

Chandrika Prasad Singh and Others

Vs

The State of Bihar

Criminal Appeal No. 91 of 1968

(J.M. Shelat, I.D. Dua, S.C. Roy JJ)

07.09.1971

JUDGMENT

DUA, J. -

1. The five appellants in this appeal by special leave were tried along with ten others in the Court of the Sessions Judge, Mirzapur for various offences. Chandrika Prasad Singh, appellant No. 1 in this Court, was charged under Section 302, I.P.C. for committing the murder of one Ram Sajjan Singh. He was also charged, along with the remaining co-accused, under Sections 302/149, I.P.C. for the same murder. All the accused were further charged under Section 379, I.P.C. All the five appellants, along with some others out of the accused persons, were in addition charged under Section 148, I.P.C. Seven accused persons, none of whom is before us, were separately charged under Section 147, I.P.C. Appellant Raj Nandan Singh, Bilat Singh, Ram Binod Singh were separately charged under Section 324, I.P.C. for voluntarily causing simple hurt to Shri Sambhu Prasad Singh. The trial Court convicted Chandrika Prasad Singh under Section 302, I.P.C. and sentenced him to imprisonment for life because the murder was not considered to be a premeditated one. While dealing with the charge under Sections 302/149, I.P.C. the trial Court felt that the five appellants, along with Ram Narain Singh who were members of an unlawful assembly, knew that at least hurt was likely to be caused in the rioting in prosecution of the common object of the said assembly. They were, therefore, convicted under Sections 326/149, I.P.C. instead of under Sections 302/149 and sentenced to five years' rigorous imprisonment each. Nine accused out of the 15 were given benefit of doubt and acquitted.

2. On appeal to the High Court by the six convicted persons Ram Narain Singh was also given benefit of doubt by that Court. He was, therefore, acquitted. The appeal on behalf on the present five appellants was dismissed. In this Court the main argument addressed on behalf of the appellants was that Chandrika Prasad Singh was not present at the spot and with respect to the other appellants the material on the record did not show any overt act on their part with the result that they were also entitled to benefit of doubt and, therefore, to acquittal.

3. The High Court dealt with the argument on the plea of Chandrika Prasad Singh's alibi in the following manner :

"On behalf of Chandrika Prasad Singh eight witnesses were examined. His main plea was that on December 3, 1964 he was examined by D.W.I Dr. Jamuna Prasad Rai as he had some urinary trouble. He was referred to another Doctor and D.W. 5 Dr. S. S. Tripathy, examined his blood and stool on December 5, 1964. D.W. 4 Dr. V. N. Singh did the operation. This operation was in the nature of phimosis. Another witness

D.W. 6 was examined to say that Chandrika Prasad Singh had taken a room on rent from December 4 to 12, 1964 but he could not say definitely whether Chandrika Prasad Singh was seen by him in the night of December 5, or in the morning of December 6. The learned Sessions Judge has discussed the evidence of these witnesses in detail in paragraph 44 of his judgment and came to the conclusion that even taking the evidence of these defence witnesses at its face value it could not be conclusively proved that Chandrika Prasad Singh could not be present at the time of the occurrence at the place of occurrence. The most important point in the plea of alibi was the time of the actual examination of blood and urine as well as the operation but this was not indicated anywhere in the evidence. This village is connected with Darbhanga by a pitched road and buses ply at short intervals. So, in my opinion, the learned Sessions Judge was right in disbelieving the plea of alibi put forth by Chandrika Prasad Singh."

The conclusion of the High Court is not tainted with any infirmity justifying re-examination of the evidence by this Court on special leave and interference with those conclusions. The onus to establish alibi was on Chandrika Prasad Singh and we do not find any cogent ground for disagreeing with the High Court that this onus has not been discharged on the evidence on the record.

4. Regarding the other appellants the High Court has observed :

"The learned Sessions Judge has not accepted the story of common object of the assembly to take forcible possession of the paddy crop and the land because he found that this plot was in possession of the accused persons, one of them being Ramdeo Singh. But the common object of the assembly developed on the spot when Ram Sajjan Singh and Shambhu Prasad Singh came to protest against the harvesting of paddy. Most of the appellants had indulged in overt acts and had actually assaulted Ram Sajjan Singh and Shambhu Prasad Singh. So their conviction under Section 326 read with section 149 of the Indian Penal Code must be said to have been correctly arrived at."

The argument that no overt act has been proved against the appellants 2 to 5 and, therefore, they are entitled to be acquitted is difficult to sustain. As observed by the High Court, most of the appellants had indulged in overt acts and had assaulted Ram Sajjan Singh. If the other appellants were members of the assembly, the unlawful common object of which developed at the spot and they continued as its members, then, they are clearly liable to be proceeded against and convicted. It has not been shown that the High Court is wrong in its observation on the material on the record and we have not been persuaded to disagree with that Court. From the finding of the High Court it is clear that these appellants were present at the spot at the time of the occurrence not merely as passive or innocent spectators without intending to share the common object of the assembly; nor did they happen to be there out of idle curiosity, content by merely gazing on, having nothing to do with the assault.

5. We are, therefore, unable to hold that their conviction is illegal or not sustainable on the material on the record. This appeal accordingly fails and is dismissed.

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