

CHAPTER 4

Trial of Riot Cases

1. Rioting defined—Whenever force or violence is used by an unlawful assembly or by any member thereof in prosecution of the common object of such assembly every member of such assembly is guilty of the offence of rioting. (Section 146 of the Indian Penal Code).

2. Careful handling required—Riots resulting in serious injuries or even death are of frequent occurrence in this State and cases relating to such riots require very careful handling. A large number of persons is generally involved and the evidence is often entirely of a partisan character. There is moreover, great danger of innocent persons being implicated along with the guilty, owing to the tendency of the parties in such cases to try to implicate falsely as many of their enemies as they can.

3. Court's duty to ascertain the true version—The parties generally give widely divergent versions of the riot and in such cases the Police usually prosecute members of both the parties and place the divergent versions and the evidence in support before the Court. It is for the Court to ascertain in such cases which of the two versions is correct and the Court cannot shirk this duty on the ground that the Police did not ascertain which of the stories was true (cf. 2 P.R. 1913).

4. Right of self-defence—When both parties deliberately engage in a fight no question of the right of self-defence arises. But, otherwise, the question as to which of the parties was the aggressor and which was acting in self-defence becomes of vital importance and the Court must do its best to arrive at a finding thereon for the party acting in self-defence cannot be held to be guilty of any offence unless the right of private defence is exceeded (*see* Section 96-106, Indian Penal Code).

5. Separate trials when both parties are prosecuted—When both parties to a riot are prosecuted, the two cases must be tried separately and evidence in the one case cannot be treated as evidence in the others even with the consent of the parties (IV. I.L.R. Lahore 376). Similarly judgments in such cases should be written separately and care should be taken to see that the evidence in the one case is not imported into the judgment in the other. Sometimes Courts consider it convenient to dispose of such cases in a single judgment, but doing so they are liable to mix up the evidence in the two records. Even when the Lower Courts are careful enough not to mix up the evidence, the mere fact of their having written one judgment furnishes the convicts with a ground of appeal that the directions of their Lordships of the Privy Council in *Madat Khan v. The King Emperor* (I.L.R. VIII Lahore 193), have not been followed. Such objections

have to be heard, examined and decided and a good deal of the time of the appellate Court is thus wasted.

COMMENTS

Two parties of Pathans who had engaged in an armed fight, resulting in the death of a member of each party, were separately charged and tried for murder and causing grievous hurt. The Sessions Judge, as well as the High Court on appeal, dealt with both cases in one judgment. The appellants, members of one party, obtained special leave to appeal from their convictions, on the ground that in the consideration of the charges against them evidence given in the case against the other party was referred to. On the hearing of the appeal it appeared that there was a body of evidence adduced in the case against the appellants which warranted their convictions and that no injustice had arisen from the technical irregularity. *Held*, that in accordance with the practice of the Judicial Committee the appeal should be dismissed. *Madat Khan vs. The King-Emperor*, (1927) I.L.R. VIII Lah. (PC) 193.

6. Case of each accused should be separately sifted—In recording evidence in riot cases, care should be taken to bring out distinctly as far as possible the connection of each of the accused with the crime and the actual part played by him. In the judgment the evidence against each of the accused should be discussed separately along with the evidence produced by him in defence, (if any) and should be scrutinised with care. The possibility of innocent persons being falsely implicated should be always borne in mind. The mention or omission of the name of an accused person in the First Information Report, when such report is made promptly by an eye-witness, and the presence or absence of injuries on his person are worthy of consideration in this respect, though these are, of course by no means conclusive.

7. An unlawful assembly, its common object and use of violence must be proved—A charge of rioting presupposes the existence of an unlawful assembly with a common object as defined in Section 141 of the Indian Penal Code. No charge of rioting can be sustained against any person unless it is proved that he was a member of such an unlawful assembly, and that one or more members of the assembly used force or violence in prosecution of its common object. It is, therefore, advisable to refer to the unlawful assembly, its common object, and the use of force or violence in the charge, so that the essential ingredients of the offence are not lost sight of. A lucid statement of the law of unlawful assembly and riot by Plowden, J., will be found in 4 P.R. 1889.

8. Joint liability of accused—Section 149 of the Indian Penal Code, which makes every member of an unlawful assembly constructively liable for offences committed by other members, in prosecution of the common object of the assembly, deserves careful study. Before Section 149 can be called in aid, the Court must find with certainty that there were at least five persons sharing the common object. It is not essential that five persons must always be convicted before Section 149 can be applied. In this connection please see 1954 Supreme Court Reports 145, A.I.R. 1954 SC 648 and I.L.R. 1954 Punjab 813. If there is uncertainty as to the required number having participated in the crime, joint liability may still arise by virtue of Section 34 of the Indian Penal Code, if it is found that the act constituting the offence was committed 'in furtherance of the common intention of all. As regards the precise scope and effect of Section 149 and Section 34 Indian Penal Code, 1954, Supreme Court Reports 904 and I.L.R. 1954 Punjab 813 may be consulted, when no joint liability can be established, each accused person can be held responsible only for his own acts.

COMMENTS

Before Section 149 can be called in aid, the Court must find with certainty that there were at least five persons sharing the common object. A finding that out of seven men in question three “may or may not have been” at the site of offence betrays uncertainty on this vital point and consequently a conviction resting on that uncertain foundation cannot be sustained. Especially in a murder case where the sentence of transportation in no less than four cases has been enhanced to death, it is essential that the Judge should give a finding on the point with unerring certainty.

It is not essential that five persons must always be convicted before Section 149 can be applied. Where it is possible to conclude that though five persons were unquestionably at the place of offence the identity of one or more is in doubt a conviction of the rest with the aid of the section would be good. *Dalip Singh and others, vs. The State of Punjab*, AIR 1953 SC 364 : 1954 SCR 145.

The two appellants were charged and convicted along with five others of having constituted an unlawful assembly and committed murder (Section 302 read with Section 149). But in the appeal before the High Court the five accused were given benefit of doubt and acquitted. In an appeal before the Supreme Court it was contended that the said five accused having been acquitted, and in the absence of a charge that five other unknown persons constituted an unlawful assembly, the two appellants could not be held members of the unlawful assembly which had the common object.

Held after reviewing the evidence and weighing the opinion embodied in the judgment of the High Court that there was no scope left for introducing into the case the theory of the benefit of doubt, that the five accused were wrongfully acquitted and that though their acquittal stood that circumstance could not affect the conviction of the appellants under Section 302 read with Section 149. *Marachalil Pakku and Another, vs. State of Madras*, AIR 1954 SC 648.

Though there is substantial difference between Section 34 and Section 149, the sections also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. If the common object which is the subject matter of the charge under Section 149 does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not therefore to be permitted. But if the facts to be proved and the evidence to be adduced with reference to the charge under Section 149 would be the same if the charge were under Section 34, then the failure to charge the accused under Section 34 could not result in any prejudice and in such cases the substitution of Section 34 for Section 149 must be held to be a formal matter. *Karnail Singh and another, vs. State of Punjab*, AIR 1954 SC 204 : 1954 SCR 904. (*Barendra Kumar Ghosh vs. Emperor*, AIR 1925 PC 1 and *Lachhman Singh vs. State*, AIR 1952 SC 167, Relied on).

9. Sentences when several offences are committed—When a number of offences are committed by members of an unlawful assembly in the course of the riot in prosecution of their common object, each member is guilty not only of rioting but of every other offence committed by himself or by the other members of the unlawful assembly. Under Section 35 of the Criminal Procedure Code he is liable to be punished separately for each of such offences, subject to the provisions of Section 71 of the Indian Penal Code. As regards the bearing of the latter section on the question of separate sentences where a series of acts of violence is committed in the course of the riot, a Full Bench ruling of the Punjab Chief Court—4 P.R., 1901 may be consulted. Section 35 of the Criminal Procedure Code [See Section 31 of new Code] enables the Court to make the sentences for two or more of such offences concurrent. The appropriate sentence in the case of each accused person must, of course, be determined in view of all the circumstances of the crime and the actual part played by him.