

CASE NO.:
Appeal (crl.) 418 of 1994

PETITIONER:
BHIMA @ BHIMARAO SIDA KAMBLE AND ORS.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 27/08/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI

JUDGMENT:
JUDGMENT

2002 Supp(1) SCR 693

The Judgment of the Court was delivered by

RAJENDRA BABU, J . 22 persons were charged by the Court of Session, Solapur on the allegation that they formed an unlawful assembly with the common object of murdering vithal and causing injury to Bhimrao, the brother of Vithal, and to cause damage to the 'wada' at Dambaldar. After trial most of them stood convicted under Section 302 read with Section 149 and Section 440 read with Section 149 of the Indian Penal Code [IPC] and accused Nos. 14, 18 and 19 were also charged and convicted under Section 323 read with Section 34 IPC for having caused simple hurt to Bhimrao. On appeal, the High Court acquitted some more accused but confirmed the conviction and sentence in regard to others. Accused Nos. 1 to 3 and 14 to 19 are in appeal before us. We are not concerned with other accused.

This Court granted leave by an order made on 18-7-1994 confining the same only to the question of the nature of offences disclosed. When the learned Senior Advocate Shri A. T.M. Rangaramanujam pitched his arguments a little too high to contend that the accused are entitled to plain acquittal, we made it clear to him that when the trial court and the High Court on the basis of evidence have come to a conclusion one way or the other of their involvement in the incident in respect of which they were charged, we cannot re-appreciate the matter and come to a different conclusion. Thereafter, he confined his arguments only to the question of offence arising out of proved facts.

After analysing the evidence of PWs 15 and 16 and other material on record the learned Sessions Judge held that accused No. 1 went to the 'vasti' of Vithal along with some of the accused and was following Vithal upto his 'wada', that when Vithal and Bhimrao were inside he charged on the servant to scare him away as he was pleading to protect the members of his master's family. He held that he shared the common object to murder Vithal, though the circumstances in the case may not suggest that he was sharing the common object to murder Bhimrao but to cause him hurt.

As regards accused No. 2, from the testimony of PW 16 and other evidence on record, the learned Judge held that when the deceased-Vithal arrived at the Bus Stand after release on bail, he was seen following Vithal; that he went inside the 'wada' scaling the wall; that his conduct certainly suggested that he was taking active part as a member of the unlawful assembly to find out where the victims were hiding and how to reach them, as otherwise there was no reason to scale the wall and go inside the 'wade'.

As regards accused No. 3, the learned Judge on analysing evidence of PWs 12 and 16 along with other material on record held that he was present at the S. T. stand and he was following Vithal near the 'wada' and when Vithal and Bhimrao were inside, he pelted stones at Suman. These circumstances were

sufficient to hold that he was the member of the unlawful assembly and was sharing its common object except in respect of the injury caused to Bhimrao.

As regards accused Nos. 14, 18 and 19, the learned Judge relied on evidence of PWs 9 and 10 for causing injuries to Bhimrao and from evidence of PWs 14 and 16 held that accused Nos. 18 and 19 were at the S. T. bus stand and accused No. 14 joined them in search of Vithal. They came following Vithal, went inside the 'wada' beat Bhimrao after taking him outside from where he was hiding. These acts prove their sharing of the common object to murder Vithal and their common intention to assault Bhimrao. The learned Sessions Judge also took the view that the target of attack was not Bhimrao but Vithal inasmuch as Bhimrao happened to be accidentally with Vithal and accused Nos. 14, 18 and 19 beat him inside the 'wada'. This act of theirs was not in furtherance of the common object of the assembly, but this was in furtherance of the common intention to do so in order to put Bhimrao in fear from coming ahead to save his brother Vithal. Therefore, as regards accused Nos. 14, 18 and 19, the learned Judge concluded that there is 'common object in respect of Vithal and 'common intention' in respect of Bhimrao.

In this case, the learned Sessions Judge noticed that there was no specific evidence as to the nature of weapons with which they were armed. What was proved in the whole case was that accused Nos. 14, 18 and 19 personally dealt blows with sticks and the allegation that accused No. 3 wielded axe was not proved. There was no evidence to show that at the time of incident they were armed with axes. Axes produced by accused Nos. 1, 2, 18 and 19 were not shown to have been used in causing hurt. On that basis, the learned Sessions Judge held that accused Nos. 14, 18 and 19 cannot be found to be the members of unlawful assembly armed with deadly weapons.

In appeal, the High Court also examined the evidence with reference to each one of the appellants and affirmed the findings recorded by the trial court.

When a large number of persons were armed only with sticks or pelted stones which they could find anywhere either near the fields or on their way and it was not established as to who specifically attacked whom, it is not clear as to whether the intention was to cause death. It is more probable that the intention was to give hard beating only. Even if we accept the case that the deceased-Vithal was pursued right upto the 'wada' the object of the mob was to teach him a stern lesson who is said to be a bully in the village. In the circumstances and in the light of evidence, we must hold that the reasonable inference to be drawn is that the common object was to commit offences under Section 323 and Section 325 read with Section 147/149 IPC and not under section 302 read with Section 149 IPC. The trial court as well as High Court appear to have lost sight of crucial aspects.

Therefore, we think that these accused who are under appeal before us deserve to be acquitted of the charges under Section 302 read with Section 149 IPC, while they stand convicted as rightly held by the trial court, under Section 147, Section 323 and Section 325 IPC. The sentences which they have already undergone should be treated as sufficient punishment and they may be released forthwith if they are still in jail. Orders made by the trial court as confirmed by the High Court will stand modified accordingly.

The appeal is allowed limited to the above extent.