

PETITIONER:
HARICHARAN & ANR.

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 22/10/1997

BENCH:
G.T. NANAVATI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

THE 22ND DAY OF OCTOBER, 1997

Present:

Hon'ble Mr. Justice G.T. Nanavati

Hon'ble Mr. Justice V.N. Khare

Kailash Vasdev, Adv. for the appellants.

K.S. Bhati, Adv. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

Nanavati, J.

The two appellants, along with two others have been convicted for committing murder of Ram Babu. What has been proved against them is that they formed an unlawful assembly and in prosecution of the common object of the unlawful assembly, on 27.2.1981 at about 1.00 p.m. they armed with weapons, stopped the bus going from Dholpur to Khuthiyana Ghat, asked the passengers to get down attempted to drag out Ram Babu conductor of the bus and then appellant Rammo by firing two shots from his gun and others by their weapons injured and thereby killed Ram Babu.

In order to prove it case, the prosecution had examined 3 eye-witnesses PW - 1 Kedarnath, PW - 3 Ramjilal and PW-6 Satpal Singh the driver of the bus. PW-7 did not support the prosecution and he was required to be cross-examined by the public prosecutor, Learned trial court did not believe PW-3 Ramjilal who was the brother of the deceased on the ground that he was not present in the bus. Relying upon the evidence of Kedarnath the trial court convicted Rammo (A-1) under Section 302 IPC and others under Section 302 read with Section 49 IPC. All the four accused applied for leave to appeal to this Court. Leave was granted to Hari Charan (A-3) and Siya Ram (A-4) and the application of Rammo (A-2) and Kailashi (A-5) was dismissed.

What is contended by the learned counsel for the appellants is that so far as A-3 and A-4 are concerned there is no clear evidence regarding any overt act suggesting that they were acting in prosecution of the common object of the unlawful assembly or that they were even members of any unlawful assembly. It was also contended that even if they are held to be members of an unlawful assembly, in view of absence of any evidence to prove that they had taken any

part in killing Ram Babu it cannot be said that his murder was committed in order to achieve the object of that unlawful assembly. Therefore, their conviction under Section 302 IPC read with Section 49 is not correct.

We have carefully gone through the evidence of PW-1 Kedarnath. He has in clear terms stated that the bus in which he was travelling was topped by five persons near Faratpur. The persons who had stopped the bus were armed with weapons and Rammo had carried a gun. After stopping the bus he had put the gun on the chest of the driver Satpal and with a threat told him not to move the bus ahead. They had tried to pull down the conductor by they were not successful. Thereafter accused Rammo had fired two shots and injured him. Thereafter accused Rammo had fired two shots and injured him. The remaining three had also assaulted him with their weapons. After killing Ram Babu they ran away. So far as this witness is concerned we find that he stands corroborated by the evidence of Ram Swaroop PW-2 who had stated that at about 3.000 p.m. Kedarnath informed him about the incident. On the basis of the said information he had immediately prepared a report and submitted the same at the Police Station. That report also contains the names of Kedarnath and Satpal as the persons who had seen the incident and informed the witness about it. The attempt of the defence was to show that this witness was not travelling by that bus as he stood contradicted when he stated that he was returning after purchasing 'Gwarsa' fertilizer whereas the bill produced by him discloses that he had purchased urea on that day. This discrepancy in his evidence cannot be regarded as sufficient to doubt his presence in the bus. Even though Satpal turned hostile to the prosecution his cross-examination by the public prosecutor also indicates that Kedarnath was with him when he went to inform Ramjilal and that he was travelling in the bus with bags of fertilizers. Nothing has been brought in his evidence to show that he was not travelling by that bus. Both the courts below have relied on the evidence of this witness and we find that his evidence has been rightly appreciated.

Once we accept the evidence of Kedarnath it becomes clear that all the five accused were acting in prosecution of their common object. As stated earlier they had gone to the place of incident armed with weapons, stopped the bus, put the gun on the chest of the driver Satpal and threatened him to shoot as if he drove the bus ahead. They had caught hold of Ram Babu and tried to drag him out. Rammo had fired two shots at him and other accused had assaulted him with other weapons. They had run away together. Therefore, we are of the opinion that the appellants were rightly convicted under Section 302 IPC read with Section 49. The appeals is, therefore, dismissed.

The appellants are directed to surrender to custody to serve out the remaining part of their sentence. The State is also directed to take him in custody and take appropriate steps for the said purpose.