

Ramlagan Singh and Others

Vs

State of Bihar

Criminal Appeal No. 121 Of 1970

(I.D. Dua, J. M. Shelat, H. R. Khanna JJ)

17.08.1972.

JUDGMENT

KHANNA, J. -

1. This is an appeal by special leave by 13 persons, Ramlagan Singh, Ram Suresh Singh alias Suresh Singh, Ramdutt Singh, Awadh Singh, Ambika Singh, Saligram Singh, America Singh, Ram Nandan Singh, Karoo Singh, Ram Swaroop Singh, Bhondu Singh, Sheodutta Singh and Bali Singh, against the judgment of Patna High Court.
2. The 13 appellants and Kameshwar Singh were tried in the court of Additional Sessions Judge, Gaya for various offences. The main charge was against Ramlagan Singh and Suresh Singh, who are both brothers, for an offence under Section 302, Indian Penal Code for causing the death of Tulsi Yadav. There were also charges under Section 302 read with Section 109, Section 302 read with Section 149, Sections 324, 147 and 148, Indian Penal Code. The charge under Section 324 related to the injuries caused to Narsingh Yadav P.W. The trial court acquitted Kameshwar Singh, Ram Suresh Singh and Ramlagan Singh were convicted under Sections 302 and 148, Indian Penal Code, and each of them was sentenced to undergo imprisonment for life on the former count and rigorous imprisonment for a period of two years on the latter count. Ramdutt Singh was convicted under Section 147 and Section 323 read with Section 109, Indian Penal Code. He was awarded a sentence of rigorous imprisonment for a period of one year on the former count. No sentence was awarded to him for the offence under Section 323 read with Section 109, Indian Penal Code. Karoo Singh was convicted under Section 148, Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of two years. Ambika Singh, Saligram Singh and America Singh were convicted under Section 323, Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of one year. They were also convicted under Section 147, Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of one year. Awadh Singh, Ram Nandan Singh, Ram Swaroop Singh, Bhondu Singh, Sheodutta Singh and Bali Singh were convicted under Section 147, Indian Penal Code, and each of them was sentenced to undergo rigorous imprisonment for a period of one year. The sentences awarded to each of the accused were ordered to run concurrently. On appeal the Patna High Court altered the conviction of Ramlagan Singh and Suresh Singh accused from under Section 302 to that under Section 304, Part II, Indian Penal Code. Each of these two accused was sentenced to undergo imprisonment for a period of eight years on that count. In other respects, the appeals filed by the 13 accused-appellants were dismissed.
3. The prosecution case is that on August 24, 1965, Tulsi deceased, along with his brother Raj Kumar (P.W. 9) and Narsingh Yadav (P.W. 2), proceeded from his village Hasanpur to Dhia market. When they passed near the field of Ramdutt accused in the area of village Baraini, Ramdutt shouted

that the enemy was passing that way. On the shout the Ramdutt accused, the other accused who were nearby, came there. Four of the accused, namely, Ramlagan Singh, Suresh Singh, Kameshwar Singh and Karoo Singh were armed with gandasas with the others were armed with lathis. Ramlagan Singh and Suresh Singh then gave gandasa blows on the head of Tulsi. Tulsi fell down and was given further gandasa blows on the Ramlagan Singh and Suresh Singh. The other accused, who were armed with lathis, also joined in the assault, Karoo Singh gave a gandasa blow at the back of Narsingh Yadav P.W. Narsingh Yadav was also given lathi blows by America Singh, Ambika Singh and Saligram. Narsingh Yadav on receipt of injuries ran away, while Tulsi died at the spot. The occurrence, it is stated, was also witnessed by Tapeswar Singh (P.W. 1), Lakhan Singh (P.W. 3) and Jaglal Yadav (P.W. 5). These three witnesses were present in the nearby fields at the time of the occurrence. The accused after causing injuries ran away.

4. Raj Kumar P.W. accompanied by Tapeswar Singh P.W. went to police station Belaganj at a distance of 8 miles from the place of occurrence and arrived there at about 5 p.m. Raj Kumar then made statement which was entered by the Munshi in the daily diary. Ramdeni Singh (P.W. 9), who was Station House Officer, was not present at the police station at that time. On receiving intimation, S.H.O. Ramdeni Singh went to the police Station and recorded the statement of Raj Kumar at 6.30 p.m. The Station House Officer left the police station at 9 p.m. and arrived at the place of occurrence at about 2 a.m. Delay in arrival at the place of occurrence was due to heavy rains and the fact that the Station House Officer had to cover the distance on foot. On arrival at the place of occurrence, the Station House Officer found the dead body of Tulsi lying there. The Station House Officer prepared the inquest report and sent the dead body for post-mortem examination. Post-mortem examination on the dead body of Tulsi was performed by Dr. Ram Chander Prasad Sinha on August 25, 1965. Narsingh Yadav P.W. was also got examined from the doctor and was found to have six simple injuries on his person. One of those injuries consisted of an incised wound.

5. At the trial Tapeswar Singh (P.W. 1) Narsingh Yadav (P.W. 2), Lakhan Singh (P.W. 3). Jaglal Yadav (P.W. 5) and Raj Kumar (P.W. 8) gave ocular evidence regarding the occurrence in support of the prosecution case.

6. The accused in their statements under Section 342 of the Code of Criminal Procedure denied the prosecution allegations and stated that they had been falsely involved in the case. Written statement was also filed on behalf of the accused, according to which Tapeswar Singh P.W. collected a mob of about 100 persons, including Tulsi, Narsingh Yadav and others. The mob then went to the Baithak of Ram Nandan Singh appellant and assaulted Ram Nandan Singh and Suresh Singh. The villagers then came there and caused injuries to Tulsi, Narsingh Yadav and Tapeswar. In defence, the accused examined Dr. K. N. Sinha, who deposed that Ram Nandan Singh and Ram Suresh Singh accused had three injuries each on their persons when the witness examined them on the night of August 24, 1965. Those injuries incised wounds.

7. The trial court accepted the evidence of the five eye-witnesses. It was also held that the common object of the unlawful assembly was only to assault and not to commit murder. Death of Tulsi, it was observed, was due to the individual acts of Ramlagan Singh and Suresh Singh accused. The other accused, it was held, could not be held to be constructively liable for the murder of Tulsi. The accused were accordingly convicted and sentenced as above. On appeal the High Court took the view that Ramlagan Singh and Suresh Singh could not have the intention of killing Tulsi. At the same time, in the opinion of the High Court, they had the knowledge that death of Tulsi might result as a result of the blows given by them. Ramlagan Singh and Suresh Singh were accordingly convicted under Section 304, Part II Indian Penal Code. In other respects the judgment of the trial

court was upheld.

8. We have heard Mr. Chari on behalf of the accused-appellants and Mr. Jha on behalf of the State, and are of the opinion that no case has been made for interference with the judgment of the High Court. It cannot be disputed that Tulsi died as a result of the injuries which were inflicted upon him. Dr. Ramesh Chander Prasad Sinha, who performed post-mortem examination on the body of Tulsi deceased, found eight injuries on the body. The first injury consisted of an incised wound $4\frac{1}{2} \times 1\frac{1}{2}$. It was bone deep on the left side of the head. The injury resulted in the cutting of the skin muscles and the scalp, the left parietal bone and the outer covering of the brain with blood clots on the left lobes of the brain. The second injury consisted of an incised wound $2\frac{1}{4} \times 1\frac{1}{2} \times 1\frac{1}{4}$ on the right side of the head, just behind the forehead. The third injury was scalp deep on the vault of the head. There were five incised wounds bone deep on the back of the head. In addition to that, there were incised wounds on the left forearm, left wrist and right leg. Bruise was also found on the right shoulder.

9. According to the prosecution case, the incised wounds on the body of Tulsi deceased were caused by Ramlagan Singh and Suresh Singh accused. The prosecution in this respect examined Tapeshwar Singh (P.W. 1), Narsingh Yadav (P.W. 2), Lakhan Singh (P.W. 3), Jaglal Yadav (P.W. 5) and Raj Kumar Yadav (P.W. 8). The evidence of these witnesses was accepted by the trial court and the High Court, and nothing has been brought to our notice as may justify interference with the appraisalment of the said evidence in this appeal under Article 136. It may be stated that Narsingh Yadav was himself injured during the course of occurrence and there can be hardly any doubt regarding his presence at the spot. Likewise, the other four witnesses have satisfactorily accounted for their presence at or about the place of occurrence.

10. Mr. Chari has referred to the fact that injuries were found on the persons of the two of the accused, namely, Ram Nandan Singh and Suresh Singh. It is stated that these injuries have not been satisfactorily explained by the prosecution witnesses. No question, however, appears to have been put to any of the prosecution witnesses regarding the injuries caused to Ram Nandan Singh and Suresh Singh accused. As such, there arose no occasion for the prosecution witnesses to explain the injuries on the persons of the two of the accused. Apart from that, we find that a cross case was started against the prosecution witnesses in this case regarding the injuries in Ram Nandan Singh and Suresh Singh accused. The accused in the cross case, we have been informed by Mr. Chari, were acquitted on appeal by the High Court. It appears that the witnesses refrained from referring to the injuries on the persons of Ram Nandan Singh and Suresh Singh because of fear of being implicated in the cross case. Looking to the circumstances of the case, we are of the opinion that the non-mention of the injuries on the persons of the two accused in the prosecution evidence would not justify interference with the appraisalment of the evidence by the trial court and the High Court.

11. The appeal fails and is dismissed.

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