

Lalai @ Dindoo and Another

Vs.

State of U. P.

Criminal Appeal No. 13 of 1974

(Y. V. Chndrachud, A . C. Gupta, R. S. Sarkaria JJ)

04.10.1974

JUDGMENT

CHANDRACHUD, J. -

1. The appellants Lalai alias Dindoo and Ram Ajore were convicted by the learned Sessions Judge, Faizabad, on the charge that they had committed the murder of one Paras Nath. Lalai was convicted under Section 302, Penal Code and was sentenced to death while Ram Ajore was convicted under Section 302 read with Section 34, Penal Code and was sentenced to imprisonment for life. The order of conviction and sentence having been confirmed by the High Court of Allahabad the appellants have filed this appeal by special leave of this Court.
2. A land litigation between the appellants and the deceased Paras Nath was decided in favour of the latter on November 17, 1971. That led to enmity between the parties which ultimately culminated in the murder of Paras Nath.
3. On November 24, 1971 Paras Nath and his son, Radhey Shyam, took their evening meal at about 6 p.m. and retired for the night. Radhey Shyam was sleeping on a cot in the mandai while Paras Nath was sleeping on a takhat. It is alleged that at about 10.30 p.m. the appellants went near the takhat, Lalai being armed with a gandasa and his brother Ram Ajore with a spear. Lalai gave a number of blows on the neck and face of Paras Nath as a result of which he died instantaneously. Radhey Shyam who was sleeping at a distance of three cubits from Paras Nath woke up on hearing a groaning sound and is alleged to have seen Lalai assaulting Paras Nath. He attempted to rescue his father but Ram Ajore threatened him with a spear. At about 11 a.m. the next day Radhey Shyam lodged the first information report at the police station which is at a distance of about seven miles from the scene of occurrence.
4. The prosecution led the evidence of four eyewitnesses in support of its case : Radhey Shyam, Dhoosey, Brij Mohan and Ram Charitar. The evidence of the last named witness has been discarded by the Sessions Court as well as the High Court and it need not detain us. The evidence of the other three witnesses has been accepted by both the Courts and the narrow question for decision in this appeal is whether their concurrent appreciation of evidence is so fundamentally wrong as to justify interference by this Court.
5. Learned Counsel appearing on behalf of the appellants has drawn our attention to the evidence of Radhey Shyam, Dhoosey and Brij Mohan. We are unable to see any reason why we should differ from the view taken by the two Courts of that evidence. Radhey Shyam is a natural witness. His father, the deceased Paras Nath, had purchased a large quantity of coal on the evening of the 24th

and had stored it at his brickkiln near the mandai. Radhey Shyam was sleeping at a close distance from his father and considering the nature of injuries inflicted on the father, it is impossible that Radhey Shyam would not wake up. The only infirmity in his evidence is said to be that his clothes had no blood-stains and that is said to indicate that he was not present when his father was assaulted. This circumstance has been taken into consideration by the High Court and it was right in taking the view that if the father died an instantaneous death it was not improbable that Radhey Shyam did not go near him.

6. The only other ground on which Radhey Shyam's evidence was challenged is that though the incident took place at about 10.30 p.m. on the 24th it was not until 11 a.m. on the 25th that Radhey Shyam lodged the first information report. This undoubtedly is an important circumstance but the Sessions Court and the High Court have given a reasonable explanation of the delay. The night was dark, the road was rough and the assault so fierce that Radhey Shyam could not have collected his wits to proceed straightway to the police station. There is no indication in the evidence that the names of the appellants were incorporated in the first information report as a result of any confabulation.

7. It was finally urged that in any case Ram Ajore was a silent spectator, took no part in the assault and cannot, therefore, be held guilty of having entertained a common intention with Lalai to commit the murder of Paras Nath. On this aspect, the time at which Paras Nath was murdered, the place of murder, the weapons carried by the appellants, their relationship and finally their concerted conduct in the wake of murder are all relevant. The offence took place at about 10.30 p.m. and unless the appellants had sought their victim, he was not likely to have crossed their path. Paras Nath was murdered in his own habitation and there can be no doubt that the appellants sought him purposefully. Ram Ajore did not participate in the assault on Paras Nath but he played his part truly by his brother by carrying a spear so as to overcome any outside interference with the attainment of their object. Lastly, immediately after Paras Nath was murdered the appellants ran away together. These facts have a sufficient bearing on the existence of common intention in the commission of Paras Nath's murder.

8. In the result we confirm the order of conviction and sentence and dismiss the appeal.

</html