

Shyam Niranjana Dubey and Others

Vs

State of U. P.

Criminal Appeal No. 150 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

18.12.1973

JUDGMENT

BEG, J. -

1. The appellants, Shyam Niranjana Dubey, his son Mata Charan, and his friend Ramhit were charged and convicted of offences punishable under Section 302 read with Section 34, Indian Penal Code, and sentenced to life imprisonment, whereas Sharda Prasad another friend and associate of Shyam Niranjana Dubey was convicted for an offence punishable under Section 302 simpliciter and sentenced to death. All the four accused persons were also charged and convicted under Section 323/34, Indian Penal Code, and sentenced to six months rigorous imprisonment, the sentences running concurrently. In their appeals before the High Court of Allahabad the convictions of all the three appellants as well as of Sharda Prasad were maintained, but the sentence of Sharda Prasad was converted into one of life imprisonment whereas the sentences of all the three appellants were maintained. This Court granted special leave to the three appellants while rejecting Sharda Prasad's application for special leave to appeal. The only question raised before us is whether on the facts and circumstances of the case found by the Courts of fact, the appellants could be punished for the offence of murder with the aid of Section 34, Indian Penal Code.

2. The concurrent findings of other two Courts which had to decide questions of fact where : Bhagelu, a shepherd, had cut some twigs of a babool tree which was claimed by Shyam Niranjana who started collecting the twigs. Bhagelu, who considered himself entitled to cut the babool tree which he claimed as his, objected to Shyam Niranjana's action. There was an exchange of abuses possibly followed by a scuffle between Bhagelu and Shyam Niranjana. Shyam Niranjana's shouts attracted Sharda Prasad who appeared armed with spear accompanied by Mata Charan and Ramhit who had sticks. Shyam Niranjana asked the appellants to beat Bhagelu who had started for his house. The appellants surrounded Bhagelu and tried to inflict lathi injuries on him but did not succeed as Bhagelu turned round. He was, however, faced with Sharda Prasad when he turned round. Sharda Prasad killed Bhagelu by thrusting his spear twice into him. The appellants then ran away with Sharda Prasad.

3. Mr. Mulla, appearing for the appellants, has contended that the only ground on which the appellants have been made liable for sharing a common intention with Sharda Prasad was that they were held to have surrounded Bhagelu so as to enable Sharda Prasad to kill him and to have tried to use their sticks, but "surrounding", he contends, is a matter of inference and trying unsuccessfully to use sticks does not establish any common intention. We, therefore, examined the evidence of the two alleged eye-witnesses, Sarabjit, P.W. 1, and Shri Kant, P.W. 4, to find out what has meant by "surrounding" by them. They were held to have seen the start of the quarrel between Shyam

Niranjan, who was the Pradhan of the village, and Bhagelu, as a result of which Shyam Niranjan had given a shout which brought Sharda Prasad with a spear and the two appellants, Mata Charan and Ramhit, with sticks to act in execution of the orders of Shyam Niranjan. It is apparent from the evidence that Shyam Niranjan was giving the orders. Mata Charan and Ramhit being youngmen had rushed ahead so as to be able to intercept the retreat of Bhagelu towards the East in which direction the house of Bhagelu lay. Shyam Niranjan had approached from behind with Sharda Prasad from the West so that the escape of Bhagelu may be barred. The part on which he was thus caught ran East West. Clearly, this was what was meant by "surrounding". The witnesses had used the correct word. The Courts also, in our opinion, were right in endorsing this interpretation of the witness on the facts mentioned above. It may be that Ramhit and Mata Charan had only struck their sticks on the ground so as to indicate to Bhagelu that he will be struck if he proceeded further to his house towards the East. It is in evidence that Shyam Niranjan has actually given the order to kill Bhagelu so that the accused acted in concert. Bhagelu had following injuries :

"Punctured wound 1 1/2 in. X 1/4 in. lower part of chest above the phisternum bone (?) a little towards left from the middle line. The wound was oblique and was going downwards laterally from above and was deep to the chest cavity.

One punctured wound vertical 1/2 in. X 1/4 in. X 1/2 in. on the right side back lower part.

On internal examination the following things were found.

The lower part of the sternum bone was cut. That part of pericardium which joins diphram was punctured.

Right verticle was punctured. The wound was 1/4 in. X 1/2 in. on the lower part back side".

The place of the occurrence was proved by the recovery of blood from site which corroborated the prosecution version.

4. It is true that another person Badri, who had tried to intervene, was said to have been beaten, but he appears to have compromised the matter with the appellants who, in addition to convictions mentioned above under Sections 302/34, Indian Penal Code, were also sentenced under Section 323 read with 34, I.P.C., although these sentences were directed to run concurrently. Badri did not appear in the witness box and his injuries were not proved. The convictions of the appellants under Section 323 read with 34, I.P.C., had been affirmed by the High Court. We think that, in the circumstances of the case, the convictions under Sections 323/34, I.P.C., can and should be set aside. But, we see no reason whatsoever to interfere with the convictions and sentences of the appellants under Section 302 read with 34, Indian Penal Code.

5. The background of the occurrence shows that there were constant quarrels between Shyam Niranjan and the shepherds over the taking of twigs from babool trees. It was also stated by Sarabjit, P.W. 1, that Shyam Niranjan, Sabhapati, was trying to help Sharda Prasad in taking forcible possession of the parti land of the shepherds over which the babool trees stood. In other words, the appellants had been making a common cause with Sharda Prasad. The manner in which they responded to the call of Shyam Niranjan and emerged together from the house of Sharda Prasad lying to the north of the path suggests that there could have been even a plan to teach a lesson to one

of the shepherds for taking twigs from babool trees. It was only near the house of Sharda Prasad that Shyam Niranjana, who was following Bhagelu, gave his shout for assistance. He must have known, when he gave that shout, that the appellants were there. The way in which Sharda Prasad emerged with a spear indicated preparation to kill. The other two appellants had enabled Sharda Prasad to commit murder by preventing the escape of Bhagelu. We have, therefore, no doubt that they had a common intention with Sharda Prasad.

6. The result is that we allow the appeal to the extent that we set aside the convictions of the appellants under Section 323 read with Section 34, Indian Penal Code, but we affirm the convictions and sentences of the appellants under Section 302 read with Section 34, Indian Penal Code, and dismiss the appeal on the main point argued before us for the appellants.

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