

Hori Lal and Another

Vs

State of U. P.

Criminal Appeal No. 70 of 1968

(S. M. Sikri, G.K. Mitter, P. Jagmohan Reddy JJ)

08.09.1969

JUDGEMENT

P.JAGANMOHAN REDDY, J. -

1. This appeal by special leave is directed against the judgment of the Allahabad High Court setting aside the conviction of Hori Lal and Bisram under Section 307 read with Section 34 of the I.P.C. and instead convicting them under Section 326 read with Section 34 I.P.C. and sentencing each of them to rigorous imprisonment for 5 years.

2. The appellants who are the residents of Bhitwa Gadan Khera are friends belonging to the same party. It was alleged that on June 14, 1964 Bisram's cattle strayed into the field and damaged the crop of Deo Dutt who is the nephew of Sagar Singh and Jeet Bahadur. In respect of this damage Deo Dutt and his partner Ram Bharose complained to Bisram who along with some other persons went to the house of Deo Dutt and threatened him and the members of his family including Jeet Bahadur and Sagar Singh. Thereupon Deo Dutt lodged a complaint in the police station. Because of this complainant relations between the parties became strained as a result of which the accused stopped working for Jeet Bahadur and Sagar Singh and even asked the other members of his Beradari to follow suit. On March 29, 1965 at about 5.30 p.m. Jeet Bahadur P.W. 2 along with his labourer Sri Pal deceased was reaping the harvest. The field of Sagar Singh P.W. 1 is situate just adjacent to the field of Jeet Bahadur with only a Chak road between their fields. It is the prosecution case that on that day both the accused armed with Kantas went to the field of Jeet Bahadur and challenged him. Immediately thereafter they began to deal Kanta blows on Jeet Bahadur. Jeet Bahadur P.W. 2 cried out whereupon Sagar Singh P.W. 1 hearing the shouts rushed to his aid. Maya Ram P.W. 3 and Himachal and Ram, Pal who were nearby also rushed to the aid of Jeet Bahadur. Accused Bisram is said to have fired a revolver at Sagar Singh but he did not receive any injury. Thereafter the accused ran away towards the village. As Jeet Bahadur was injured, Sagar Singh P.W. 1 took him to the police station and there lodged a report Ex. Ka-1 at about 9.55 p.m. on March 29, 1955. The Investigation Officer Bhanu Prakash Sharma, P.W. 5 investigated the crime, prepared site plan, recorded statements of the witnesses and seized blood-stained mud. Jeet Bahadur was admitted to the District Hospital at Unnao. Dr. Srivastava examined him of March 30, 1965 at 8.30 a.m. and found as many as 10 injuries of which injuries 2 to 7 were incised wounds, injuries 1 and 9 contusions and injuries 8 and 10 abrasions. All the incised injuries except No. 7 showed that the bones had been cut. These injuries are as follows :

"2. Incised wound 3" x 1" x bone vertically on the right half forehead just above right eye brow.

3. Incised wound 1 1/4" x 1/2" x bone cutting the underlying bone lower part left humerus just above the left elbow on the back of left arm.
4. Incised wound obliquely 5" x 1" x bone cutting the underlying radius and above left in the middle of the left forearm back.
5. Incised wound 5" x 1" x bone on the back of the left forearm lower 1/3rd. Slightly obliquely cutting both the bones of left forearm.
6. Incised wound 4 1/2" x 1" x bone on the left leg middle back and laterally cutting the underlying tibia bone shaft."

3. The defence of the accused is that they had been falsely implicated. The prosecution examined Sagar Singh P.W. 1, Jeet Bahadur P.W. 2 and Maya Ram P.W. 3 as eye witnesses and since Sri Pal one of the eye witnesses died after his evidence was recorded by the committing magistrate, his deposition was admitted and treated as evidence under Section 33 of the Evidence Act (Ex. Ka-11). The learned Sessions Judge believed the eye witnesses and relying upon Ex. Ka-3 convicted the accused under Section 307 read with Section 34. The learned Judge however acquitted them of the second charge of attempting to murder P.W. 1 with pistol.

4. In this appeal Mr. S. C. Agarwala learned counsel for the appellants contends firstly, that the injuries as found by the doctor do not justify the conviction of the appellants of grievous hurt in as much as there is no evidence for 20 days or more, secondly, that the contusions found on P.W. 2 would clearly belie the evidence of the eye witnesses that the injuries were inflicted by a Kanta, and thirdly, that the deposition of Sri Pal ought not to have been admitted in evidence under Section 33 because the death of Sri Pal has not been strictly proved.

5. The main question which requires to be determined in this case is whether there is sufficient evidence to establish that the appellants had caused the injuries found on P.W. 2, and if so, having regard to the injuries what is the offence which the appellants have committed. It appears to us that there is sufficient credible evidence of the eye witnesses to prove beyond doubt that the appellants had caused injuries to P.W. 2. Even if the evidence of P.W. 1 and P.W. 2 who are brothers, of whom P.W. 2 is the victim, is for the moment not considered, there is no reason why the evidence of P.W. 3 Maya Ram ought not to be relied upon. According to Maya Ram, he was in the Khallian when he heard the cries of Jeet Bahadur and rushed. He says, "it was the time of about 5 or 5.30 p.m. I heard an alarm raised in the field of Jeet Bahadur. I and Himachal ran to that side. Ram Pal was coming up running from the western side. In the field of Jeet Bahadur, I saw Bishram and Hori Lal accused present in court beating Jeet Bahadur with Kantas. We raised alarm. After assaulting Jeet Bahadur Hori Lal and Bishram accused went away towards the east. Sagar Singh was coming up running from his Chalk. Sagar Singh was raising alarm. Bishram accused fired the pistol at Sagar Singh, but Sagar did not sustain any injury. I saw injuries on the body of Jeet Bahadur. After it we took Jeet Bahadur to Hasanganj on a cot". The witness was cross-examined at length but nowhere has it has been suggested that he is an interested witness or he is speaking untruth. Both the Sessions Court as well as the High Court relied upon his evidence which according to them fully corroborated the evidence of P.Ws. 1 and 2. The fact that some contusions and abrasions were found on P.W. 2 does not impair the evidence of these witnesses because the doctor was not asked whether the injuries were possible if Kanta blows are given. It is quite possible to find contusions where two persons are giving blows with Kantas which have also blunt sides. Unless definite suggestions are made and the impossibility of finding any such injuries with Kanta blows is elicited, we will not be justified merely on a

submission from the bar to accept it and discard the evidence of the eye witnesses. We, therefore, find no valid reason in not accepting the concurrent findings of both the courts that the appellants had caused injuries to P.W. 2 as spoken to by the witnesses. In these circumstances, it is unnecessary for us to express any view on the question whether the evidence of the investigating officer Bhanu Prakash Sharma that 'it has been learnt that Sri Pal has died' is sufficient to prove the death of Sri Pal in order to admit the deposition of Sri Pal in the Committal Court under Section 33 of the Evidence Act.

6. It now remains to consider whether the conviction of the appellants under Sections 326 for grievous hurt is justified. The answer to this question would depend on the nature of the injuries which have been found on P.W. 2, namely, whether they are simple or grievous. In order to justify conviction under Section 326, injuries on P.W. 2 must satisfy the requirements of Clause 7 or Clause 8 of Section 320 of the Indian Penal Code, otherwise they will be treated as simple injuries. Clauses 7 and 8 of Section 320, I.P.C. provide that an injury could only be designated as grievous if it is : (1) as fracture or dislocation of a bone or tooth, or (2) any hurt which endangers life or which cause the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

7. It is contended by the learned counsel for the appellant that none of the Injuries 2 and 6 which were inflicted on P.W. 2 discloses that there is a fracture or dislocation of any bone. These injuries, it is said, at the most show that the particular bones on which the injuries were inflicted were cut which however does not amount to a fracture. It is true that fracture has not been defined in the Penal Code. It is sometimes though as in the case of *Po Yi Maung v. Ma E Tin*, (A (1937) Rang 253) that the meaning of the word fracture would imply that there should be a break in the bone and that in the case of a skull bone it is not merely sufficient that there is a crack but that the crack must extend from the outer surface of the skull to the inner surface. In *Mutukdhar Singh v. Emperor* (A (1942) Pat 376) it was observed that if the evidence is merely that a bone has been cut and there is nothing whatever to indicate the extent of the cut, whether a deep one or a mere scratch on the surface of the bone, it will be difficult to infer is a grievous hurt within the meaning of Section 320 of the Penal code. In our view, both these assumptions are misleading. It is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture of fissure in it, it would amount to a fracture within the meaning of Clause 7 of Section 320. What we have to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them. The nature of the injuries as spoken to by the doctor in his evidence discloses the length, breadth and depth of each injury. So far as the depth of the injuries Nos. 3, 4, 5 and 6 is concerned, each one of the injuries shows that it is bone deep and they are described as cutting the underlying bone. In Injury 3 left humerus, in Injury 4 radius, in Injury 5 both the bones of the left forearm and Injury 6 the tibia bone shaft have been cut which would show that they are fractures. Apart from this the doctor as noticed earlier has in his evidence said that these injuries are grievous. It is contended that the doctor has not disclosed the reason why he thinks that the injuries were grievous. But in our view the doctor would not be unaware of what injuries are grievous or what are simple. At any rate, the nature of the injuries considered with the evidence of the doctor would undoubtedly establish that all the aforesaid injuries were grievous. These injuries were inflicted by Kantas which are dangerous weapons and hence the conviction under Section 326 is fully justified.

8. The appeal fails and it is dismissed.

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