

SUPREME COURT OF INDIA

Kripal

Vs.

State of U.P.

CrI.A.No.37 and 77 of 1953

(N. H. Bhagwati, B. Jagannadhadas and T. L. Venkatarama Ayyar, JJ.)

25.02.1954

JUDGEMENT

JAGANNADHADAS, J. :

1. These two appeals are against a judgment of the High Court of Allahabad dated 8th May, 1953, and arise out of a trial before the Sessions Judge of Muzaffarnagar of the three appellants herein along with ten others in respect of charges under section 148, and section 302, as well as 323 read with 149 of the Indian Penal Code. The Sessions Judge acquitted these ten persons of all the charges. But so far as the three appellants are concerned, though acquitted in respect of the charge under section 302, I.P.C., they were convicted under section 304 (1) as well as under section 323, I.P.C. read with section 34, I.P.C.

The appellants in Cr. A. 37 of 1953, Kripal and Bhopal, were sentenced to five years rigorous imprisonment and a fine of Rs. 100 and the appellant in Cr. A. 77 of 1953, Sheoraj, was sentenced to four years rigorous imprisonment and a fine of Rs. 100. The three appellants files appeals to the High Court in respect of their convictions and sentences, while the State filed an appeal as against these three appellants alone in respect of their acquittal under section 302, I.P.C. In the High Court, the appeal filed by the three appellants was dismissed but on the appeal filed by the State, the acquittal of these three appellants under section 302, I.P.C. was set aside and they were convicted of the said offence.

The two appellants in Cr. A 37 of 1953 were sentenced to death while the appellant in Cr. A 77 of 1953 was sentenced to transportation for life. So far as the appellants in Cr. A 37 of 1953 are concerned, the appeal to this Court is under Art. 134(1)(a) of the Constitution which provides for a right of appeal from a judgment of a High Court in criminal proceedings where, on appeal, the High Court reverses an order of acquittal and sentences an accused to death. So far as the appellant in Cr. A 77 of 1953 is concerned, his appeal which arises out of the same judgment is before us on special leave granted under Article 136 of the Constitution.

2. The prosecution case which has given rise to these appeals is as follows. In the village of Kakrala, police station Khatauli, District Muzzaffarnagar, there were two incidents at about the same time, viz., 7 o'clock in the morning of the 16th May, 1949, one at a spot called Milakwala well and the other at a place called Dhakolas. At the Milakwala well incident one Jiraj was murdered and at the Dhakolas incident one Indraj was murdered. These two murdered persons were brothers and the sons of Chandan, who gave the First Information Report. It would appear that the two murdered

persons as well as the three appellants are all related to each other as decendants from a common ancestor through different branches and that there were serious disputes between them relating to partition of certain properties.

The specific case of the prosecution with reference to the incidents which brought about the death of the two persons, Jiraj and Indraj, was that on the morning of the 16th May, 1949, at about 7 A.M. the three appellants of whom Bhopal and Sheoraj were brothers and Kripal their cousin, were working in a field in which was situated a well called Milakwala well. The deceased Jiraj had a field somewhat lower down the Milakwala well where sugarcane was grown. For that morning's work of digging canes from the field, he had fixed up two labourers by name Man Singh and Sher Singh.

All the three of them were proceeding towards Jiraj's field, the two labourers being somewhat ahead of Jiraj. On their way the two labourers had to pass by the side of the Milakwala well where the three appellants were working. They were accosted by the accused and on getting to know that they were going to work for Jiraj in his field lower down, they abused them and told them not to go there but to work for themselves. The two labourers proceeded forward without heeding them. When they had gone about 30 or 40 paces, the three appellants rushed at them and began to beat them with the with the handles of spears which were in the hands of Bhopal and Kripal and with a lathi which was in the hand of Sheoraj.

Meanwhile Jiraj arrived at the spot and asked the appellants why they were beating his labourers and stopped them from beating them. Thereupon the three appellants attacked Jiraj, as a result of which he fell down and died on the spot. The labourers, Man Singh and Sher Singh ran to the help of Jiraj and they were further assaulted by the appellants who resisted the assault on themselves with lathis. Meanwhile one Ram Chandra, brother-in-law of the two labourers, who was also coming somewhat behind to join in the labour, came near the Milakwala well and saw the occurrence and becoming afraid ran back to the village.

He was chased by two of the appellants, viz., Bhopal and Sheoraj. On the way Ram Chandra met Indraj, brother of Jiraj, coming out of the village and told him that Jiraj had been killed and the labourers have been beaten by the appellants. Another, Bhanwar Singh, who was also going to the field of Jiraj, saw Jiraj being attacked by the three appellants and ran back to the village and informed certain persons in the village about the occurrence. Meanwhile, the two accused Bhopal and Sheoraj in the course of their chase of Ram Chandra encountered Indraj in the place known as Dhakolas on the way from the Milakwala well to the village, about a furlong and a half away from the Milakwala well.

At that place all the three appellants as also ten other persons who were there, armed with lathies and spears attacked Indraj and some other persons on his side, who by that time had come running up to the place from the village on receiving information. At that encounter Indraj and four others received injuries. Injuries on Indraj were serious and within the course of a short time he died. Thus according to the prosecution case there were two incidents, one at Milakwala well and another at Dhakolas. In the first incident, only the three appellants participated, while in the second there three along with ten others participated.

At the first occurrence Jiraj died, while the two labourers Man Singh and Sher Singh received some injuries. At the second Indraj received mortal injuries and four others viz. Tulsi, Munshi, Bhanwar Singh and Lal Singh, received minor injuries. The prosecution treated both these incidents as forming one transaction and placed all the 13 accused, together, on join trial in respect of the two

charges, the first being a charge under section 148, I.P.C. and the second a charge under sections 302 and 323 taken with 149, I.P.C. both the charges being against all the 13 persons.

As regards the incident at the Dhakolas, the learned Sessions Judge considered that the evidence bearing on the same was not satisfactory. He accordingly acquitted the ten persons who concerned solely with that incident. He accepted the prosecution evidence in so far as it relates to the incident at Milakwala well and convicted all three present appellants as being concerned there in. As already stated he considered all of them guilty only under section 304, I.P.C. read with section 34, I.P.C. and not under section 302, I.P.C. and sentenced them as already above stated.

3. The prosecution case in so far as Milakwala well is concerned is supported not only by the evidence of the two witnesses Man Singh and Sher Singh who were going to the field of Jiraj for working their and were beaten but also by the evidence of five other persons who were in the fields nearby and happened to see the occurrence. The defence of the appellant Kripal was that he was not at the scene of occurrence but at a different village to which he had gone. He examined two witnesses in support of that defence. Appellants Bhopal and Sheoraj admitted their presence at the occurrence but their case was that there were no two different incidents at two places as put forward by the prosecution, but there was only one incident.

According to them they were both working at the Milakwala well in the company of a Tilak Brahmin, when, the two deceased persons along with 8 others, (i.e. ten out of the 13 original accused in this case) came to the spot armed with lathis and spears and challenged them for a fight. They were themselves merely acting in self-defence as against the aggressive attack of the prosecution party and in course of this scuffle both Jiraj and Indraj received fatal injuries from the members of their own party. Both the Courts below accepted the prosecution evidence so far as this incident is concerned and rejected the defence as not having been made out and indeed as being false.

4. Learned counsel for the appellants argued before us that the evidence of the prosecution witnesses is unreliable and not safe enough to support the conviction of these appellants. For this purpose he took us through the evidence of all the relevant eye-witnesses and pointed out, what according to him, were serious contradictions and omissions in the statements made by them under section 162, Cr. P.C. This portion of the prosecution evidence, however, has been concurrently accepted by both the Courts below and we have been shown no sufficient reason to differ from them in their estimate thereof.

5. The main stress of the learned counsel's argument was that the prosecution case ascribing the murder of Indraj to a different incident at a place called Dhakolas one and a half furlongs away from Milakwala well was a false and deliberate shifting, in order to handicap the appellants with reference to their case of private defence. It is urged that, if as was claimed, ten out of the 13 persons who were originally put up for trial were in fact participants in the incident at the Milakwala well, then the defence of two of the present appellants that they were acting only in the right of private defence and that the two brothers, Jiraj and Indraj, died only as a result of the accidental hits received from the members of their own group would become probable and that, therefore, the prosecution evidence relating to the Milakwala well incident which suppresses such a vital part thereof is open to grave suspicion and must be rejected.

In support of this suggestion reliance has been placed on the First Information Report given in the case of Chandan, the father of the two deceased persons and also on the dying declaration given by

the deceased Indraj. It is true that a reading of these two documents does not specifically indicate that there were two incidents at two different places. But neither are their contents inconsistent with the occurrence of two separate incidents. However that may be, and whether or not the incidents took place only at Milakwala well or at any other place also, the entire probabilities of the situation and a comparison of the injuries received on both sides render the defence improbable.

On the theory put forward in the defence, the three appellants had to face a group of at least eight persons i.e. two deceased brothers, as well as six others who have received injuries. But it is the group with the larger number of persons which was worsted with two deaths out of them, while on the side of the accused only two had received very minor injuries as the medical certificates disclose. Not only is this unlikely but there is no foundation at all in the evidence by way of any recent provocative cause for the likelihood of so many as eight persons on the prosecution side gathering that morning near about Milakwala well for the purpose of attacking these three appellants. We have, therefore, no hesitation in coming to the conclusion that the concurrent findings of the Court below as to what happened at the Milakwala well must be accepted and that the defence must be rejected as false.

6. The question, however, remains as to which of these three appellants are guilty and what offence has been committed by each. The learned Session Judge while holding all the three appellants responsible for causing death of Jiraj and was of the opinion that they could be found guilty only under section 304, I.P.C. taken with section 34, I.P.C. on the ground that there is no evidence of any preconcerted or predetermined plan to kill the deceased Jiraj and that the blows were inflicted by the appellants in the course of sudden fight in the heat of passion without having taken undue advantage or acted in a cruel or unusual manner.

The learned Judges of the High Court quite rightly pointed out that a preconcert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Whether in a proved situation all the individuals concerned therein have developed only simultaneous and independent intentions or whether a simultaneous consensus of their minds to bring about a particular result can be said to have been developed and thereby intended by all of them, is a question that has to be determined on the facts.

In the present case, therefore, it is necessary to scrutinise what the exact evidence in this behalf is which has been accepted by the Courts below. The evidence of all the eyewitnesses relating to this incident has been summarised by the High Court in its judgment as follows :

"The three appellants were working the well (Milakawala well) that morning. When they saw Man Singh and Sher Singh going past the well they asked them where they were going. On being told that they were going to harvest Jiraj's sugarcane field they abused them and told them not to go there but to work for them. Man Singh and Sher Singh did not listen to them and walked on.

When they had gone 30-40 paces, the three appellants rushed at them and began to beat them with the handles of spears which were in the hands of Bhopal and Kripal and with a lathi which was in Sheoraj's hand. Jiraj arrived at the spot and asked the appellants why they were beating his labourers and stopped them from beating them. Sheoraj hit him on the legs with his lathi and he fell down. Kripal stabbed him with his spear near the ear. Bhopal then stabbed him with his spear on the left jaw, put his legs on his chest and extracted the spear blade from his jaw. Just as the blade came off Jiraj died."

On this evidence there can be no doubt that all the three appellants had the common intention of beating Man Singh and Sher Singh and that they did beat them with the several weapons in their hands. But it is specifically in evidence that though two out of them, viz. Bhopal and Kripal had spears in their hands, they beat them with the handles thereof and that Sheoraj beat with the lathi in his hand. It is clear, therefore, that the common intention that can be ascribed to the three appellants so far as there two persons, viz. Man Singh and Sher Singh are concerned is a common intention to beat them. The injuries actually received by both of them are, as found from the Medical certificates, only simple.

Then, as regards the deceased Jiraj, the first assault was by Sheoraj with his lathi on the legs as a result of which he fell down. The second was by Kripal on his ear with the spear in his hands and the third was by Bhopal on the left jaw with the spear in his hands. But it is in evidence that Bhopal placed his legs on he chest of the deceased and extracted the spear blade from his jaw and that just as blade came out, Jiraj died.

The post-mortem certificate relating to the dead body of Jiraj shows that there were only two injuries on his body. One is a penetrating wound 2 3/4" broad and 1 1/2" long penetrating the mouth cutting through the left jaw and the second is a punctured wound 1/2 "in diameter 1/2" above the left ear. It is in the evidence of the Doctor that wound No. 1 extended through the skull cavity and mouth and that it had wounded the membrane of the brain also and that the cause of the death was the non-functioning of the brain due to injury to the brain.

He has definitely stated that the deceased must have died at once from injury No. 1. Having regard to the nature of that injury, there can be no doubt that this injury must have been caused by the stab with the spear on the left jaw of the lying man, inflicted by the appellant Bhopal. The second injury which appears only to be a punctured wound (without any penetration) appears to be fairly a simple one and is obviously the injury which must have resulted from the assault by the appellant Kripal with the spear in his hand near the ear of the deceased.

The lathi blow said to have been given by Sheoraj has apparently produced no visible injury. Now having regard to the sequence of the assaults, the parts of the body on which the assaults by Kripal and Sheoraj were aimed and the actual result of these assaults as above indicated, it is difficult to attribute to either of them any intention to kill the deceased. Nor is it reasonable to suppose that on the spur of the moment the common intention of the three appellants which was at first merely to beat the two labourers developed suddenly into a common intention 'to kill' Jiraj when he intervened in the altercation.

We are, therefore, unable to uphold the view taken by the High Court that any common intention to kill the deceased can be attributed to the three appellants. Therefore, the only common intention that can be attributed to all the three appellants in so far as the assault on Jiraj is concerned is the common intention to beat Jiraj also with the weapons in their hands, which were likely to produce grievous injuries. In this view therefore, all the three would be guilty in respect of their assault on Jiraj for an offence under section 326, I.P.C., while Bhopal alone would be guilty in respect of the offence under section 302 I.P.C. It follows from that the conviction of both Kripal and Sheoraj under section 302 I.P.C. must be set aside but that of Bhopal has to be maintained.

7. As regards the sentences so far as Bhopal is concerned, the learned counsel appearing for him urges that his Act was merely accidental and was the outcome of a sudden quarrel and in the heat of the moment. He presses for acceptance of the view taken by the learned Session Judge in this behalf

that it was done without premeditation and without taking undue advantage of the situation.

We are, however, unable to agree. The appellant's Act may probably be said not to be premeditated in the sense that he preplanned or lay in wait to get an opportunity to kill the deceased Jiraj. But it is obvious that when he found him in a fallen and helpless position lying on the ground, he must have been actuated by the pre-existing enmity to finish the man. The nature of this stab was brutal and fatal and this throws light on his deliberate intention. We have no doubt, therefore, that in his case there is no reason not to agree with the High Court in awarding him the sentence of death.

As regards Kripal and Sheoraj, they are sentenced to five years and three years rigorous imprisonment respectively for their convictions under section 326, I.P.C. The convictions of the three appellants under section 323, I.P.C. as regards the assault on Man Singh and Sher Singh will be maintained. The sentences of fine award under this head in so far as they relate to Kripal and Sheoraj are to be maintained, but we do not think it necessary that there should be any separate sentence on Bhopal for his conviction under this head. The sentence of fine so far as he alone is concerned is, therefore, cancelled.

8. Both the appeals are dismissed subject to the above modifications.

Appeal dismissed.

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