

Sohan Lal and Others

Vs

The State of U. P.

Criminal Appeal No. 224 of 1968

(CJI S. M. Sikri, I. D. Dua, P. Jagmohan Reddy JJ)

09.02.1971

JUDGMENT

REDDY, J. -

1. Sohan Lal, Jiwan and Janki were convicted of offences under Section 302 read with Section 34, I.P.C., and each of them sentenced to life imprisonment by the Additional Sessions Judge, Rampur. They were further convicted of offences under Section 324, 323 read with Section 34, I.P.C. and each of them sentenced to rigorous imprisonment for one year and six months respectively under the two counts. The sentences were directed to run concurrently. In Appeal the High Court acquitted Jiwan and Janki of the offence of murder under Section 302 read with Section 34, I.P.C., and instead convicted them of offence under Section 325 read with Section 34, I.P.C., for which each of them was sentenced to five years rigorous imprisonment. Their convictions and sentences under Sections 324 and 323, I.P.C., were maintained. The conviction of Sohan Lal for an offence under Section 302 read with Section 34 was converted into one under Section 302, I.P.C. simpliciter. The sentence of life imprisonment for the offence of murder as well as conviction and sentence under Sections 324 and 323, read with Section 34, I.P.C., was maintained. Sohan Lal and others have filed this Appeal by Special Leave. It is contended on behalf of the Appellant Sohan Lal that as there is no evidence that he gave any fatal injury to the deceased the conviction and sentences under Section 302 also cannot be sustained. It is also urged that the Appellant was entitled in the circumstances in which the occurrence took place to exercise his right of private defence if the offence which occasions then exercise of the right be of the description which falls under Fifthly of Section 100 or under Section 101, Indian Penal Code. If so the conviction and sentence under Sections 324 and 323 are also not sustainable. In order to appreciate these several contentions it is necessary to set out briefly the prosecution case.

2. Makhan Lal, P.W. 1, Jiwan and Janki Accused 2 and 3 in the Trial Court were all residents of the village Kapnairi. It is admitted that Makhan was married to Chameli D.W. 3 about 4 or 5 years prior to the incident and she began to live with him from about 2-3 years during which period it is alleged she developed illicit relations with Jiwan. It may here be pointed out that the Appellant was cultivating the lands of Jiwan as his Sajhedar. A year before the incident, she went to her parent's house and lived with her father and brother Sohan Lal in his village Hardua and did not return to her husband's village because of misunderstandings between herself and her husband. When Chameli was residing in her brother's house Makhan went to bring her back on several occasions but every time Sohan Lal and his father Mangli did not permit him to do so.

3. A little after mid-day on January 14, 1965, Makhan along with his brother Chunni Lal P.W. 2 and Jhanjan the deceased went to the house of the Appellant Sohan Lal in the village of Hardua to bring

back Chameli. At that time Sohan Lal was not at home as he had gone to Kapnairi with a cart to bring back sugarcane. When Makhan asked Chameli to accompany him to his house, it is said she agreed to return with him and so both of them accompanied by Chunni Lal P.W. 2 and the deceased Jhanjan started for their village. After they had travelled about 1 1/2 miles they was Sohan Lal coming with a cart-load of Sugarcane along with Jiwan and Janki. When Sohan Lal saw Chameli going with Makhan he is said to have objected, with the result that a quarrel ensued between him and Makhan. At that time Sohan Lal was armed with a Lathi, Jiwan with a Suja and Janki with a spear. The verbal quarrel resulted in all the three Sohan Lal, Jiwan and Janki attacking Makhan, Chunni and Jhanjan. Jiwan is said to have assaulted Jhanjan with a Suja as a result of which Jhanjan fell down and became unconscious. Makhan received several Lathi blows and Chunni received a spear and Lathi blow. Makhan and Chunni then cried for help and on hearing their hue and cry Tota Ram P.W. 3, Ram Lal P. W. 4 and Pemi rushed from the nearby fields and asked the accused "if they were going to kill them". Then accused Sohan Lal threw his Lathi and grappled with Makhan. At that time when Makhan and Appellant were grappling Jiwan aimed a Suja blow on Makhan but Makhan moved aside and the Suja blow fell on Sohan Lal. Thereafter the accused accompanied by Chameli went away towards the village Kapnairi. After the accused left, Makhan sent Chunni to bring a bullock-card from Kapnairi and after the bullock-cart arrived Makhan and Chunni took Jhanjan to Milak Police Station situated at about 9 miles from the place of incident but Jhanjan succumbed to his injuries while he was being so taken. Makhan then lodged a F.I.R. of the occurrence at about 9.15 p.m. on the same day at Milak Police Station. The Police registered a case under Sections 302, 323 and 324, Indian Penal Code, and started the investigation. About 10 minutes thereafter accused Sohan Lal also reached the same Police Station and lodged a F.I.R. of the occurrence giving his own version. An inquest was held on the dead body of Jhanjan after which it was sent to the Rampur mortuary for post-mortem examination. Next day Dr. S. P. Gupta conducted the post-mortem of the dead body at about 4.15 p.m. He found two punctured wounds, one abrasion and three contused wounds. The contused wound was 1" x 1/2" x 1/4" at the lower lip on the right side. Another was 4" x 1" with all round swelling at the right side of head just above the right ear and the third one was 3 1/2" x 1" at the left chest 1" below the left nipple. One punctured wound was on the right cheek 1/2" away from the angle of mouth and another 1/4" x 1/4" x 1/2" at the back of left forearm 2" below the elbow joint. On dissection he found both temporal and parital bones both right and left were fractured. There was fracture on the right and left middle fossas in continuation with the fracture of the right and left temporal bones. According to him the punctured wounds were caused by some sharp weapon such as a spear or a Suja and the rest of the injuries by some blunt weapon. Makhan and Chunni were also medically examined at about 10.15 p.m. on January 14, 1965, by Dr. S. C. Vaish. On Makhan was found a contused wound 1 1/2" x 1/2" x bone deep on the right side of the forehead and one contusion with swelling 2" x 1/2" on the right elbow. Both these injuries were simple injuries and said to have been caused by some blunt weapon. On Chunni there was an incised wound 3/4" x 1/2" x skin deep on the right forearm and one contusion with swelling on the back of his left hand. The incised wound was caused by some sharp-edged weapon while the contusion with some blunt weapon. Sohan Lal was also examined by Dr. Vaish on the same night at about 10.45 p.m. He had on him one punctured wound 3/4" x 1/2" x 1 3/4" with clean cut margins under the skin on the left side of the chest 4" away from the left nipple at 4 o'clock position. The injury was simple and was caused by some edged and pointed weapon which could be caused by edged knife or Suja. This injury according to the doctor was 2" away to the left from the location of the injury and that it could have been dangerous if the injury had been deeper.

4. Sohan Lal was arrested when he went to give an F.I.R. and it is said that from Sohan Lal's house a blood-stained Lathi was recovered. After preparing a Recovery Memo, collecting blood-stained

earth at the place of the occurrence all these Memos were sent to the Chemical Examiner. Accused Janki was arrested on January 15, 1965, while Jiwan surrendered to the A.D.M., Rampur on February 22, 1965.

5. The defence of Sohan Lal is that at about 1 p.m. on January 14, 1965, Makhan, Chunni and Jhanjan and one Pyare and Punni were bringing his sister Chameli who was married to Makhan about 3 years ago, from his house; that at that time he along with his brother Babu and Jukhi were bringing sugarcane in a bullock-cart ? and that when he asked Makhan why he had brought his sister in his absence from his house, Makhan retorted that she was his wife. When he remonstrated Chunni gave him a Gupti blow after which fighting started between the parties, which was witnessed by Dori and Mathuri, but after the fighting stopped he and his brother together with Chameli went away to village Kapnairi and thereafter he lodged an F.I.R. with the Milak Police Station. In the F.I.R. given by Sohan Lal he had stated that when Chunni gave him a Gupti blow his brother Babu fled away on account of fear. He raised a hue and cry, hearing which one Dori and Mathuri happened to come there and save them all. He alleged Chunni, Makhan, Pyare, Punni and Jhanjan had committed rioting.

6. It is clear from what we have said that there are certain admitted features in the prosecution and defence versions which tally with one another, namely that Chameli is sister of accused and was married to Makhan about 3 years before; that for the last one year she was residing in her parent's house at village Hardua and was not visiting her husband; that Makhan had made several efforts to take her back to his house but was not permitted to do so; that on the day of the incident Makhan and Chunni P.W. 2 and Jhanjan went to bring her back and were bringing her back when on the way they met Sohan Lal and on being challenged as to why Makhan was taking Chameli, a quarrel ensued between them in which Jhanjan received severe wounds on his head which caused his death and that in that same quarrel Makhan and his brother P.W. 2 as well as Sohan Lal also received injuries. The High Court after reviewing the evidence addressed itself to the question, whether all the Appellants knew that during the fight Sohan Lal would give a heavy blow on the head which would result in the death of Jhanjan, and said "the obvious reply to this question would be in the negative". In that view Jiwan and Janki were held not to have a common intention to kill Jhanjan or to cause such an injury which would have been sufficient to cause his death and were acquitted of the offence of Section 302, read with Section 34. The High Court however held that since they along with Sohan Lal attacked Makhan, Chunni and Jhanjan with the intention of causing them bodily injury those two accused were found guilty under Section 325, read with Section 34, for causing grievous injuries to Jhanjan. In so far as Sohan Lal was concerned the High Court held that he gave a blow with his Lathi to Jhanjan on a vital part of the body like the head with such force that the skull was fractured causing instantaneous death and as such convicted him of an offence under Section 302 simpliciter. It however confirmed the conviction on all the three accused under Sections 324 and 323, read with Section 34.

7. Before us the learned Advocate for the accused contends that the evidence shows inter alia (1) that Makhan was abducting Chameli, as such Sohan Lal was entitled to rescue his sister and if his attempt was resisted and force was used against him he could exercise his right of private defence and use such force against the assailants as was sufficient for that purpose; that Sohan Lal in his attempt to rescue his sister from the abductor himself received injuries which would show that Makhan and his party were aggressive and that any force he may have used in trying to rescue his sister from being abducted was in exercise of the right of private defence under Fifthly of Section 100 and in the alternative under Section 101, I.P.C. (2) In any case he cannot be convicted under Section 302 because the evidence does not show that he had inflicted a Lathi blow on the head of

the deceased because the eye-witnesses say that the Appellant had given only one blow with a Lathi and that was not on the head of the deceased so as to warrant a conviction of murder under Section 302. The blow that is said to have been given by Appellant with a Lathi was inflicted on Makhan and not on the deceased.

8. Taking the last point first we propose to examine the evidence of the four eye-witness Makhan, P.W. 1, Chunni Lal, P.W. 2, Tota Ram, P.W. 3, and Ram Lal P.W. 4. According to all these four witnesses Sohan Lal was armed with a Lathi, Jiwan with Suja and Janki with Ballam. Makhan's version of the incident is that on hearing Sohan's abuses he asked him why he was abusing, upon which all the 3 accused fell on them. Jiwan assaulted Jhanjan with a Suja, with the result that Jhanjan fell down and became unconscious. Janki inflicted a Ballam injury on his brother. When some of the witnesses who had come there asked them, if they were going to kill them, accused Sohan Lal threw away the Lathi and clung to him. P.W. 2 says that Sohan Lal gave a Lathi blow to his brother Makhan. Similarly P.W. 3 also says that Sohan Lal assaulted Makhan with a Lathi, Janki assaulted Chunni with a Ballam, thereafter Sohan Lal threw away his Lathi and caught Kauli of Makhan. In cross-examination he says that Sohan Lal had first caused Lathi blows to Makhan and thereafter he threw away the Lathi and clung to him. P.W. 4 Ram Lal improves on this version by saying that Sohan Lal gave 2 or 3 Lathi blows to Makhan. From this evidence it is clear that none of these eye-witnesses deposed to Sohan Lal giving any Lathi blows to the deceased. In fact the only Lathi blow according to P. W. 2 and P.W. 3 was that given by Sohan Lal to Makhan, though no doubt P.W. 4 says that Sohan Lal had given 2 or 3 Lathi blows to Makhan. Neither Makhan nor any of the 3 other eye-witnesses speak of a Lathi blow being given to the deceased and in fact after Sohan Lal threw away the Lathi and grappled with Makhan there is no evidence of his having again picked up the Lathi.

9. The learned Advocate for the Respondent however contends that as the blood-stained Lathi was seized from the house of Sohan Lal which was certified by the Serologist to have human blood, the High Court was right in holding that it was the Appellant who had given the Lathi blow on the deceased from which he died. We do not think that this result follows, because it is quite possible for the Lathi to have come into contact with blood when the Appellant threw it down to grapple with Makhan. It is also submitted by the Respondent's learned Advocate that the seizure report of the Lathi shows that out of 7 Pores on the Lathi, blood-stains were found at the 6th Pore, which shows that the Appellant had given a Lathi blow on the head of the deceased. Even this contention is not tenable because there is no evidence of the head injury being a bleeding injury and consequently the Lathi could not have got blood-stains from such an injury. In our view the evidence of the prosecution does not justify the conviction of the Appellant under Section 302 simpliciter. The State not having appealed against acquittal of the co-accused under Section 302, I. P.C., read with Section 34, we cannot consider whether the Appellant is guilty under these sections with the result that the Appellant will have to be acquitted of the charge of murder and instead will have to be convicted under Section 325, read with Section 34, in that he along with the two other accused attacked with dangerous weapons and injured Makhan and the deceased with the common intention of causing grievous injury. The learned Advocate for the Appellant however submits that the Appellant cannot be guilty of any offence as he had inflicted these injuries in exercise of his right of private defence to rescue his sister who was being abducted by Makhan and his companions.

10. Prima facie there would be no question of abduction when a husband takes his wife with him but relying on the evidence of Chameli that she would not have gone with him but for the deceit played upon her by representing that she was called by the Appellant for a Panchayat, it is contended that Makhan was abducting her by practising deceit. A person would be guilty of an

offence of abduction under Section 362 if by force he compels or even by deceitful means induces any person to go from any place. This submission in our view has little validity because the evidence of Chameli, D.W. 1, does not inspire confidence. She says when Makhan asked her to accompany them she replied that she would not go. Makhan then said to her that her brother had called her and so she should accompany him, even then she did not want to go but was forcibly taken. However when she was asked how she was taken forcibly she stated they brought her on some pretext. She admits that at that time her younger brother and one Ram Kali Nain were present in their house. She denies that she has given birth to a child and categorically stated that no child was ever born to her or that it had died 3 months ago. She also denied that she lived with Jiwan in Kapnairi. The evidence that she had not given birth to a child was contradicted by Dr. Kishori Gupta, Court witness No. 1, who examined Chameli and testified that she had given birth to a child. It is also not correct to say that there was no one in the house of Sohan Lal when Chameli was taken away by Makhan, much less to say that she was taken away forcibly or by deceit.

11. For these reasons we cannot accept the contention of the learned Advocate that Chameli was being abducted. In this view it would be unnecessary to consider the other question whether in fact if she was being abducted it would be open to the Appellant to plead that he had a right of private defence and if such a defence is open to him he had not exceeded his right when he in concert with the other co-accused inflicted injuries on Makhan and the deceased. In the result the conviction and sentence under Section 302 is set aside and the accused is acquitted on that charge. He is however found guilty under Section 325, read with Section 34 and sentenced to five years' rigorous imprisonment. In all other respects the convictions and sentences for offences under Sections 324 and 323, read with Section 34, are maintained. All these sentences are directed to run concurrently. The Appeal is accordingly partly allowed, but dismissed with respect to appellants Nos. 2 and 3.

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