

SUPREME COURT OF INDIA

Inder Singh Bagga Singh

Vs.

State of Pepsu

Crl.A.No. 58 of 1854

(Vivian Bose, N. H. Bhagwati and B. Jagannadhadas, JJ.)

06.08.1954

JUDGEMENT

BHAGWATI, J.

1. This is an appeal by special leave against the judgment of the High Court of PEPSU confirming the conviction of the Appellant under S. 302, Penal Code and the sentence of transportation for life passed upon him by the Court of Sessions Judge, Bhatinda.

2. The deceased Bachittar Singh it appears had made overtures to the sister-in-law of the Appellant and the Appellant had asked his cousin Sunder Singh to warn the deceased not to do so in the future. Sunder Singh was not on speaking terms with the deceased and he had replied that he would not do so. Three or four days after this event the marriage of the daughter of one Kartar Singh was being celebrated in the village and the marriage party was sitting in the bethak of Hakim Dewan Chand. The marriage party was broadcasting recorded music and Sunder Singh was sitting on the platform hearing the music. One Pearey Singh came along there from his outer house with a bucket containing milk and was proceeding towards his residential house.

The deceased, who came there from the side of his house met Pearey Singh in front of the house of the Appellant. Pearey Singh engaged the deceased in some talk and at that time the Appellant rushed out of his house armed with a lathi and gave a blow with it on the head of the deceased from behind. The deceased turned his face towards his assailant when another blow descended on his head. The deceased fell on the ground and the Appellant gave another lathi blow on his neck. In all six blows were given by the Appellant to the deceased. Sunder Singh and Pearey Singh raised an alarm and the Appellant ran away from the place of the occurrence. First aid was administered to the deceased who was lying unconscious. Some water was poured into his mouth and he revived after about 10 or 15 minutes.

Sunder Singh supported the deceased and took him to his house where he was laid on cot. These events happened on the night of 13-3-1952.

3. Nothing happened the next day but on the morning of 15-3-1952 the deceased felt very uneasy and was taken to the police station Mansa on a cart accompanied 'inter alia' by Sunder Singh. The first information report was lodged at the police station and the deceased was got admitted into the hospital for medical treatment. Dr. Bhagwant Singh attended upon him. The condition of the deceased became gradually worse and he became absolutely unconscious on 28-3-1952 on account

of compression of the brain and ultimately died on 2-4-1952.

Even though the police had taken no step on receiving, the first report of the injuries on 15-3-1952, a case was registered by them on 28-3-1952 on receiving the further report from Dr. Bhagwant Singh and after the death of the deceased the police took up investigation into the offence under S. 302, Penal Code. The appellant was arrested on 14-4-1952 in his own village and the stick Ex. P-1, the weapon of the offence was also found in his possession. As a result of the investigation the appellant was sent up by the police to stand his trial for the murder of the deceased.

4. The appellant denied the offence and pleaded 'alibi'. He further stated that the deceased appeared as a witness against him and his brother in a civil case, and on the night of the occurrence his brother received injuries at the hands of the deceased, that next day in the "Sath" he resented that act of the deceased to him and he replied that he had not belaboured him, but he would do it thenceforth. The suggestion in fact was that the injuries were inflicted by someone upon the deceased not in the night of 13-3-1952 but the next day, that is, on 14-3-1952.

5. The prosecution relied upon the first information report made by the deceased on 15-3-1952 which was treated as a dying declaration, as also on the evidence of the two eyewitnesses Sunder Singh and Pearey Singh. Pearey Singh however gave evidence in the Sessions Court which conflicted with that which he had given earlier in the Committing Magistrate's Court and the learned Sessions Judge brought on the record his earlier statement under S. 288, Criminal P. C. and relied upon the same. This evidence was considered sufficient by the learned Sessions Judge to bring the guilt home to the appellant and he convicted the appellant of the offence under S. 302, Penal Code and sentenced him as above. The High Court on appeal also was of the same opinion and confirmed the conviction and the sentence passed upon the appellant by the learned Sessions Judge.

6. In this appeal before us the same arguments which were negated by both the Courts below were reiterated by the learned counsel for the appellant. Further support was sought to be derived from the discrepancies to be found in regard to the date of the occurrence in the evidence as also in the report of the injuries made by Dr. Bhagwant Singh to the police on 15-3-1952 where the date and time of the injury were given as "the 14th March 1952 evening." It was suggested that apart from the occurrence of 13-3-1952 deposed to by the witnesses there must have been of necessity some further occurrence on the evening of 14-3-1952 which aggravated the condition of the deceased and which was really responsible for his ultimate death.

There is no doubt some discrepancy in regard to these dates. But no point in regard to the same was made in both the Courts below. No foundation for a suggestion that there was any further occurrence in the evening of 14-3-1952 was laid there and this point was urged for the first time before us by the learned Counsel for the Appellant. All throughout the proceedings had gone on, on the basis that the injuries on the person of the deceased were inflicted only on the evening of 13-3-1952 and these injuries were really responsible for the ultimate death of the deceased. On the record as it stands we cannot allow such a contention to be raised at this late stage. Both the Courts below have arrived at a concurrent finding of fact that the injuries were really inflicted by the appellant, on the person of the deceased on the evening of 13-3-1952 and these were the injuries which were responsible for the ultimate death of the deceased. We do not see our way to differ from this concurrent finding of fact.

7. The only questions that therefore survive are (1) what was the offence committed by the appellant and (2) what punishment should be meted out to him. It has been established that the appellant, administered six blows of the lathi on the person of the deceased and the injury No. 1 was the fatal injury. That injury was thus described by Dr. Bhagwant Singh in his report.

"(1) Abrasion 1" x 1/2 " on right parietal region. Patient was bleeding from mouth. His right upper eye lid was ecchymosed on inner part. Patient was having severe headache. Fracture of the skull was suspected. Hence he was advised X-ray examination film of skull at Harindra Hospital, Faridkot."

The injury No. 1 was kept under observation. The deceased however developed slight symptoms of compression of brain and these symptoms gradually increased and he became absolutely unconscious on 28-3-1952. Extra dural haemorrhage set in and proved fatal. The evidence of Dr. Bhagwant Singh further showed that the injury No. 1 was sufficient in the ordinary course of nature to cause death. Even though the deceased expired after so many days the death was due to the hemorrhage gradually occurring on the side of the injury and gradually pressing the brain more and more leading ultimately to death and he was further of the opinion that no medicine could cure such a condition.

8. Relying upon this evidence the learned Sessions Judge came to the conclusion that the offence committed by the appellant was one under S. 302, Penal Code. He however considered that there was really one injury which proved fatal, that no merciless beating was given by the appellant, that the deceased lingered on for about 3 weeks and was not finished downright on the spot and that therefore the lesser sentence of transportation for life only was deserved.

The High Court agreed with these conclusions and was of the opinion that the blow which resulted in the injury No. 1 must have been given with considerable force and taking this fact in conjunction with the other facts that repeated blows were given on the head and the lathi was 5'-6" in length and 1 1/2" in diameter, the only intention of the appellant could have been to cause the death of the deceased. The High Court therefore while confirming the conviction under S. 302, Penal Code also confirmed the sentence of transportation for life meted out to the appellant.

9. While agreeing with both the Courts below that it was the appellant who was responsible for inflicting the injuries which ultimately resulted in the death of the deceased we are, however, of the opinion that even though the blows were inflicted by the appellant on the head of the deceased with force, the lathi not being iron shod and the deceased being a young man and strongly built the appellant could not under the circumstances be held to have been actuated with the intention of causing the death of the deceased, nor do we think despite the medical evidence, that the injury was sufficient in the ordinary course of nature to cause death, seeing that he survived for three weeks and seeing on the doctor's admission that an injury of that kind is not incurable. But he no doubt knew that he would be causing such bodily injury as was likely to cause death and the offence committed by him would fall under S. 304 Part I and not under S. 302, Penal Code.

10. Under the circumstances we allow the appeal of the appellant to this extent that the conviction under S. 302, Penal Code will be converted to that under S. 304 Part I, Penal Code and the sentence of transportation for life meted out to the appellant will be converted into one of 10 years' rigorous imprisonment.

Order accordingly.

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