

Ram Singh

Vs

State of U. P.

Criminal Appeal No. 162 of 1968

(S. M. Sikri, G. K. Mitter, K. S. Hegde JJ)

29.07.1969

JUDGMENT

MITTER, J. -

1. This is an appeal by special leave from a judgment and order of the Allahabad High Court upholding the conviction of the appellant under Section 302 of the Penal Code imposed upon him in the Sessions trial and accepting the reference made by the Sessions Judge. The appeal to the High Court was presented not only by Ram Singh, the appellant before us, but also by three other persons, Sabha Singh, Arjun Singh and Hari Shankar. The last three were convicted by the Sessions Judge under Sections 326 and 323, I.P.C. read with Section 34, I.P.C. and had been sentenced to various terms of rigorous imprisonment, the sentences to run concurrently. The persons who figured as accused in the Sessions trial included four other persons who were given the benefit of doubt by the Sessions Judge.

2. The facts are as follows : On the outskirts of the village Barji there is a well known as the well of Maharani Din. The age of the well is not known. At about 5 p.m. on April 1, 1966, there was an incident near the well as a result of which one Baj Bahadur lost his life. The case for the prosecution was that the said deceased along with Kallu, Kandhai Lal and Vishwanath were irrigating their fields from the said well from early morning of the day. At about 5 p.m. the appellants came to that well. Of the appellants, Ram Singh and Arjun Singh were brothers. The accused Sabha Singh was their cousin. They were also accompanied by Hari Shanker who was a grandson of Maharani Din, his father being one Tulsiram, aged about 70 years at that time. According to the prosecution case, the accused Sabha Singh asked Vishwanath and his group to stop irrigating from the well. This was resisted and Vishwanath and others said that they would complete the irrigation of the fields which they had taken up. The accused started abusing them when Vishwanath protested. At this all the accused rushed towards Vishwanath and others to beat them. Vishwanath and Baj Bahadur ran away from the well in one direction while Kallu and Kandhai Lal took another. Vishwanath and Baj Bahadur were not pursued but the accused surrounded Kallu and Kandhai Lal in the field of Tulsiram which was adjacent to the well and started beating them with Lathis. Ram Singh was armed with a Pharsa while the others had Lathis in their hands. Ram Singh did not take any part in the beating of Kallu and Kandhai Lal but kept quiet. Baj Bahadur and one Mata Gulam came to the rescue of Kallu and Kandhai Lal whereupon Ram Singh gave a Pharsa blow on the head of Baj Bahadur and Sabha Singh administered a blow on his head with a Lathi. Arjun Singh and Hari Shanker started beating Mata Gulam. A number of persons had collected there and the appellants ran away. Baj Bahadur died on the way to the police station which was at a distance of six miles. The first information was lodged by Vishwanath. Kallu, Kandhai Lal and Mata Gulam were examined but the injuries on their bodies were found to be quite simple. The post-mortem

examination of Baj Bahadur showed that he had suffered an incised wound 4 1/2" x 3/4" brain deep on the right side of the head which had cut through the head bone and exposed the brain. He had also received a lacerated wound 1" x 1/4" scalp deep on the left side of his head. Blood was found in the field of Tulsiram which also showed signs of a fight having taken place there.

3. The accused denied their part in the crime and stated that they had been implicated on account of enmity between Vishwanath and Sabha Singh.

4. In the Sessions Court no less than twenty witnesses including the Medical Officer were examined.

5. The Sessions Judge found that there was litigation going on between the complainant and Vishwanath on one side and accused Ram Singh and Sabha Singh on the other. The accused did not challenge that Baj Bahadur, Mata Gulam, Kandhai and Kallu had received injuries on April 1, 1966 at about 5 p.m. The post-mortem examination report and the statement of Dr. Mathur who performed the post-mortem showed that the death of Baj Bahadur was "due to coma following head injuries" one of which was caused by a sharp-edged heavy cutting weapon and the other by a low blow of a blunt weapon like a Lathi. He opined that the injury was sufficient to cause death. The Sessions Judge who examined the statement of witnesses fairly closely took the view that the trouble had arisen over the direction by the group of the accused to Vishwanath's group to stop irrigation from the well. He noted that the accused Arjun Singh, Sabha Singh and Ram Singh had no interest in the well and in their own right they could not ask Kallu and others to stop irrigating their fields. The incident, it may be noted, had taken place in broad daylight not far from the houses in the village and there was evidence before the Sessions Judge that quite a large number of independent persons had gathered on the scene of occurrence, yet not one of them was produced in the witness box. The Judge found himself unable to accept the case that Tulsiram, an old man of 70 years would take part in the fight and he did not believe the version that Tulsiram's son, Dayaram was there. He further disbelieved the story of the chase of Kallu and Kandhai Lal by the party of the accused inasmuch as Kandhai had stated that the fight had taken place at the spot where abuses had been hurled on them. The Sessions Judge held that the statements of Kandhai Lal, P.W. 6, Kallu P.W. 7 and Vishwanath, P.W. 12, as regards the chase were contradictory. He also took the view that if Baj Bahadur and Vishwanath had run in a direction different from that of Kallu and Kandhai they would not have returned to the spot where the fighting took place. In the Sessions Court Kandhai contradicted the statement made by him in the committing court to such an extent that the Sessions Judge remarked :

"He concealed true acts and did not disclose the names of seven or eight other persons who were also present at the well when altercations were going on there."

6. Similarly Kallu had gone back on his statement in the committing court and the Sessions Judge held that he could not be believed. The Judge disbelieved the prosecution version that Kallu and Kandhai had been beaten at first and thereafter the assault on Baj Bahadur had taken place. He found himself unable to accept the version that all the accused had surrounded Kallu and Kandhai in the field of Tulsiram but only the accused who had Lathis were giving the beating. According to the Sessions Judge, Mata Gulam was not an independent witness and was siding with Kallu and Kandhai and must have been beaten along with them. Of the other prosecution witnesses the Sessions Judge thought Ishwardin, P.W. 2, was not an independent witness and had deliberately made a wrong statement regarding the situation of his house in the village which would give him an opportunity to come to the scene of the incident. According to the Judge it was doubtful whether he had come to the spot at all. As regards Hamid Ali, P.W. 4, the Judge held that he was interested in

Ishwardin who was not on good terms with the accused and did not seem to be an independent witness. The presence of Hamid Ali at the spot was also doubted. The version given by Hari Niwas, P.W. 5, was held by the Sessions Judge to be an absurd one and quite contradictory to the version of the other witnesses.

7. Although the Sessions Judge found himself unable to accept the statement of the prosecution witnesses he purported to go by the circumstances and holding that the accused had no right of private defence of property concluded that it was the blow of Ram Singh on the head of Baj Bahadur with a Pharsa that had caused his death and as such he was punishable under Section 302 of the Penal Code. He reconstructed the incident as follows : Altercations had taken place between the parties leading to the fight and although the accused did not have the common intention to kill but only to beat Kallu, Kandhai, Vishwanath and Baj Bahadur if they did not agree to stop irrigating their fields, there was a sudden development of common intention to kill Baj Bahadur though there was no evidence of any pre-concerted or pre-determined plan to kill him.

8. In appeal the High Court examined the evidence of prosecution witnesses Nos. 1, 2, 4 and 5, namely Mata Gulam, Ishwardin, Hamid Ali and Hari Niwas. The High Court remarked that no enmity had been brought out by any of the accused with Mata Gulam. This was however not the view of the Sessions Judge who found that Mata Gulam was a cousin of Kandhai and was present at the well when the altercation had started. With regard to Ishawar Din and Hamid Ali the High Court held that although a case of enmity between these persons and the group of the accused had been disclosed they were not speaking the truth. The High Court also noted that none of the witnesses had stated that Ram Singh was taking any part when the altercation has started. Reviewing the evidence the High Court was of opinion that though it was not possible to attribute the common intention of striking with a Pharsa to all the appellants from the beginning nevertheless Sabha Singh and Ram Singh had the common intention of causing grievous hurt to Baj Bahadur and there being no extenuating circumstance in his favour, Ram Singh must be held to have been rightly convicted under Section 302, I.P.C. for the Pharsa blow given by him on Baj Bahadur's head.

9. Normally this Court does not examine the evidence when the findings of fact by the lower courts are concurrent. In this case, in spite of the unanimity of the two courts in holding the appellant guilty under Section 302, I.P.C., their views on the evidence are so divergent that a recapitulation of the portion relevant to the appeal was considered by us to be necessary. In doing so, we are unable to accept the finding of the High Court and uphold the conviction. The Sessions Judge had held that although a large number of independent persons were present when the incident had taken place none of them had come forward to give evidence as to the development of the trouble and the sequence of events to show how Baj Bahadur had received the injuries which proved fatal. Not only did the Sessions Judge give the benefit of doubt to four of the accused but he held that Kallu, Kandhai and Mata Gulam were all inimically disposed towards Ram Singh and the other accused. On the evidence adduced, it would not be right to uphold the conviction of the appellant with the true picture of the incident was never presented to the court, independent witnesses were not produced and when even the medical evidence did not establish that death was due only to the injury caused by a sharp-cutting weapon even if we were to accept the testimony of some of the witnesses that the appellant had such a weapon with him. Moreover, it came out in evidence that Vishwanath and his associates who were irrigating the field were not completely unarmed and if we are to disregard the evidence that Kallu and Kandhai were chased and beaten to start with, it would not be safe to uphold the conviction of Ram Singh on the evidence before the court. We must therefore set aside his conviction and direct that he be set at liberty.

</html