

A

HARI CHARAN AND ANR.

v.

STATE OF RAJASTHAN

OCTOBER 22, 1997

B

[G.T. NANAVATI AND V.N. KHARE, JJ.]

*Indian Penal Code, 1860 : S.302 r/w S.49—Armed men stop bus at gun point, shoot at the deceased and assault him with other weapons, and run away together after committing crime —Held, they were members of an unlawful assembly acting in prosecution of their common object.*

C

The two appellants were part of an armed group which stopped a bus at gun point, asked the passengers to get down, then attempted to drag out its conductor, failing which A-1 fired at him and injured him, and others assaulted him with their weapons resulting in his death. Eye witnesses, PW-1, a passenger of the said bus and its driver, PW-6 informed PW-2 of the incident, who immediately prepared a report and submitted it at the police station.

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The trial court relying upon the evidence of PW-1 convicted A-1 under S.302 IPC, and the appellants and others under S.302 read with S.49. The appellants were granted leave to appeal.

E

It was contended for the appellants that there was no clear evidence regarding any overt act suggesting that they were acting in prosecution of the common object of the unlawful assembly, and further that there was no evidence to prove that they had taken any part in killing the deceased.

F

Dismissing the appeal, the Court

HELD : 1. The appellants were rightly convicted under S.302 IPC read with S.49. [681-D]

G

2. Both the courts below relied on the evidence of PW-1. He had in clear terms stated that the bus in which he was travelling was stopped by five persons. They were armed with weapons and A-1 had carried a gun, who had put it at the chest of the driver with a threat not to move the bus. They had then tried to pull down the deceased, failing which A-1 fired two shots and injured him.

H

The other accused also assaulted him with their weapons. They ran away after killing him. [680-E] A

3. This witness stands corroborated by the evidence of PW-2, who stated that PW-1 had informed him about the incident, on the basis of the said information he had immediately prepared a report and submitted it at the police station. That report also contains the names of PW-1 and PW-6 as the persons who had seen the incident and informed PW-2 about it. PW-6 had deposed in cross-examination that PW-1 was travelling in the bus with bags of fertilizers. The evidence of PW-1 has thus been rightly appreciated. [680-G-H; 681-A] B

4. All the five accused had gone to the place of the incident armed with weapons, stopped the bus, put the gun on the chest of the driver and threatened to shoot if he drove the bus ahead. They caught hold of the deceased and tried to drag him out. The accused armed with gun had fired shots at the deceased and other accused had assaulted him with other weapons. They had run away together. It cannot, therefore, be said that they were not acting in prosecution of their common object. [680-F; 681-C] C D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 89 of 1988

From the Judgment and Order dated 20.1.87 of the Rajasthan High Court in CrI.A. No. 120 of 1984. E

Kailash Vasdev for the Appellants.

K.S. Bhati for the Respondent.

The Judgment of the Court was delivered by F

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 27.2.81 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. G

In order to prove its case, the prosecution had examined 3 eye-witnesses H

- A 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.
- B

- C 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.
- D

- E 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 stopped 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 but they were not successful. 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 3.00 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
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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 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 appeal 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.

P.S.S.

Appeal dismissed.