

Juwar Singh

Vs

State of Madhya Pradesh

Criminal Appeal No. 157 of 1968

(CJI S. M. Sikri, V. Bhargava JJ)

02.02.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The Additional Sessions Judge, Dhar, convicted four accused under Section 148 as also under Section 302, read with Section 149 and in the alternative Section 302, read with Section 34 of the Indian Penal code and sentenced each of them of them two years rigorous imprisonment and life sentence respectively. The High Court confirmed these convictions, and sentences against which one of the accused namely the Appellant has filed this Appeal by Special Leave.

2. The prosecution case is that Jamunabai, P.W. 4 and Janibai are the widows of two brothers Jawarchand and Nandaji respectively, they owned considerable land in village Kherod. Jamunabai and Janibai had two daughters Ram Kunwar and Deo Kunwar respectively. These ladies rented their lands to the deceased Purshottam who was the real brother of Ramesh Chandra, P.W. 1. Accused 1, Bhanwar Singh and Accused 3, Amar Singh are sons of Accused 5, Kunwarji. It is alleged that the lease of the land by Jamunabai and Janibai in favour of Purshottam had aggrieved the accused Juwar Singh who is nephew of Jamunabai and Janibai. It is further alleged that a day before the incident a male calf of the deceased had damaged the rachka (fodder) of Ganesh and the later had threatened the deceased that he would take revenge. On January 18, 1966, at noon Purshottam accompanied or closely followed by Ramesh, P.W. 1, Babulal, P.W. 2 and Jamunabai, P.W. 4, were going to their field to fetch the fodder (rachka). While they were passing by a well known as Radhakund or Sarkari Bawadi all the five persons accompanied by Ganesh were standing on the embankment of the pond near the well when Kunwarji challenged Purshottam to halt and incited the other accused persons to attack him. On being so incited accused Bhanwar Singh delivered a blow with a Lohangi at the head of Purshottam as a result of which Purshottam fell down on the ground. Accused Juwar Singh and High Singh struck Purshottam with dhariyas while Amar Singh struck him with pharsa. Thereafter accused Bhanwar Singh delivered two further blows with his lohangi on the back of Purshottam after which all the accused ran away. A number of persons including Jamunabai, P.W. 4, Babulal, P.W. 2, Sunder Singh, P.W. 5, and Gendelal who were present at or near the place of occurrence witnesses the incident. The injured Purshottam was put on the cot and taken to the Mhow Meemuch Road with the object of taking him in a bus to Sadalpur which was at a distance of five miles from the village Kherod. When the person in-charge of the bus refused to take the injured he was placed in a cart and while he was being taken to Sadalpur he died. At first when Purshottam was injured a report had been given and initially the offence was registered under Sections 148, 149 and 307 of the Indian Penal Code. After the dead body was taken to the Police Station, Phajanlal who recorded the First Information Report, Ex. P. 1, amended the offence into one under Sections 148/147 and 302 of Indian Penal Code. An inquest of the dead body was prepared as per Ex. P. 2

and the body was sent for post-mortem to the Dhar Civil Hospital where a post-mortem was held by Dr. Kulkarni, P.W. 3. The accused were called into the Police Station on the evening of the 19th and arrested on the morning of January 21, 1966. It is alleged that on information furnished by accused Bhanwar Singh, Hindu Singh, Amar Singh, Juwar Singh a lohangi, a pharsa and a dhariya were recovered respectively at the instance of the above persons. The accused denied the offence. The Appellant's case however was that he was at his own house and saw Ganesh, Babulal, Ramesh and Purshottam fighting near the Bhawadi. Seeing the persons fighting he went there to pacify but Purshottam hit a blow with lathi on his head rendering him unconscious. The other accused pleaded alibi. While the recovery of the weapons was admitted by the accused the Additional Sessions Judge found that there was nothing to connect those weapons with the offence. He, however, believed the evidence of eye-witnesses - Ramesh, P.W. 1, Babulal P.W. 2, Jamunabai, P.W. 4 and Sunder Singh, P.W. 5, but rejected that of Ambaram, P.W. 6, and Gendalal, P.W. 7. Relying on these eye witnesses he convicted the four accused Bhanwar Singh, Hindu Singh, Amar Singh and Juwar Singh but acquitted Kunwarji. It may be stated here that Ganesh who was arrested for the offence had died before the Trial Commenced.

3. Before us the learned Advocate for the Appellant submits that the defence of Juwar Singh that he was watching the incident from his house and had gone to pacify the accused and the deceased when they were fighting with the result that he received injuries on his head, is supported by the evidence of Dr. Vijay Kumar Jain, P.W. 13, who had examined him and found a lacerated wound of 1" length and 3/4" depth in the right side of the middle of his scalp. This defence however was rejected by the Additional Sessions Judge because it was not possible to say what was the exact nature of the injury nor did the report or the statement of the Doctor who examined the accused say what was the correct dimension of the injury on the head. The injury as spoken to by Dr. Vijay Kumar Jain was a lacerated wound but according to Juwar Singh he was given a blow with a stick on his head by Purshottam which was not considered to be a lacerated wound, as such the medical evidence did not support the statement of the accused. The learned Advocate however pointed out that the Additional Sessions Judge had observed that the accused had received a lacerated wound but it might have occurred during the incident in which Purshottam received fatal injuries and from this he contends that the defence of the accused is substantially established and that he should be given the benefit of doubt. It is pointed out by the learned Advocate that P.W. 2, Babulal, has admitted that the deceased Purshottam had a sickle in his hand thereby implying that the injury may have been given to the appellant by that sickle. We may however, point out that there is nothing in the medical evidence to show whether that injury could be caused by that sickle or when in fact the injury was received to enable us to conclude that it was received at the time of the incident. In fact the Doctor says that the injury could be caused by some hard and blunt weapon like a lathi, if so the possibility of the injury being given with a sickle is ruled out. It was also pointed out by the learned Advocate that there are several discrepancies in the evidence of the eye witnesses. No doubt as the Additional Sessions Judge observed there are such discrepancies but nothing has been pointed out which materially affect the veracity of these witnesses. In any case there is nothing in the evidence of Jamunabai, P.W. 4, which suffers from any infirmity. This witness gave a straight-forward version of the incident and is not shown to be partisan or in any way inimically disposed towards the accused. Apart from this one significant fact which emerges from the evidence of P.W. 1, Ramesh Chander is that the Appellant is the nephew of Jamunabai and consequently there is no reason for her to speak against him. We have therefore no hesitation in holding that the concurrent findings of both the Courts are fully supported by the evidence in the case. The appeal is accordingly dismissed.

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