

Joginder Ahir and Other

Vs

The State of Bihar

Criminal Appeal No. 115 of 1968

(K. S. Hegde, A. N. Grover JJ)

23.04.1971

JUDGMENT

GROVER, J. -

1. This is an appeal by Special Leave from a judgment of the Patna High Court.
2. Four persons, namely, Jagmohan Ahir, Joginder Ahir, Budhnath Ahir and Manpuran Ahir were tried for having caused the death of Pahnra Uraon on the July 9, 1965 between 8 or 9 a.m. in a paddy field bearing plot No. 1797 in village Pandaria Kusum Tola in the District of Ranchi. They were convicted by the Trial Judge under Section 304, Part II of the Indian Penal Code, read with Section 34, each was sentenced to rigorous imprisonment for five years. On appeal the High Court upheld the conviction but reduced the sentence to one of three years rigorous imprisonment and in the case of each of the four persons. A petition under Article 136 was brought to this Court by the four convicted persons. Special Leave was declined with regard to Jagmohan Ahir but was granted with regard to the other appellants. It was limited to ground No. 7 of the Petition for Special Leave to Appeal.
3. We need refer only to the findings the High Court. The injuries which had been sustained by the deceased had been inflicted by blunt weapons, i.e., lathies. According to the High Court, two blows had been inflicted on the head one on the back and one on the left ankle joint. It was not disputed that the injuries had been inflicted on the deceased in the paddy field which was in the cultivating possession of the appellants and Jagmohan Ahir. The deceased along with his sons (P.Ws. 2 and 3) was engaged in re-ploughing that paddy field when the appellants and Jagmohan are alleged to have caused the injuries to him by means of lathi blows. It was found that the appellants and Jagmohan had exceeded the right of private defence of property. It was further found that it was not possible to attribute any individual injuries to any of the individual assailants. The view of the High Court, however, was that the object of all the four persons including the appellants was the same namely to defend their property. In so doing the right of private defence had been exceeded by them all, and therefore, Section 34 was applicable.
4. On the question of the applicability of Section 34 in cases of the present kind, we may refer to the decision of this Court in State of Bihar v. Nathu Pandey and Others. (AIR 1970 SC 27 : (1970) 1 SCR 358 : 2 SCJ 858.) In that case C who was in possession of a plot on which mahua trees were standing. He went there along with his party with the object of preventing the commission of theft of the mahua fruit by the prosecution party. This he did in exercise of the right of private defence of property. In the altercation which followed two persons belonging to the prosecution party received bhalas injuries resulting in their death. Some members of the accused party were armed with bhalas

but it was not possible to say who was so armed and who out of them had inflicted the fatal injuries. It was found that persons who had caused the deaths had exceeded the right of private defence as they had inflicted more harm than was necessary for the purpose of the defence. It was held that they could not be convicted under Section 302, read with Section 149, Indian Penal Code or under Section 302, read with Section 34. It was pointed out that the High Court had rightly found that the members of the accused party wanted to prevent the collection of mahua fruit and that a common intention of all of them of murder the deceased was not established. In the present case on the findings of the High Court, there was no common intention of the accused persons to murder the deceased. They were however, convicted for having exceeded the right of defence of property in furtherance of the common intention of all. We are unable to concur with the view of the High Court that any such common intention could be attributed to the appellants of the facts and in the circumstances of the case. They certainly had the common intention of defending the invasion of the right to property. While doing so if one or two out of them took it into his or their heads to inflict more bodily harm than was necessary, the others could not be attributed the common intention of inflicting the injuries which resulted in the death of the deceased. Section 34 can only be applied when a criminal act is done by several persons in furtherance of the common intention of all. No over-acts had been proved or established on the part of the appellants which showed that they shared the intention of the person or persons who inflicted the injury or injuries on the head of the deceased which led to his death. They cannot, therefore, possibly be held guilty of an offence under Section 304, Part II, read with Section 34 of the Indian Penal Code.

5. The appeal is allowed, the conviction and the sentence of each one of the appellants is hereby set aside.

</html