REVISIONAL CRIMINAL

Before Falshaw, J.

JAGAT SINGH,—*Convict-Petitioner*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 107 of 1954

1954

May, 27th

Indian Penal Code (XLV of 1860), Sections 34 and 149—More than five persons charged under section 149—Less than five convicted under section 34—Whether conviction legal—Two groups fighting—Injuries on both sides—Duty of the Court in such cases stated.

Held, that it cannot be laid down that in no case where five or more persons are involved on a charge under section 149, and it is then found by the court that a smaller number than five took part in the occurrence, can a conviction under section 34 be substituted. Obviously a decision on this point depends on the particular facts of the case and what is the common object with which the alleged members of an unlawful assembly have been charged. If, for instance, the common object of the members of an alleged unlawful assembly is to take possession of some land or to demolish a wall, and the commission of murder is only a likely result of carrying out this common object by force and not its primary object, it is then obvious that if a lesser number than five accused are found guilty of murder, the Court cannot convict them of murder and extend liability collectively to all of them under section 34 on the ground that the commission of murder was their common intention. On the other hand if the common object of the accused is simply to commit murder, and this is the common object with which as members of an unlawful assembly, they have been charged, there is no objection at all to convicting a lesser number than five found actually responsible for the murder under section 34 even after a larger number has been charged under section 149 with collective liability.

Held, that when a fight takes place in which on the one side three persons receive a total of thirteen injuries, and on the other side two persons receive a total of seventeen injuries, it is hardly possible merely on the medical evidence

to come to any conclusion as to which party was the aggressor, though it is the duty of the Court to come to a clear finding on this point and to give the benefit of any doubt which may exist regarding it to the accused.

Petition under section 439 of Criminal Procedure Code, for revision of the order of Shri *Manohar Singh, Additional Sessions Judge, Amritsar, dated the 19th December, 1953, modifying that of* Shri *S. P. Jain, Magistrate, 1st Class, Amritsar, dated the 24th November, 1953, convicting the petitioner.*

V. K. RANADE, for Petitioner.

K. S. CHAWLA, Assistant Advocate-General, for Respondent.

JUDGMENT

FALSHAW, J. This is a revision petition by Jagat Singh against his conviction under section 324, Indian Penal Code, and the sentence of six months' rigorous imprisonment. Falshaw, J.

In the trial Court there were six accused, the petitioner Jagat Singh, his sons Balbir Singh and Jagir Singh, and three other men named Sundar Singh, Kartar Singh and Kundan Singh, who were prosecuted on charges under section 148 and section 307 read with 149, Indian Penal Code. The result of the case was that three of the accused were acquitted and Jagat Singh and his two sons were convicted under section 307 read with 34, Indian Penal Code, and sentenced to three years' rigorous imprisonment and also ordered to furnish security under section 106, Criminal Procedure Code, for one year after their release, and the result of their appeal in the Court of the Additional Sessions Judge was that Balbir Singh and Jagir Singh were acquitted altogether and Jagat Singh, petitioner, was convicted and sentenced as above.

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Briefly the prosecution case was that a quarrel broke out as a result of a chance encounter between Jagat Singh, petitioner, and Wadhawa Singh, P.W., at a place not very far from the former's house on account of the fact that Jagat Singh insinuated that someone who had been working Wadhawa Singh's well on the previous night had stolen some sugarcane from Jagat Singh's field, which is near the well. Abuse was exchanged and it is alleged that Jagat Singh went away and returned soon afterwards with the remaining accused on which Wadhawa Singh and Saudagar Singh, P.Ws., went inside their houses and fastened the doors. It is alleged that the accused then attacked Sadhu Singh and Gurmej Singh, P.Ws., who are related to the other P.Ws. and also, when Gurdip Singh intervened to stop the fight, he was shot with a pistol by Jagat Singh. Swaran Singh, P.W., is said to have given one or two stick blows to Jagat Singh and to have captured the pistol from him. The defence case was that Jagat Singh and his son Balbir Singh, accused, were attacked and beaten by the prosecution witnesses and that the other accused had not taken any part in the fight.

There is no doubt that the witnesses are all interested and inter-related, and the one thing that appears to be established beyond any doubt by the evidence produced is that there was a fight between the parties in which Sadhu Singh, Gurmej Singh and Gurdip Singh received injuries on the complainants' side and Balbir Singh and Jagat Singh on the side of the accused. Gurdip Singh had evidently been shot in the left arm in which there was a gun-shot wound, 2″ in diameter, from which seventeen pellets were removed, the injury in itself, however, being simple as no bone was damaged. Sadhu Singh, P.W., had eight incised wounds and two abrasions, three of his incised

wounds being grievous, though not very serious, as only the nasal bone and bones in both his hands were cut. Gurmej Singh, P.W., had two small simple contused wounds. On the other side Balbir Singh had incised wounds on his right little, ring and middle fingers, one of these injuries being grievous as the distal part of his little finger was completely severed, and also three contused wounds on the head and a contusion on the left shoulder and abrasions on the left forearm and abdomen. Jagat Singh, accused, had two contused wounds on the head, contusions on the left shoulder and the right side of the back and abrasions on the right forearm, right knee and left wrist.

It is clear that when a fight takes place in which on the one side three persons receive a total of thirteen injuries, and on the other side two persons receive a total of seventeen injuries, it is hardly possible merely on the medical evidence to come to any conclusion as to which party was the aggressors, though it is the duty of the Court to come to a clear finding on this point and to give the benefit of any doubt which may exist regarding it to the accused. In the present case the trial Court has found that the participation of Jagat Singh and his two sons was established and that they were the aggressors, but it does not seem to me that there is any sufficient material for this finding considering that the prosecution witnesses are all interested and that they have not accounted at all for the injuries found on Balbir Singh, accused, and have not satisfactorily accounted for the injuries on Jagat Singh. The learned Magistrate thought that the results of the fight showed that the accused were the aggressors, but on this point as I have said above, I disagree with him entirely.

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Turning now to the judgment of the learned Additional Sessions Judge I do not find that this aspect of the case has even been faced, and in my opinion his conclusions are altogether unsatisfactory. Without giving any clear finding as to which party was the aggressors, he acquited the two sons of the petitioner simply on the ground that since the charge framed against the accused as a whole by the trial Court was under section 307 read with 149, Indian Penal Code, it could not be changed to a charge against three of them under section 307 read with 34, Indian Penal Code, the offence under section 307 of course relating to the shooting of Gurdip Singh, P.W., by Jagat Singh. He then went on to say that it was at any rate clear that Jagat Singh had shot Gurdip Singh with his pistol and that since the resulting injury was only a simple one, his case fell under section 324, Indian Penal Code.

In my opinion, if the learned Additional Sessions Judge really thought that Jagat Singh and his sons took part and were really aggressors, he was quite wrong to acquit the sons and to reduce the offence of Jagat Singh to one under section 324, Indian Penal Code, since it seems to me that it is the merest chance that the pistol shot fired by Jagat Singh only injured Gurdip Singh's arm and not some vital part of his body, and if he thought that Jagat Singh's sons accompanied him to attack the prosecution witnesses knowing that he was likely to shoot someone with the pistol, there is no reason why section 34 should not have been applied in their case. In acquitting the sons he relied on a remark in the judgment of the Supreme Court

delivered by Bose, J., in *Dalip Singh and others* v. *The State of Punjab* (1), which reads:—

> "Nor is it possible in this case to have recourse to section 34 because the appellants have not been charged with that even in the alternative, and the common intention required by section 34 and the common object required by section 149 are far from being the same thing."

The facts of that case were that seven accused had been convicted by the trial Court under section 302 read with 149, Indian Penal Code, and a Bench of this Court, of which I was a member, had acquitted three of the accused and upheld the convictions of the other four on the ground that the only witnesses were highly interested, and that while their statements received some sort of corroboration from other sources in the case of the four whose convictions were upheld, it was not safe to rely on them against the other three, though we thought that some of them must have actually taken part in the occurrence. The main point decided by the Supreme Court was that the evidence of relations of the deceased does not require corroboration as a matter of law and that we ought in this case to have upheld the convictions of all the accused. The point about the possible application of section 34 arose on the ground that we ought not to have upheld the convictions of four of the appellants before us under section 149, Indian Penal Code, without a clear and definite finding that at least five of the accused had taken part in the occurrence, and it was on this point that the observation I have cited above was made. I do not, however, consider that the learned Judges of the Supreme Court meant by

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it that in no case where five or more persons are involved on a charge under section 149, and it is then found by the Court that a smaller number than five took part in the occurrence, can a conviction under section 34 be substituted. Obviously a decision on this point depends on the particular facts of the case and what is the common object with which the alleged members of an unlawful assembly have been charged. If, for instance, the common object of the members of an alleged unlawful assembly is to take possession of some land or to demolish a wall, and the commission of murder is only a likely result of carrying out this common object by force and not its primary object, it is then obvious that if a lesser number than five accused are found guilty of murder, the Court cannot convict them of murder and extend liability collectively to all of them under section 34 on the ground that the commission of murder was their common intention. On the other hand if the common object of the accused is simply to commit murder, and this is the common object with which as members of an unlawful assembly, they have been charged, I can see no objection at all to convicting a lesser number than five found actually responsible for the murder under section 34 even after a larger number has been charged under section 149 with collective liability. The point was not before the Supreme Court in this form in the case cited and I do not think that the observation relied on by the learned Additional Sessions Judge means any more than what I have explained at a greater length above.

Turning to the present case I do not find that the evidence justified a definite conclusion that the party of the accused were the aggressors, and, therefore, consider that the present petitioner was just

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as much entitled to acquittal as the rest of the accused. I accordingly accept the revision petition and acquit him. His bail bond will accordingly be cancelled.

CIVIL WRIT

Before Bhandari, C.J. and Khosla, J.

S. KULDIP SINGH,—*Petitioner*

versus

THE PUNJAB STATE, (2) COURT OF WARDS, PUNJAB,—*Respondents.*

Civil Writ No. 338 of 1952

1954

June, 1st

Punjab Court of Wards Act (II of 1903)—Section 5—Whether ultra vires *the Constitution—Fundamental principle of law regarding property, stated—Constitution of India—Article 226—Petition under, for a writ of mandamus, etc—High Court, whether competent to examine evidence to come to the conclusion that conditions in Section 5(2) of the Act have been complied with.*

Held, that section 5 of the Punjab Court of Wards Act, 1903, is not *ultra vires* the Constitution of India. The restrictions imposed by the Act are neither arbitrary nor capricious. In so far as they are designed to secure that well-to-do land-holders should not be allowed to dissipate their property by entering upon a course of wasteful extravagance, the restrictions must be deemed to be in the public interest. If the property is likely to be disssipated because the land-holder has taken to gambling or because he has taken to drink or because he indulges in the other vices, it is obviously open to the State to impose restrictions upon his enjoyment of property, for it is the duty of the State to make laws to preserve and protect the public morals. If the property is likely to be dissipated because the land-holder is incapable of managing his own affairs, even then it is the duty of the State as the supreme guardian of the incompetent to take his property under control. If the property is likely to be dissipated for any other reason and the State considers that it should not be split up even then it is open to the State to