

RAMASHISH YADAV AND ORS.

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v.

STATE OF BIHAR

SEPTEMBER 9, 1999

[G.B. PATTANAİK AND N. SANTOSH HEGDE, JJ.]

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*Indian Penal Code, 1860 :*

*Ss. 302/149, 302/34, 324/34, s.141—Unlawful assembly—Murder—Land dispute between complainant side and accused persons—Accused 13 in number; some armed with gun, gandasa, knife and lathis—One accused shot dead a person on complainant side—Two others gave gandasa blows to another person on complainant side as a result the victim died—Two more accused caused knife injuries to complainant—Trial Court convicted all the accused u/s. 302/149 and sentenced them to imprisonment for life—High Court acquitted 5 and convicted remaining 7 u/s, 302, 302/149 and 302/34; one of the accused died pending appeal—Held, from the prosecution evidence it is not established that accused persons constituted an unlawful assembly—Their conviction by taking recourse to s.149 is unsustainable—Conviction u/s. 302/149 set aside—Accused who fired gunshot causing death of the person on complainant side convicted u/s. 302—Accused who caused death of another person by giving him gandasa blows, convicted u/s. 302/34—These three accused sentenced to imprisonment for life—The other two accused who caused knife injuries to the complainant convicted u/s. 324/34 and sentenced to imprisonment for two years.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 719-722 of 1996.

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From the Judgment and Order dated 31.1.96 of the Patna High Court in Crl. A. Nos. 543/88, 1/89, 13 and 30 of 1989.

M.P. Jha and Ram Ekbal Roy for the Appellants.

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B.B. Singh for the Respondent.

The following Order of the Court was delivered by :

Seven accused appellants who were tried along with 6 others for having

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A committed an offence under section 302/149 and some other offences were ultimately convicted by the learned Sessions Judge under section 302/149 and were sentenced to rigorous imprisonment for life for having caused the murder of Mundrika and Ram Tapeshwar yadav. Out of the 13 accused persons who were convicted by the learned Session Judge, one expired after the judgment of the learned Sessions Judge. The High Court considered the case of all the accused persons who stood convicted by the learned Sessions Judge and acquitted 5 of them but maintained the conviction of rest 7 under sections 302, 302/149, 302/34 and other offences and as such these appeals are by the 7 appellants. According to the prosecution case these accused persons were ploughing the land claiming the land to be theirs on the date of occurrence

B and some of the accused persons had a gun while some others had weapons like gandasa and lathis. When the informant and some others belonging to his party went and protested as to why they are ploughing the land belonging to the informant the accused persons asserted that it is their land and, therefore, they would continue to plough the land in question. On this score

C there was some altercation and then accused Ram Das Yadav brought out the gun and fired which hit Mundrika and Mundrika died at the spot. Two other accused persons, namely, Ram Pravesh Yadav and Ramanand Yadav suddenly came and caught hold of Tapeshwar Yadav belonging to the complainant party and at that point of time Samundar Yadav and Sheo Layak Yadav came with gandasa in their hand and gave blows on the head of Tapeshwar by

D means of gandasa. The informant was caught hold by Ramanand Yadav, Sukhdeo Yadav, Sheo Layak Yadav and Ram Ishwar Yadav who has already died, gave a lathi blow on the wrist and Ramanand Yadav gave a chhura blow. On the basis of information given by PW.1, the police started investigation and submitted the charge-sheet, as already stated. The prosecution case is sought to be proved through the evidence of the 3 eye witnesses PWs.1, 3

E and 4. The learned Sessions Judge relying upon the evidence of the aforesaid eye witnesses came to hold that all the accused persons formed an unlawful assembly and in furtherance of the common object of the said assembly accused Ram Das Yadav had fired the gun as a result of which Mundrika died and, therefore convicted all of them under section 302/149. Accused Ram Das

F Yadav who had given the gun blow was convicted under section 302. On appeal, the High Court re-appreciated the evidence of the three eye witnesses PWs. 1, 3 and 4 and came to the conclusion that their evidence can be relied upon which finds corroboration from the evidence of the doctor. The High Court further came to the conclusion that there is satisfactory and convincing evidence on record to establish that Mundrika Yadav had been shot at by

G Ram Das Yadav, after some exchange of words in the field and Mundrika died

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at the spot and that Ram Tapeswar after being caught was given blows with gandasa by Samundar yadav and Sheo Layak Yadav and the informant too after being caught had been given blows with lathi and chhura by Ram Ishwar Yadav and Ramanand Yadav but since the witnesses had not ascribed any positive role to accused Rajeshwar Yadav, Chandeshwar Yadav, Devi Dayal Yadav, Rajendra Yadav and Sonadhari Yadav, they cannot be held to have shared the common object of assaulting or killing persons who became the victim of the occurrence and accordingly held them to be not guilty of any offence and acquitted them of the charges. But so far as the five appellants are concerned, the High Court held them guilty of the offence under section 302/149 IPC, and affirmed the sentence of imprisonment for life. The High Court also held accused Samundar Yadav and Sheo Layak Yadav to be guilty of offence under section 302/34 IPC for having caused the murder of Tapeswar and affirmed the sentence of life imprisonment thereunder. Besides, Rameshwar Yadav's conviction under section 325 for causing grievous injury to the informant and sentencing him to undergo R.I. for two years was upheld. So far as the conviction of the accused Ramanand under section 307 IPC, the High Court set aside the same and instead convicted him under section 324 IPC and sentenced him to undergo R.I. for one year. The sentences were directed to run concurrently.

It is contended by the learned counsel for the appellants that even taking the prosecution case in full on the evidence of PWs. 1, 3 and 4 only Ram Das Yadav can be convicted under section 302 who has fired the gun and Mundrika died on account of the gun shot injury and the two others who have the gandasa blows on Tapeswar can be convicted under section 302/34. But the two others who caught hold Tapeswar as well as two other appellants who never assaulted either Mundrika or Tapeswar who had caused the injury on PW. 1 could not have been convicted under section 302/149. Mr. B.B. Singh, appearing for the State of Bihar, on the other hand, contended that the very fact that accused persons went there with arms in the hands and then after the informant party went and challenged, there was exchange of words and then they started assault as a result of which two people died, it must be held that all of them had the common object and could be held liable by taking recourse of section 149. In the alternative he argued that at least those who caught hold of deceased who facilitated the other two accused persons to give the gandasa blow on Tapeswar would be liable under section 302/34. To appreciate the contentions of Mr. Singh we have scrutinised the evidence of PWs. 1, 3 and 4. From the evidence it transpires that the accused persons had gone to the field and were ploughing.

A at that point of time it cannot be said that they constituted an unlawful assembly within the meaning of section 141 of the Indian Penal Code inasmuch as it has not been established by the prosecution that they had one of the five specified objects enumerated in section 141 of the IPC, as their common objects. Mr. B.B. Singh, however, relied upon the explanation to section 141 and contended that an assembly which was not unlawful, when it assembled, B may subsequently become an unlawful assembly. There is no dispute with the aforesaid proposition. But from the evidence of PWs. 1, 3 and 4, it is difficult for us to conceive that at any later point of time the accused persons can be said to have nurtured one of the five specified objects as their common objects. This being the position and in the absence of establishing the fact C that the accused persons constituted an unlawful assembly, their conviction by taking recourse to section 149 IPC is unsustainable. Section 149 postulates an assembly of five or more persons having a common object namely, one of those named in section 141 and then the doing of acts by members of the assembly in prosecution of that object. In view of our conclusion that there was no unlawful assembly, conviction of the appellants under section 149 IPC D cannot be sustained. We accordingly set aside the conviction of the appellants under section 302/149 IPC. But so far as the accused Ramdas Yadav is concerned, the witnesses being consistent that it is he, who fired the gun shot which hit Mundrika and Mundrika died and medical evidence corroborates the same, he is convicted under section 302 IPC and sentenced to imprisonment E for life.

Coming to the question of applicability of section 34 for the murder of Tapeshwar, we find from the evidence of the three eye witnesses that while Ram Pravesh Yadav and Ramanand Yadav caught hold of Tapeshwar, accused Samundar Yadav and Sheo Layak Yadav came with gandasa and gave blows F on the head of Tapeshwar, as a result of which Tapeshwar died. section 34 lays down a principle of joint liability in the doing of a criminal act. The absence of that liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. The distinct feature of section 34 is the element of participation in action. The common intention implies acting in concert, G existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. It requires a pre-arranged plan and it presupposes prior concert. Therefore, there must be prior meeting of minds. The prior concert or meeting of mind may be determined from the conduct of the offenders unfolding itself during the course of action H and the declaration made by them just before mounting the attack. It can also

be developed at the spur of the moment but there must be pre-arrangement or premediated concert. This being the requirement of law for applicability of section 34 IPC, from the mere fact that accused Ram Pravesh Yadav and Ramanand Yadav came and caught hold of Tapeashwar, whereafter Samundar Yadav and Sheo Layak Yadav came with gandasa in their hands and gave blows by means of gandasa, it cannot be said that the accused Ram Pravesh Yadav and Ramanand Yadav shared the common intention with accused Samundar yadav and Sheo Layak Yadav. Consequently, accused Ram Pravesh Yadav and Ramanand Yadav cannot be held guilty of the charge under section 302/34 IPC but accused Samundar Yadav and Sheo Layak Yadav did commit the offence under section 302/34, having assaulted deceased Tapeshwar on his head by means of gandasa on account of which Tapeshwar died. The accused Ram Pravesh Yadav and Ramanand Yadav are, therefore, acquitted of the charges levelled against them and they be set at liberty forthwith. So far as the two other appellants are concerned, namely, Ramashis Yadav and Sukhdeo Yadav, they have merely caused injury to the informant by means of a knife and for causing such injury they can only be convicted under section 324/34 IPC and are sentenced to imprisonment for two years. But they have already been in custody for more than seven years by now, they should also be set at liberty forthwith. In the net result, therefore, the conviction of appellant Ram Das Yadav under section 302 IPC and sentence of imprisonment for life is upheld and his appeal stands dismissed. Conviction of all other appellants under section 302/149 is set aside. Conviction of appellants Samundar Yadav and Sheo Layak Yadav under section 302/34 IPC and sentence of imprisonment for life is upheld. Appeal by them, therefore, stands dismissed. Accused Ram Parvesh and Ramanand are acquitted of the charges and be set at liberty forthwith. Accused Ramashis Yadav and Sukhdeo Yadav are convicted under section 324/34 IPC and sentenced to two years' R.I. and since they have already been in custody for more then seven years, they are directed to be set at liberty forthwith.

The appeals are disposed of accordingly.

R.P.

Appeals disposed of.