

PETITIONER:
PUNDALIK MAHADU BHANE & ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 14/08/1997

BENCH:
M. K. MUKHERJEE, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

MUKHERJEE, J.

In Sessions Case No. 233 of 1979, 12 persons were tried by the Additional Sessions Judge, Thane for rioting, committing murder and other allied offences. Of them 2 were acquitted and the other 10 (who were arrayed as accused Nos. 1 to 10 and henceforth will be referred to) were convicted under Section 148 I.P.C. Besides, A-1 to A-3 were convicted under Section 302/34 I.P.C. and the remaining 7 under Sections 324/149 and 323/149 I.P.C. Against their convictions and sentences, A-1 to A-10 preferred an appeal which was disposed of by the High Court, by affirming their convictions, maintaining the sentences awarded to A-1 to A-3 for their convictions under Sections 302/34 and 148 I.P.C. and reducing the substantive sentences of the remaining 7 to the period already undergone and imposing a sentence of fine. Assailing the above judgment of the High Court, only A-1 to A-3 filed this appeal after obtaining special leave. During the pendency of this appeal A-1 died and hence the appeal so far as he is concerned stands abated.

2. The prosecution case as unfolded during trial is as under:

- (a) Kathod (P.W.3) has three sons named Anant (P.W.2), Krishna and Haribhau (the deceased) Rama (P.W.1) and Bama (P.W.4) are the sons of Barku, brother of P.W.3. A-1 to A-10 are also related to each other. The agricultural land belonging to the family of P.W.1 adjoins that of Tukaram (A-5). As the land of A-5 is on a level lower than that of P.W.3, during monsoon the accumulated rain water of the land of P.W.3 flows down to the land of A-5.
- (b) On June 23, 1978 at or about 9.00 A.M. when P.W.2 went to plough their land, he found that it was submerged in water. He then removed a portion of the bound of the land as a result whereof the discharged water started flowing into the land of A-5. Seeing the water flowing into his land A-5, who was then present there, took exception to such discharge of water; and over this issue, a quarrel ensued between P.W.2 and A-5. Ultimately however, A-5 changed the flow of water by

closing the bound and the water started flowing through the land of P.W.2. P.W.2 then left the place in a huff and reported the incident to his family members.

(c) On the following day, i.e. June 24, 1978, at or about 7.30 A.M. when P.W.1 was returning from the field after answering the call of nature and had reached near the Primary School building, he found all the accused present there armed with sticks. Seeing him they threw a challenge that they were prepared to fight and asked him to call his associates. Immediately thereupon A-4 and A-6 struck P.W.1 with their respective sticks. P.W.1 then raised shouts and hearing the same Anant (P.W.2), Haribhau (the deceased), Kathod (P.W.3), Bama (P.W.4), Harish Chandra (P.W.5), Moti Ram (P.W.6) and one Gopinath Pawar rushed to his rescue. The accused then started beating them also with their sticks. In the meantime, Pundalik P.W.10), Vishnu (P.W.12) and other villagers gathered there and stopped the assault. It was then found that Haribhau and P.W.4 were lying on the ground with serious injuries on their heads and other parts of the bodies. The other persons who sustained injuries at the hands of the appellants were the above witnesses. Haribhau was immediately taken to Central Hospital, Ulhasnagar where he was admitted as an indoor patient. At or about 8 A.M. P.W.1 went to Hill Line Police Station, Ulhasnagar and lodged a report about the incident. On that information a case was registered and P.S.I. Kamble (P.W.21) took up investigation.

(d) Dr. Datte (P.W.22) examined Haribhau at 9.15 A.M. but within two hours he succumbed to his injuries. After inquest was held on his dead body by P.W.21, P.W.22 held the postmortem examination. On completion of investigation P.W.21 submitted charge-sheet and in due course the case was committed to the Court of Session.

3. The accused pleaded not guilty to the charges levelled against them. Their specific defence was that on the day in question, when A-5 was going to his field he was assaulted by the prosecution witnesses on account of the incident that took place on the previous day over the flow of the rain water. It was their further defence that A-1 to A-2 A-4 to A-7 and A-10 were also assaulted by the complainant party. In support of their case they exhibited the first information report that A-5 lodged against some of the members of the complainant party and further brought on record the fact that on completion of the investigation in that case 11 persons, including some of the prosecution witnesses, were charge-sheeted and subsequently committed to the Court of Session to stand trial under Sections 148, 323, 324/149 and 307/149 I.P.C.

4. On perusal of the judgment of the trial Court we find that after a detailed discussion of the evidence adduced during trial, the trial Court recorded the following findings:

"In my opinion, the circumstances and the evidence taken together would show that there was free fight between the party of the prosecution and the Party of the accused and such a free fight was premeditated one. There was motive for both the sides to attack on the other, The version of the prosecution witnesses stated above that they were attracted due to be

and cry, appears to be unreliable. It was rightly submitted by Mr. Ovalekar that it was improbable for the witnesses to come from the different localities and on arrival to see the only incident of accused nos. 1 to 3 assaulting Haribhau with sticks and bana. However this would not mean that these witnesses were not at all present. On the contrary, in my opinion, all these persons must have come together near the school and the party of the accused was already there. The evidence of P.W.3 Kathod explains how both the parties gathered near the school Kathod saw accused No. 1 to 10 passing by the road in front of his house and accused no. 5 Tukaram threatening him to come to wards Dhoknil land. True it is that P.W. 3 Kathod was omitted to state this version before police but under the circumstances, I find such a version quite probably and fitted in the circumstances. The number of injuries by prosecution witnesses, as well as that by accused would go to show that the assault was during the course of free fight and not as and when the witnesses came."

<emphasis supplied)

5. In appeal the High Court concurred with the above findings of the trial Court as would be evident from the following passage of its judgment:

"Exhibit 18, further shows that when P.W.1 Rama was assaulted the rest of the prosecution witnesses came there and although P.W.1 Rama has stated that they were also assaulted by the accused it will not be too far fetched to fight which must have ensued between the two parties who were armed. The prosecution witnesses have also admitted that as a result of the same incident accused No. 5 Tukaram has lodged a complaint against them and they were also tried in the companion case for having caused injuries to some of the accused. Except saying that the prosecution witnesses themselves assaulted the accused with deadly weapons, which one cannot expect in a case like the present one where two parties come together to try their strength, the version given by the prosecution witnesses about the assault made by the accused on each one of the injured persons is substantially corroborated by the medical evidence that has been produced in this case."

(emphasis supplied)

6. After having gone through the entire record we are of the opinion that the above concurrent findings of the learned Courts below are substantially correct and are based upon reasonable appreciation of the evidence. But then, having recorded such findings the learned Courts below were not justified in convicting the appellants for rioting, for the law is now well-settled that in the case of a sudden and free fight each of the persons involved therein can be held liable for his individual act and not vicariously liable for the acts of others. [Lalji and Ors. Vs. The State of U.P. AIR 1973 S.C. 2505, Ishwar Singh Vs. The State of U.P. AIR 1976 S.C. 2423]. The convictions of the two surviving appellants under Section 148 IPC cannot, therefore, be sustained.

7. Coming now to their individual acts we find that each of them assaulted the deceased with sticks resulting in grievous injuries on his person. Both of them (now that A-1 is died) are therefore liable for conviction under Section 325 I.P.C. We, therefore, set aside the convictions of A-2 and A-3 namely Balram Kundalik Bhane and Undrya Baglya Bhane respectively under Sections 148 and 302/34 I.P.C. From the record we find that they have already served more than 3-1/2 years of their sentences. In consideration thereof and the fact that since the incident took place more than 19 years have elapsed, we sentence them to the period already undergone and a fine of Rs. 2,500/- each. In default of payment of fine they shall suffer rigorous imprisonment for 1-1/2 years each. The fine should be paid within 6 weeks, falling which the two appellants should be sent to prison to serve the sentence imposed by us for default in payment of the fine. The entire fine, if realised, shall be paid to the widow of the deceased Haribhau. The appeal is thus disposed of.