

Ram Chander Rai and Others

Vs

The State of Bihar

Criminal Appeals Nos. 22 and 23 of 1969

(V. Ramaswami-I, I.D. Dua JJ)

16.10.1969

JUDGMENT

DUA, J. -

1. These two appeals with special leave granted on the question of sentence only arise out of one trial in which eight appellants were convicted. One appeal is by six of them and the other by two. The two appellants in the latter appeal are Loka Rai and Rajeshwar Rai, who are both represented to be 60 years old. We have mentioned that fact because the argument in regard to their sentence is mainly founded on their ages.

2. The prosecution story, as accepted by the High Court, may briefly be stated. The appellants and Sheopujan Pathak (P. W. 6) are all residents of village Kathi about 1/2 mile away from the place of occurrence. Ram Chander Rai and Ramgobind Rai are real brothers being sons of Naumi Rai. Jadunandan Rai, Harinandan Rai and Sivanandan Rai are also real brothers being sons of Loka Rai appellant. Loka Rai is the grandson of Behari. Lachhuman Rai appellant is the son of Rajeshwar Rai appellant, who is the grandson of Naurang. Naumi Rai, father of Ram Chandra Rai and Ramgobind Rai, is also a grandson of Naurang. There is a long-standing enmity between Sheopujan Pathak (P.W. 6) and the party of the appellants. About 17 or 18 years ago nose of Naumi Rai was such and Sheopujan Pathak along with some others was tried in respect of this incident, but they were all acquitted. On April 8, 1965, Sheopujan while returning from Vindhyaachal by train got down at Raghunathpur railway station between 2.30 and 3 p.m. He along with a co-villager Madho Misser (P.W. 2) then proceeded on foot to their village Kathi. About 1/2 mile away at about 4 p.m. when they reached near the field of Sheolok Mehto, Sheopujan found himself surrounded by the eight appellants. Madho Misser on seeing the mob fled away towards his village. Sheopujan asked the accused reason for surrounding him, upon which Loka Rai and Rajeshwar Rai instigated their companions to cut off Sheopujan's nose. They are stated to have in situated them with the following words.

"Maro Sale ko, Nak Kat Lo".

1. Thereupon Harinandan Rai and Ramgobind Rai struck Sheopujan with Lathis on both of his legs, as a result of which he fell down. Lachhuman and Sivanandan Rai then got upon this chest while Jadunandan chapped off fingers of his left hand with a Garasi and Ram Chander Rai cut off his nose with a Chhura. The appellants then fled away. In the meantime madho Misser (P.W. 2) while running ways met his co-villagers P.Ws. 4, 8 and 9 and told them that Sheopujan Pathak had been surrounded by his enemies. These four persons then proceeded towards the place of occurrence and they saw the incident from a distance of

about 20 years. It was the protest made by these persons on hearing which the appellants had filed away. It is this story which has been believed by the High Court. The judgment of the Trial Court is not before us, but we assume that this story was accepted by that Court as well.

3. It is unnecessary to consider the evidence in support of the conviction because this appeal was admitted only on the question of sentence. The Trial Court convicted Ram Chander Rai and Jadunandan Rai under Section 326, I.P.C., and each was sentenced to rigorous imprisonment for life. They were also convicted separately under Section 326 read with Sections 34 and 149, I.P.C., as also under Section 148, I.P.C., but no separate sentence was passed on these counts. The other six appellants were convicted under Section 326 read with Section 34 and 149 I.P.C., and every one of them was sentenced to rigorous imprisonment for seven years. They were also convicted under Section 147, I.P.C., but no separate sentence was imposed on this count. Harinandan Rai and Ramgobind Rai were further convicted under Section 325 read with Section 34, I.P.C., and were sentenced to rigorous imprisonment for four years each. Loka Rai and Rajeshwar Rai were also convicted under Section 326 read with Section 149, I. P.C., but no separate sentence was passed on this count. The medical evidence showed the following injuries on the person of Sheopujan Pathak (P.W. 6).

1. Chopping off 3 fingers of the left hand - the middle, ring and the index. The fingers were completely severed.
2. Chopped off nose with cartilage and bone.
3. Fracture of the tibia and fibula of the left leg below knee.
4. Lacerated wound 1/2" x 1/4" x 1/4" on the right leg.
5. Three abrasions 1/2" x 1/2" diameter round about right knee.
6. Abrasion 2" x 1" about the right elbow joint.

4. It is the number and nature of injuries which seems to account for separate convictions. But in these appeals which are limited to the question of sentence only we are concerned with the merits of these convictions.

5. We may now turn to the question of sentence. Ram Chander Rai is proved to have cut off the nose of P.W. 6 whereas Jadunandan Rai chopped off three fingers of his left hand. The eight appellants surrounded P.W. 6 and after injuring him on the legs and felling him down two of them sat on this chest and Ram Chander Rai and Jadunandan Rai respectively cut off his nose and three fingers of his left hand. The offence committed is no doubt brutal and dastardly. It was a cowardly act and smacks of medieval barbarism. The question, however, arises if imprisonment for life is appropriate sentence for the two accused who cut off the nose and chopped off the fingers, and seven years' rigorous imprisonment for the other accused persons. Imprisonment for life is certainly permissible for an offence under Section 326, I.P.C., but that is the maximum sentence prescribed. A person found guilty of murder can also be punished under Section 302, I.P.C., with death or imprisonment for life and under the present law it is not longer necessary for the Courts to assign reasons for imposing the lesser sentence of imprisonment for life. Prefacing his argument thus, the appellants' learned counsel had in support of his appeal for reduction of sentence drawn attention to *Emperor v. Bhagwan Chhagan* (17 Bom LR 68) and *Emperor v. Ismail Umar*. (40 Bom LR 832) In the former case the accused was convicted under Section 335, I.P.C., for causing under grave and

sudden provocation grievous hurt to his wife by setting her nose and was sentence by the Trial Court to rigorous imprisonment for four months, but on a reference by the Sessions Judge the High Court enhanced it to rigorous imprisonment for two years. The grave and sudden provocation in that case was not construed to have the same effect as in the case of a man who strikes a severe blow under sudden and provoked anger. In the latter case also the accused had been convicted for cutting off his wife's nose and sentenced by the Trial Court to rigorous imprisonment for nine months. On appeal after notice for enhancement the sentence was enhanced to rigorous imprisonment for two years. In the judgment there is also a reference to an unreported decision of the year 1928 in which sentence of one year's rigorous imprisonment was enhanced to two years on the authority of Queen Empress v. Abdul Rahiman (ILR 16 Bom 580) and of the decision in Bhagwan Chhagan's case (supra). In still another unreported decision of 1927 also referred in Ismail Umar's case (supra) sentence of one month's rigorous imprisonment was enhanced by the Bombay High Court to one year's rigorous imprisonment. Let us now examine the decision of the Bombay High Court in Abdul Rahiman's case (supra). We find that the accused in that case had deliberately cut off his wife's nose with a pen knife. The learned Magistrate sentenced him to two years' rigorous imprisonment which was the maximum sentence he could impose. The person convicted under Section 326, I.P.C., could then be sentenced to transportation for life or imprisonment for ten year. The Government applied for enhancement of sentence. The High Court observed that in a case of such gravity the learned Magistrate would have exercised a proper discretion if he had sent the prisoner for trial by the High Court. Considering the sentence to be inadequate the conviction and sentence of the accused was quashed and the Magistrate was directed to commit the prisoner for trial by the High Court. The prisoner was subsequently brought up for trial before a Judge of the Bombay High Court and a common jury and on conviction was sentenced to eight years' rigorous imprisonment. In the case of Sikender v. Emperor, (AIR 1915 Lah 395) which was also cited at the bar, the accused was convicted under Section 326 I.P.C., for cutting off his wife's nose and was sentenced by the District Magistrate to rigorous imprisonment for four years. On appeal the Sessions Judge while maintaining the conviction reduced the sentence to two years. The Punjab High Court enhanced the sentence to four years' rigorous imprisonment observing that leniency in such cases was ordinarily speaking out of place.

6. The question of sentence is always one of judicial discretion but the proper exercise of direction in this respect is generally a matter of difficulty. The sentence should neither be too lenient nor disproportionately severe. The former loses its deterrent effect and the latter has a tendency to tempt the offender to commit a more serious offence, if there is an opportunity to do so. The object of punishment for crimes being to impress on the guilty party and other like-minded persons that the life of crime does not pay, so that the purpose of promoting the cause of orderly and civilized society is advanced, the Court has in awarding the sentence a duty to guard itself against the aforesaid two tendencies and to draw a proper balance between them. In order to do so the Court has to consider the nature and gravity of the offence and duly take into account all the relevant circumstances leading to its commission. The difficulty in the right determination of sentence was also noticed by this Court in *Adamji Umar Dalal v. State of Bombay*, ((1952) 2 SCR 172 : AIR 1952 Sc 14 : 1952 SCJ 820 : 1953 Cri LJ 542) where it was added that no hard and fast rule can be laid down in this respect, it being a matter of discretion in each to be guided by variety of circumstances. In this decision the courts were reminded to bear in mind the necessity of proportion between an offence and the penalty. It was further observed that it is not the practice of this Court to interfere by special leave in the matter of punishment imposed for crime committed save in exceptional cases where the sentences are unduly harsh and do not advance the ends of justice. That, the question of sentence is normally a matter of discretion, was again reiterated by this Court in

Kapur Chand Pokhraj v. State of Bombay, (AIR 1958 SC 993 : (1959 SCR 250 : (1958) Cri LJ 1558) in which two earlier decisions of this Court making similar observations were also noticed.

7. In the present case revenge for an occurrence which took place about 18 years ago appears to be the impelling motive for the crime. It is true that in the earlier occurrence Naumi Rai's, face had been permanently disfigured and it was perhaps not easy for his relations to completely forget the disgrace caused by Naumi Rai's nose having been cut off. When his sons grew up absence of nose on their father's face as a result of injury inflicted on the earlier occasion seems to have served as a constant incitement for them to take venge. Their elders in the family instead of exercising a restraining influence apparently instigated them and in fact jointed them in their plan to take revenge. But this provocation, however strong the sentimental urge for is, could by no means be considered to be either sudden or grave for the propose of serving in the eye of law a strong mitigating circumstance. The cowardly act for inflicting the grave injury, as the medical evidence shows, is, in out opinion, inexcusable, though permanent disfigurement of Naumi Rai's face which could not be concealed from the public must be assumed to have served as a source of constant irritation for the accused persons. This factor thus cannot be completely ignored while determining the sentence.

8. After considering all the circumstances of the case, we fell that the ends of justice would be served by reducing the sentence of Ram Chander Rai and Jadunandan Rai under Section 326, I. P.C., to rigorous imprisonment for 8 years and of all the other six appellants under Section 326 read with Section 34 and 149, I.P.C., four years rigorous imprisonment. We do not consider it to be proper to sentence them separately for other injuries inflicted in the curse of the same transaction. The appeals are accepted to this extent.

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