

LALJI &amp; ORS.

v.

THE STATE OF U. P.

August 14, 1973

[H. R. KHANNA AND A. ALAGIRISWAMI, JJ.]

B *Criminal Law—Members of complainants party injured—No evidence of any common object of accused—liability of accused can only be for individual acts.*

C As a result of a fight between the members of the accused party and the party of the complainants the accused were tried and convicted for various offences. The first appellant was convicted of the offence under s. 304, Part I, and of offences under Ss. 148, 323, 324 and 325 read with s. 149. The other appellants were convicted of the offences under Ss. 147 and 304, 323, 324 and 325 read with s. 149. The High Court, in appeal, while acquitting one of the accused, observed that the conclusion reached by the trial court were substantially correct and were based upon reasonable appreciation of the evidence.

In appeal to this Court,

D HELD : On the findings of the trial court neither party attacked the members of the opposite party at the commencement of the occurrence. There was at that stage remonstrance and counter remonstrance only. Someone then started a fight, and according to the trial court it could not definitely be determined as to which of the two parties struck the first blow. There was no premeditation and the occurrence was a sudden affair. The circumstances of the case do not show that the appellants formed a common object to do any of the acts mentioned in the 5 clauses of s. 141. Section 141 (4), I.P.C., could not be relied upon by the prosecution because, it could not be said that the common object of the accused was to enforce any right or supposed right by means of criminal force or show of criminal force. The circumstances of the case show that the lathis were wielded by the accused not with a view to enforce any right or supposed right but because of the fact that a fight had started and the complainants' party was found to be armed. Therefore, it should be held that each accused was liable for his individual act and not vicariously liable for the acts of the others. Hence, the first appellant could be convicted only of the offence under s. 304, part 1, I.P.C. and his conviction for offences other than that should be set aside. As regards the other appellants they caused simple hurt with their lathis and they could be convicted only of the offence under s. 323 I.P.C. One grievous injury was caused to a member of the complainants' party but, on the material on record, it could not be said who caused that injury. [371B—H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 16 of 1970.

G Appeal by special leave from the judgment and order dated the 12-9-69 of the Allahabad High Court, in Criminal Appeal Nos. 1096 and 1097 of 1966.

*Nuruddin Ahmed* and *U. P. Singh*, for the appellants.

*O. P. Rana*, for the respondent.

The Judgment of the Court was delivered by

H KHANNA, J. This is an appeal by special leave by Lalji (23), Mahabir (45), Nar Singh (30), Paras Nath (27) and Ram Naresh (30) against the judgment of the Allahabad High Court affirming on appeal the conviction and sentence of the appellants. Lalji has been convicted under section 304 Part I and section 148 Indian Penal Code

and has been sentenced to undergo rigorous imprisonment for a period of ten years on the first count and rigorous imprisonment for a period of two years on the second count. Lalji has, in addition to that, been convicted for offences under section 324 read with section 149, section 325 read with section 149 and section 323 read with section 149 and has been sentenced to undergo rigorous imprisonment for a period of two years, 2½ years and one year respectively. Mahabir, Nar Singh, Paras Nath and Ram Naresh have been convicted under section 147, section 304 Part I read with section 149, section 324 read with section 149, section 325 read with section 149 and section 323 read with section 149 Indian Penal Code and each of them has been sentenced to undergo rigorous imprisonment for a period of 18 months, five years, 18 months, 2½ years and one year respectively. The sentences in the case of each of the appellants have been ordered to run concurrently. Budhdhu (50) and Munni Lal (20) were tried along with the appellants. Munni Lal was acquitted by the trial court, while Budhdhu was acquitted by the High Court.

The appeal arises out of an occurrence which took place at 7 a.m. on March 29, 1965 in Nawagarh near village Shahpur Nawada at a distance of five miles from police station Chandauli in Varanasi district. As a result of that occurrence, Pancham (45) received fatal injuries and later died at 11 a.m. Injuries were also received by Nand Lal (PW 1), Munshi (PW 2), Jhuri (PW 3), Potan (PW 5) and Bhaggan on the side of the complainant. On the side of the accused, Lalji, Mahabir, Paras Nath and Ram Naresh received injuries. Both parties rushed to the police station and lodged reports. On the side of the complainant, report was lodged by Nand Lal PW at 8.30 a.m., while on the side of the accused, report was lodged by Mahabir at 8.35 a.m. On the basis of those reports, two cases were registered and both parties were sent up for trial. The trial court convicted the accused appellants and Budhdhu in the present case, and Nand Lal, Munshi, Jhuri, Bhaggan and one Sheo in the cross case.

Lalji accused is the son of Budhdhu accused. Ram Naresh, Paras Nath and Nar Singh accused are the maternal uncle's sons of Mahabir accused.

The prosecution case is that Nand Lal PW is the owner of plot No. 129/2. Mahabir accused, who is a collateral of Nand Lal PW, owns the adjoining plot. Mahabir had put up a hut on his own plot. There is a *mend* (dividing ridge) between the plots of Nand Lal and Mahabir. On the morning of March 29, 1965, it is stated, Pancham deceased and Nand Lal PW saw that Budhdhu and Mahabir were digging earth and thus extending the frontage of Mahabir's hut. Ram Naresh armed with a *gandasa*, Lalji and Munni Lal armed with spears and Nar Singh and Paras Nath armed with lathis were standing close to Mahabir with a view to help him. Pancham raised a protest against the act of the accused party whereupon Mahabir and Budhdhu picked up lathis and those two accused along with the other accused started beating Pancham and Nand Lal with their respective weapons. Jhuri and Munshi then came there, but they too were attacked. Potan and Bhaggan also tried to intervene, but injuries were caused to them also by the accused party.

**A** During the course of this occurrence, Lalji thrust his spear in the abdomen of Pancham who fell down on the ground. Nand Lal, Jhuri and others on the side of the complainant used their lathies, and in the process the accused were injured.

**B** Bhaggan on medical examination was found to have two injuries caused by blunt weapon. One of those injuries was grievous as it had resulted in the fracture of humerus bone of the left forearm. Jhuri, Munshi and Nand Lal PWs had nine, seven and nine simple injuries respectively caused by blunt weapon. Potan PW had four simple injuries, out of which three had been caused by blunt weapon and one with sharp-edged pointed weapon. Post mortem examination of Pancham revealed that he had six injuries, out of which one was a stab wound, one was an incised wound, three were contusions and one was an abrasion. The fatal injury was the stab wound in the abdominal cavity measuring 2" x 1". Omentum and about 12" long portion of small intestines was protruding out of this wound. Death of Pancham was due to shock and haemorrhage resulting from cutting of small intestines, mesentery and blood vessels by some sharp edged pointed weapon.

**D** The accused were examined by Dr. K. P. Rai and subsequently by Dr. K. A. Khan in jail. The trail court and the High Court have relied upon the medical examination of the accused by Dr. Rai. According to Dr. Rai, he found nine injuries on Mahabir. Nar Singh, Paras Nath and Ram Naresh accused had four injuries each on their persons while Lalji had one injury. The injuries on the persons of the accused were simple and had been caused by blunt weapon.

**E** The defence version was that there was sugar can crop in the plots of Mahabir, Ram Naresh and Nar Singh accused. Those fields used to be irrigated from the well of the accused which was close to the hut of Mahabir. A water channel ran over the intervening ridge between the plots of Mahabir and Mand Lal. On the day of occurrence, it is stated, Mahabir and Ram Naresh accused had started repairing the water channel by digging earth from a portion of Mahabir's plot. Part of the water channel had been repaired with that earth when Pancham, Nand Lal, Munshi, Jhuri, Bhaggan, Sheo and Sotan appeared on the scene. Pancham and others were all armed at that time. Bhaggan then demolished the water channel which had been repaired by Mahabir and Ram Naresh. When Mahabir protested, the party of the complainant attacked them.

**F** Mahabir and Ram Naresh then picked up agricultural implements and wielded the same in self-defence. The other appellants too arrived at the spot and they too wielded lathis in exercise of the right of private defence. Ram Naresh accused came into the witness box and gave evidence in support of the defence version.

**H** The trail court on scrutiny of the evidence came to the conclusion that the witnesses on both sides had stated only the half truth and resorted to exaggeration, twisting and embellishment of the true account of the occurrence. It was further held by the trail court that the well near the hut of Mahabir was being used for irrigation pur-

poses, that the channel through which the water from this well used to be taken was along the disputed ridge and that on the day of occurrence the party of the accused was digging and putting earth on the ridge in order to repair and reconstruct the water channel. The trial court in this context referred to the evidence of the investigating officer, according to whom earth had been taken by the party of the accused from a pit in Mahabir's plot. The trial court did not accept the evidence of the prosecution witnesses that Pancham and Nand Lal first went to the spot and thereafter Jhuri and Munshi arrived there and after that Bhaggan, Potan and Sheo appeared there. In the view of the trial court, all the members of the complainant's party reached the place of occurrence almost simultaneously. The prosecution allegation that the other accused were standing nearby when Mahabir and Budhdhu were digging the earth and repairing the water channel was not accepted. In the opinion of the trial court, these persons were present at the hut which was only 15 or 20 paces from the ridge in question. As regards the actual assault, the trial court came to the conclusion that no attack was made immediately by either party on the arrival of the complainant's party. At first there was remonstrance and counter remonstrance. A fight thereafter ensued when the complainant's party insisted that they would not allow the earth to be put on the disputed ridge and the party of the accused claimed that they must put the earth and reconstruct the water channel. The intransigence of the parties, in the opinion of the trial court, led to a free fight and none of them could therefore plead the right of private defence. The accused, other than Lalji, in the opinion of the trial court, were armed with lathis only.

The High Court in appeal held that the conclusions reached by the trial court were substantially correct and were based upon reasonable appreciation of evidence.

In appeal before us Mr. Nuruddin on behalf of the appellants has argued that the present is not a case wherein the accused party can be said to be members of the unlawful assembly or wherein the injuries caused by Lalji to Pancham can be said to have been caused in prosecution of the common object of the accused-appellants. Although Mr. Rana on behalf of the State has controverted the above contention, we find considerable force in the same. The trial court has found that Mahabir accused had been using water from the well near his hut for irrigation purposes and that he along with Ram Naresh was repairing the old water channel on the ridge when the party of the complainant came there and stopped Mahabir and Ram Naresh from further repairing the water channel. The other accused who were present in the hut nearly at a distance of 15 or 20 paces from the ridge, then came there. There was remonstrance and counter remonstrance which resulted in a fight. The trial court has also found that there was no premeditation on the part of Lalji or any other accused to cause Pancham's death and that the fight was a sudden affair and was the result of heated passion. In the circumstances, in our opinion it cannot be said that the appellants who were present in front of

A their hut formed an unlawful assembly. An assembly of five or more persons is designated an unlawful assembly if the common object of the persons composing that assembly is to do any of the acts mentioned in the five clauses of section 141 Indian Penal Code. According to the explanation to that section, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

B The facts found by the trial court and the High Court and the circumstances of the case do not show that the appellants formed a common object to do any of the acts mentioned in the five clauses of section 141. Reference has been made to clause (4) of section 141, according to which an assembly of five or more persons would be unlawful if the common object of the persons composing that assembly is to enforce any right or supposed right by means of

C criminal force or show of criminal force. This clause cannot be of much avail because it cannot be said that the common object of the appellants was to enforce any right or supposed right by means of criminal force or show of criminal force. As mentioned earlier, no party attacked the members of the opposite party at the commencement of the occurrence. There was only at that stage remonstrance and counter remonstrance. Someone then started the fight and, according to

D the trial court, it could not definitely be determined as to which of the two parties struck the first blow. The circumstances of the case show that lathis were then wielded by the appellants, other than Lalji, not with a view to enforce any right or supposed right in respect of the water channel but because of the fact that a fight had started and the complainant's party was found to be armed. As there was no premeditation and the occurrence was a sudden affair, each

E of the appellants, in our opinion, should be held to be liable for his individual act and not vicariously liable for the acts of others.

Lalji gave the spear blow in the abdomen of Pancham. His conviction should, therefore, be maintained for the offence under section 304 Part I Indian Penal Code. The sentence of rigorous imprisonment for a period of ten years awarded to Lalji for the injury caused to

F Pancham cannot be held to be excessive. As regards the other appellants, we find that they caused simple hurt with their lathis. There is no doubt that one grievous injury was caused to Bhaggan with blunt weapon, but on the material on record it cannot be said as to who caused the said injury. We would accordingly maintain the conviction of Mahabir, Nar Singh, Paras Nath and Ram Naresh for the offence

G under section 323 Indian Penal Code. The conviction of Lalji for offences other than that under section 304 Part I, and of the other four appellants for the offences other than that under section 323 Indian Penal Code is set aside. Lalji is sentenced to undergo rigorous imprisonment for a period of ten years for the offence under section 304 Part I. As regards the other four appellants who have been convicted under section 323 Indian Penal Code, their sentence of

H imprisonment is reduced to the period already undergone.