

## REVISIONAL CRIMINAL

*Before Mr. Bisheshwar Nath Srivastava*

GHAZIUDDIN KHAN *alias* GHAZI AND OTHERS (APPLICANTS) *v.* KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY) \*

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November, 5

*Criminal Procedure Code (Act V of 1898), sections 225 and 537—Indian Penal Code (Act XLV of 1860), sections 147 and 149—Charge under section 149, Indian Penal Code—Common object of accused, if necessary to be stated in the charge—Omission to do so, if vitiates the trial—Common object of accused to assault other persons—Accused assaulting another person in whose house those persons had taken shelter—Assault and trespass, if within the common object of the accused.*

It is no doubt very desirable that in the case of an offence under section 149 of the Indian Penal Code in framing a charge the common object should be mentioned so as to give the accused clear notice of the charge against them, but the omission to do so is nothing more than an irregularity.

Where a charge sheet under section 149 of the Indian Penal Code was framed after the whole prosecution evidence had been recorded and the accused were therefore fully cognizant of the case against them, the omission to state the common object cannot be said to have caused the accused any prejudice much less resulted in any failure of justice, and the trial cannot be held to be vitiated thereby. *Kudratullah v. Emperor* (1), dissented from.

Where the common object of the accused was to attack certain persons, but they ran away and took shelter in the house of Z and the accused then committed an act of trespass in the house of Z and also assaulted him the act of trespass and assault on Z cannot be said to be within the common object of the unlawful assembly of the accused within the meaning of section 147 of the Indian Penal Code.

*Mr. R. F. Bahadurji*, for the applicants.

Assistant Government Advocate (*Mr. H. K. Ghose*), for the Crown.

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\*Criminal Revision No. 105 of 1932, against the order of Pandit Shiam Manohar Nath Shargha, Sessions Judge of Gonda, dated the 27th of September, 1932.

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SRIVASTAVA, J. :—Twenty-four persons were tried by a 1st class Magistrate of the Gonda district for offences under sections 147, 323, 325, 452, 341, and 379 of the Indian Penal Code. All the accused were acquitted of the offence under section 379. Three of them were also acquitted of all the offences. The remaining twenty-one were convicted under sections 147, 323, 325, and 452 of the Indian Penal Code. Two of them, Bire and Rameshar, were also convicted under section 341 of the Indian Penal Code. All the twenty-one persons appealed to the Court of Session at Gonda. In that court the accused made a compromise with all the complainants. The compromise was accepted in so far as it related to offences which were compoundable and as a result of it, the convictions under sections 325, 323, and 341 were set aside. The case against the accused under sections 147 and 452 was dealt with by the learned Sessions Judge on the merits and after a careful discussion of all the arguments urged before him against the findings of the trying Magistrate, the learned Sessions Judge agreed with these findings and maintained the convictions of all the appellants under sections 147 and 452, but made some alterations in the sentences passed against them.

The present application in revision has been made by all the twenty-one persons and is directed against the order of the learned Sessions Judge. The case for the prosecution which has been accepted by both the lower courts briefly stated was that on the 11th of March, 1932, the accused Ghazi and Angad Lal, applicants 1 and 2, about midday at the head of one hundred or one hundred and fifty men all armed with *lathis*, attacked Jorai and other persons who at the time were cutting the crops in Jorai's field. The tenants fled to the house of one Zaheer and took refuge there. The assailants chased them into Zaheer's house, broke open the door of the latter's house and when Zaheer intervened gave him a beating. Subsequently they

returned to Jorai's field and dragged away Nuri, a tenant, who has been injured when they made their first attack in Jorai's field, to the house of the zamindar. It may be mentioned that Ghazi and Angad Lal who led the party of assailants are the *mukhtar* and *karinda* respectively of the zamindar.

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The first point of law urged by the learned counsel for the applicants is that the trial is vitiated by reason of the common object of the unlawful assembly not having been specified in the charge-sheet, though it is stated therein that the offences were committed with a common object. It was conceded that in the case of a charge under section 147, the omission of the common object from the charge-sheet would not vitiate it unless the accused could show that they were materially prejudiced by reason of the omission. But it was contended strongly that the charge being also under section 149 the omission must be regarded as an illegality. The argument proceeded that if it is sought to make the accused constructively liable by calling in the aid of section 149, it is essential that the common object of the assembly should be clearly and definitely stated in the charge-sheet. The only case in point cited in support of this argument is *Kudrutulla v. Emperor* (1). In this case it was held that it was obligatory to set out the common object in a charge under section 149. The case does support the appellants' argument. With all respect to the learned Judges who decided the case, I regret I find myself unable to subscribe to the proposition laid down in such broad terms. It is no doubt very desirable that the common object should in such cases be mentioned so as to give the accused clear notice of the charge against them, but I am not prepared to say that the omission is anything more than an irregularity. Chapter 19 of the Code of Criminal Procedure lays down rules as regards the form of charges. Sections 222 and 223 of this

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(1) (1912) I. L. R., 39 Cal., 781.

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chapter provide that the charge shall contain necessary particulars as to time, place and person and in certain cases particulars as to the manner in which the alleged offence was committed. I have not been referred to and am not aware of any express provision about the particulars of the common object being specified though, as I have stated before, it is desirable that they should be specified. Thus it cannot be said that the omission complained of in the present case constitutes contravention of any express rule of law on the subject. It might also be pointed out that apart from the general provision of section 537, specific provision on the subject is to be found in section 225 of the Code of Criminal Procedure. This section provides that no error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case material, unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice. The charge sheet in this case was framed after the whole prosecution evidence had been recorded. The accused were therefore fully cognizant of the case against them. I am not satisfied that the omission has caused them any prejudice much less resulted in any failure of justice. I must therefore disallow the contention.

Next it was contended that the trespass committed by the accused in the house of Zaheer and the injuries inflicted on him which led to the charge under section 452 of the Indian Penal Code, cannot be regarded as part of the same transaction as the attack made on the tenants in the field of Jorai and that in any case it cannot be said that the offence under section 452 was part of the common object of the members of the assembly. It is pointed out that the learned Magistrate in the course of his judgment stated that the common object of this unlawful assembly was to compel the tenants by means of criminal force to relinquish their holdings,

to assault and to beat them and to prevent them from any future refractoriness. It is also pointed out that when the accused entered Zaheer's house, they did not make any attack or cause any injury to the tenants who had sought refuge in that house. According to the prosecution evidence itself, the only person assaulted there was Zaheer. An exhaustive definition of the term "same transaction" is not possible. Whether particular acts are so connected as to form part of the same transaction, is a question which must be decided according to the facts in each particular case. Having regard to the proximity of time and continuity of action, I am inclined to agree with the learned Sessions Judge that the offence under section 452 as well as the riot and attack which was directed against the tenants were parts of the same transaction. But the question whether it was within the scope of the common object of the accused is one of greater difficulty. Having given my careful consideration to the evidence and circumstances of the case, I find myself unable to hold that the act of trespass in the house of Zaheer, and more particularly the assault committed on him by some of the accused, was within the common object of the assembly. I am therefore of opinion that the applicants should be given the benefit of doubt in respect of the charge under section 452 of the Indian Penal Code.

The result therefore is that I set aside the conviction and sentence passed against the applicants under section 452 of the Indian Penal Code, but maintain their conviction and sentence under section 147 of the Indian Penal Code.

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