

PRIVY COUNCIL

Mamand

Vs.

Emperor

P.C.A.No.50 of 1945

(Lord Thankerton, Lord Goddard and Sir John Beaumont JJ.)

30.10.1945

JUDGMENT

SIR JOHN BEAUMONT J.

1. This is an appeal against a judgment of the High Court of Judicature at Lahore dismissing an appeal by the three appellants against a judgment of the Sessions Judge, Shahpur District, at Sargodha, convicting the appellants of the murder of one Naman and sentencing appellants 1 and 3 to death and appellant 2 to transportation for life. The High Court confirmed the said death sentences. At the conclusion of the arguments, their Lordships announced that they would humbly advise His Majesty that the appeals should be dismissed, and they now give their reasons for such advice.

2. The learned Judges of the High Court accepted the evidence of three eye-witnesses Raja Sarwar Khan (P.W. 11), Barkat (P. W. 13), and Samand (P. W. 15) as to the manner in which the murder was carried out. The story of these three witnesses, which was in substantial agreement, was that they heard a commotion at the dera of one Gahra, that they saw appellants 2 and 3 beating with sticks Naman who was on the ground, and they saw appellant 1, Mamand, grappling with Gahra. The three witnesses ran towards the disturbance, Raja Sarwar Khan and Samand shouting that the assailants should be caught. Before the witnesses reached the spot the three appellants ran away and were chased for some distance by the witnesses and two other men who had come up Barkat says that appellants 2 and 3 got appellant 1 released from Gahra. In the Sessions Court Gahra gave evidence that the murder was committed, not by the accused, but by five other men; but in a statement which he had made before a magistrate under section 164, Criminal Procedure Code, he had named the appellants as the assailants and attributed to appellant 1 the first blow given to

Naman. The learned Sessions Judge fell into an error, not uncommon in criminal Courts in India, of treating the statement made under Section 164 as substantive evidence of the facts stated. The statement could be used to discredit the evidence of Gahra given in Court, but not for any other purpose. In the High Court the learned Judges considered that, in view of the statement under section 164, Gahra had been won over by the defense, and that his evidence must be entirely ignored. This was the correct attitude. The evidence of the eye-witnesses, which was consistent with the medical evidence as to the cause of death, justified the finding of the High Court that appellants 2 and 3 were guilty of murder and the only point which really arises on this appeal is whether there was evidence to justify the conviction of appellant 1 under Section 302 read with Section 34, Penal Code. Section 34 is in these terms:

"When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

3. If the evidence of the three eye-witnesses stood alone, it could not be said to establish that appellant 1, who was merely grappling with Gahra, had formed a common intention with appellants 2 and 3 to murder Naman. But the evidence did not stand alone. There was evidence on the record, which the High Court accepted, that appellant 1 had strong grounds for entertaining feelings of enmity against Naman, grounds based on the relations of appellant 1 and Naman with a Muslim girl named Fatima or Phapho; that appellant 2, a boy of 15, was a younger brother of appellant 1, that appellant 3 was their tenant, and that all three accused lived at the dera of appellant 1. There was also the fact deposed to by the eye-witnesses that after the assault the three accused ran away together; also there was no evidence of enmity between Gahra and Naman. In their Lordships' opinion, the evidence afforded ample material upon which the learned Judges of the High Court could hold, as they did, that appellant 1 was grappling with Gahra so that he might not rescue Naman from the clutches of appellants 2 and 3, and this justified the inference that the murder was committed in furtherance of the common intention of all the appellants. There is, therefore, no reason for interfering with the convictions.

Appeal dismissed.