellants were convicted u/s 302/149, I.P.G. Surajpal''s

case (Supra) is therefore, of no assistance to the appellants.

12. The number and nature of injuries inflicted on the deceased leaves no doubt as to what the intention of the members of the assaulting party was

They must be assumed to have intended the normal and natural consequences of the injuries inflicted by them on their victims. It is noteworthy in

this connection that the High Court only convicted those persons who, it felt, on the evidence on the record, to be participants in the assault on

various persons who had received injuries in the course of the occurrence. The question whether a person happens to be innocently present at the

place where the members of an unlawful assembly have gathered together to prosecute their common object, or is a member thereof sharing their

common object is normally one of fact. The conclusion of the High Court on this point has ordinarily to be accepted by this Court and in the

absence of serious infirmity in the process of appraising evidence or arriving at the conclusion, resulting in failure of justice, this Court does not, as a

rule, proceed under Article 136 of the Constitution, as if it is a Court of fact, to review or reappraise the evidence for itself for examining the

correctness of the conclusions of the High Court on the credibility and value of the evidence led in the case. This Article without itself conferring a

right of appeal on a party, merely reserves to this Court a special discretionary power of interference, which, though couched in wide terms, is to

be exercised sparingly and only in exceptional cases where grave and substantial injustice has resulted, by some illegality or material irregularity of

procedure or, by violation of rules of natural justice. With respect to none of the counts on which the appellants have been convicted has any case

been made out for interference by this Court under this Article. There is no manifest injustice as a result of any disregard of any forms of legal

process or of any other grave or serious error.

Both the appeals must, therefore fail and are dismissed.