

RAMVIR

A

v.

STATE OF UTTAR PRADESH

(Criminal Appeal No. 183 of 2013)

OCTOBER 26, 2018

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[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Penal Code, 1860 – ss.148, 149 and 302 – Case of the prosecution that the appellant along with five other persons armed with guns surrounded one ‘S’ and his son and fired shots whereupon ‘S’ on receiving injuries fell down and died – Trial Court while acquitting the appellant of the charges u/s.149, IPC, convicted him u/s.302, IPC – Other five accused persons were acquitted from all the charges leveled against them – High Court in appeal filed by the appellant upheld his conviction u/s.302, IPC and further convicted him u/ss. 148/149, IPC – Propriety of – Held: Appellant was acquitted by the Sessions Judge for commission of offences falling u/ss.148/149, IPC – Appellant’s acquittal was not challenged by the State by filing any appeal before the High Court thus there was no occasion for the High Court to have gone into this question in appeal filed by the appellant – Five co-accused persons having also been acquitted of the charges framed against them u/ss.148/149, IPC, no case was made out against the appellant for his conviction u/ss.148/149, IPC – Once it was held by the Sessions Judge that all the six accused persons could not be convicted u/ss.148/149, IPC and were accordingly acquitted and no appeal having been filed by the State against this part of the order, the High Court was not justified in convicting the appellant u/ss.148/149, IPC – Further, appellant’s conviction u/s.302, IPC is also not factually and legally sustainable – Appellant entitled for benefit of doubt and is acquitted of the charges framed against him u/s.302 r/w ss.148/149, IPC.

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Allowing the appeal, the Court

HELD: 1.1 Appellant’s conviction under Section 148/149 IPC is not legally sustainable and deserves to be set aside for

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A more than one reasons. First, the appellant was already acquitted
by the Sessions Judge for commission of offences falling under
Section 148/149IPC. Also, the appellant's acquittal was not
challenged by the State by filing any appeal before the High Court.
In this view of the matter, there was no occasion for the High
B Court to have gone into this question in an appeal filed by the
appellant as the same had attained finality. Second, in any event,
five co-accused persons having also been acquitted of the charges
framed against them under Section 148/149IPC, no case was made
out against the appellant for his conviction under Section 148/
C 149IPC. Once it was held by the Sessions Judge that all the six
accused persons could not be convicted under Section 148/
149IPC and were accordingly acquitted and no appeal having been
filed by the State against this part of the order, the High Court
was not justified in convicting the appellant under Section
D 148/149IPC. Third, as mentioned above, the prosecution had
named six accused persons as being the members of "unlawful
assembly" of which the appellant was one. [Paras 13-17]
[551-E-H; 552-A-B]

1.2 It is not the case of prosecution that even though these
six accused persons were acquitted of the charges framed under
Section 148/149 IPC, yet there were some more unknown persons
E present at the time of occurrence with the appellant other than
five named accused persons and, therefore, the appellant could
still be convicted under Section 148/149 IPC as a member of an
unlawful assembly with such unknown persons notwithstanding
the acquittal of five accused persons. The High Court was not
F justified in convicting the appellant (A-1) for commission of the
offences punishable under Section 148/149 IPC. The conviction
under twin sections is, therefore, not sustainable both on facts
and in law and hence deserves to be set aside. [Paras 18, 19]
[552-C-E]

G 1.3 Appellant's conviction under Section 302 IPC is
concerned, the same is also not factually and legally sustainable.
There was no evidence to prove that appellant was the author of
the gun shot which killed 'S'; Second, the ballistic report (Ex C-
1) did not support the prosecution case inasmuch as it opined
that cartridges fired and recovered from the spot could not have
H been so fired from the rifle belonging to the appellant and the

third, the alleged rifle was not taken in police custody immediately after the incident but it was surrendered by the appellant in the Court. In the light of foregoing reasons, the appellant is entitled for benefit of doubt and hence deserves to be acquitted of the charges framed against him under Section 302 read with Section 148/149 IPC. The appellant is acquitted of the charges for commission of offences punishable under Section 302 read with Section 148/149 IPC. [Paras 20-23] [552-B-H; 553-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 183 of 2013.

From the Judgment and Order dated 28.02.2012 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1649 of 1983.

S. R. Singh, Sr. Adv., Mangat Prasad, Adarsh Verma, Ms. Namita Choudhary, Advs. for the Appellant.

Manoj K. Mishra, Pradeep Misra, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the accused(A-1) against the final judgment and order dated 28.02.2012 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 1649 of 1983 by which the appeal filed by the appellant herein was dismissed.

2. In short, the case of the prosecution is as follows.

3. On 25.12.1980 around 5 P.M, Siya Ram (deceased) and his son - Kripal (PW-2) were going to a place called “ Baithak “ in a village - Bishnodi (PS -Patiyali) from their house. When they reached near the hut of one Ram Vilas, the appellant (Ramvir) along with five persons namely (1) Bhoorey (2) Satya Ram (3) Shaitan Singh (4) Ram Das and (5) Jagdamba Prasad armed with guns/rifles came there and surrounded Siya Ram and fired shots from their guns/rifles. Siyaram on receiving injuries fell down and succumbed to the injuries.

4. On hearing the noise, Badri (PW-1), uncle of the deceased along with co-villagers who happened to be in near proximity with the place of occurrence rushed to the spot. The appellant (A-1) and five other accused persons (A-2 to A- 6) seeing the mob fast approaching towards them, ran away from the spot by firing gun shots in the air.

A 5. Badri (PW-1) - uncle of deceased lodged FIR (Ex- Ka- 2) on
the next day morning in police station (Patiyali) against six named persons.
The investigation was done which resulted in arrest of the
afore-mentioned six named persons. The six persons were put to trial
for commission of offences punishable under Section 148/149 read with
B Section 302 IPC. The prosecution examined eight witnesses whereas
the defense also examined two witnesses.

6. By Judgment dated 15.7.1983, the learned Sessions Judge
acquitted five accused persons(A-2 to A- 6) out of six, from all the
charges leveled against each of them. So far as the appellant (A- 1) is
concerned, he was also acquitted of the charges under Section 149IPC
C but was convicted for commission of an offence punishable under Section
302 IPC. The operative portion of the order reads as under:

**“Accused Ramvir(appellant herein) is hereby held guilty
of the offence punishable under Section 302 IPC simpliciter
and he is hereby convicted for the same. He is however
held not guilty of offence punishable under Section 149 IPC
D and he is hereby acquitted of the same.**

**Accused Bhoorey, Satya Ram, Shaitan Singh, Ramdas
and Jagdamba Prasad are not found guilty under Sections
148 and 302/149 IPC and they are hereby acquitted.**

**They are on bail. Their bail-bonds are hereby cancelled
and sureties are discharged. They need not surrender.**

**Accused Ramvir is also on bail. He shall be taken into
custody herewith. His bail-bonds are hereby cancelled and
sureties are discharged.”**

7. It is against this order; the appellant (Ramvir), feeling aggrieved,
filed criminal appeal in the High Court of Allahabad. So far as the State
is concerned, the State did not file any appeal against the part of the
order whereby A-2 to A-6 were acquitted of all the charges, and nor has
the State filed any appeal against the acquittal of A-1 with respect to the
G offence punishable under Section 149 IPC. To that extent, therefore,
the judgment of the Sessions Judge attained finality.

8. By the impugned order, the High Court dismissed the appeal
and while upholding the appellant’s conviction under Section 302 IPC
further convicted the appellant for commission of offences punishable
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under Section 148/149 IPC. The operative portion of the High Court's order reads as under A

“Accordingly, we convict the appellant by altering his conviction from that under Section 302 IPC to Sections 148 and 302/149 IPC. We do not intend to inflict any other sentence under both the counts other than that had been passed against him by the learned trial Judge.” B

9. It is against this order; the appellant (A-1), feeling aggrieved, filed the present appeal after obtaining special leave to appeal in this Court.

10. So, two questions arise for consideration in this appeal: First, whether the High Court was justified in upholding the appellant's (A-1) conviction in so far as it relates to the offence punishable under Section 302 IPC and Second whether the High Court was justified in convicting the appellant under Section 148/149 IPC. C

11. Heard Mr. S.R. Singh, learned senior counsel for the appellant and Mr. Manoj K. Mishra, learned counsel for the respondent. D

12. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned order, and acquit the appellant of the charges framed under Section 302 read with Section 148/149 IPC. E

13. In our considered opinion, so far as appellant's conviction under Section 148/149 IPC is concerned; the same is not legally sustainable and deserves to be set aside for more than one reasons.

14. First, it is not in dispute that the appellant was already acquitted by the Sessions Judge for commission of offences falling under Section 148/149IPC. It is also not in dispute that the appellant's acquittal was not challenged by the State by filing any appeal before the High Court. F

15. In this view of the matter, there was no occasion for the High Court to have gone into this question in an appeal filed by the accused (appellant herein) as the same had attained finality. G

16. Second, in any event, five co-accused persons having also been acquitted of the charges framed against them under Section 148/149IPC, no case was made out against the appellant for his conviction under Section 148/149 *ibid*. In other words, once it was held by the H

A Sessions Judge that all the six accused persons could not be convicted under Section 148/149 *ibid* and were accordingly acquitted and no appeal having been filed by the State against this part of the order, the High Court was not justified in convicting the appellant under Section 148/149IPC.

B 17. Third, as mentioned above, it is not in dispute that the prosecution had named six accused persons as being the members of “unlawful assembly” of which the appellant was one.

C 18. It is not the case of prosecution that even though these six accused persons were acquitted of the charges framed under Section 148/149IPC, yet there were some more unknown persons present at the time of occurrence with the appellant other than five named accused persons and, therefore, the appellant could still be convicted under Section 148/149 as a member of an unlawful assembly with such unknown persons notwithstanding the acquittal of five accused persons.

D 19. In the light of afore-mentioned three reasons, we are of the considered opinion, that the High Court was not justified in convicting the appellant (A-1) for commission of the offences punishable under Section 148/149 IPC. The conviction under twin sections is, therefore, not sustainable both on facts and in law and hence deserves to be set aside.

E 20. Now so far as appellant’s conviction under Section 302 IPC is concerned, the same is also not factually and legally sustainable for following reasons. At the out set, it is apposite to quote how the High Court in Para 15 dealt with the issue in question.

F **“...Even at the cost of repetition, we want to note that there was no evidence on record suggestive of the inference which was drawn by the learned trial judge against the present appellant that he was author of the shot that hit and killed the deceased Siya Ram...”**

G 21. The aforesaid reasoning itself suggests that there was no evidence to prove that appellant was the author of the gun shot which killed Siyaram: Second, the ballistic report (ExC-1) did not support the prosecution case inasmuch as it opined that cartridges fired and recovered from the spot could not have been so fired from the rifle belonging to the appellant and the third, the alleged rifle was not taken in police custody

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immediately after the incident but it was surrendered by the appellant in the Court. A

22. In the light of foregoing reasons, we are of the view that the appellant is entitled for benefit of doubt and hence deserves to be acquitted of the charges framed against him under Section 302 read with Section 148/149 IPC. B

23. Accordingly the appeal succeeds and is allowed. Impugned order is set aside. The appellant - Ramvir (A-1) is acquitted of the charges for commission of offences punishable under Section 302 read with Section 148/149IPC. He is, therefore, set at liberty unless required in any other case. C

24. Pending application(s), if any, stand dispose of.