

Mehtab Singh and Others

Vs

The State of Madhya Pradesh

Criminal Appeal No. 57 of 1971

(Y. V. Chndrachud, P. N. Bhagwati JJ)

19.11.1974

JUDGMENT

BHAGWATI, J. -

1. This appeal, by special leave, arises out of a judgment of the High Court of Madhya Pradesh. Twenty-three persons were prosecuted in the Court of the Third Additional Sessions Judge, Bhopal on various charges under Section 147 and Section 302 read with Section 149 of the Indian Penal Code. Out of these twenty-three persons seventeen, including Than Singh and Bhagwani, were acquitted by the Sessions Court. Of the remaining six, Pyare was convicted under Sections 302 and 147 and sentenced to rigorous imprisonment for life for the former offence and two years rigorous imprisonment for the latter, both sentences being directed to run concurrently. The remaining five, namely, Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram were found guilty only under Section 147 and sentenced to rigorous imprisonment for two years. Being aggrieved by the order of conviction and sentence, Pyare, Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram preferred Criminal Appeal No. 672 of 1967 and the State of Madhya Pradesh also preferred Criminal Appeal No. 777 of 1967 against the acquittal of Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram under Section 302 read with Section 149 and the acquittal of Than Singh and Bhawani under Section 147 as well as Section 302 read with Section 149. The appeal of Pyare was partly allowed and his conviction was altered to one under Section 304, Part II and sentence reduced to a term of seven years' rigorous imprisonment, while the appeal of the other accused was rejected. The appeal of the State was accepted and Mehtab Singh, Ram Singh, Sukhram, Maniram, Nandram, Than Singh and Bhawani were convicted under Section 147 and Section 304 Part II read with Section 149 and while maintaining the sentence under Section 147, the High Court directed that Mehtab Singh should be sentenced to rigorous imprisonment for three years. Pyare accepted the judgment of the High Court, but Mehtab Singh, Ram Singh, Sukhram, Maniram, Nandram, Than Singh and Bhawani preferred the present appeal with special leave obtained from this Court.

2. The incident out of which the present appeal arises took place in the evening at about 6 p.m. on March 27, 1967 in a village called Khajuri Kalan in the State of Madhya Pradesh. That day was the second day after Holi - what the witnesses have called Dooj of Holi. There were admittedly two factions in this village, one of Thakurs led by Mehtab Singh and the other of Chamars led by Ram Singh and there was animosity between these two factions. The prosecution case was that at about 6 p.m. in the evening Halku, Nanoo (PW 4), Misri (PW 11), Somat and some other Chamars were sitting on a slightly raised ground in front of Halku's hut when all the twenty-three accused including the appellants, came from the direction of the temple. Mehtab Singh and Than Singh started abusing the Chamars and shouted : "Chamars, let us finally settle the score". Mithulal (PW

1), who belonged to the faction of the Chamars and was sitting there with Halku and others, entreated the accused with folded hands, but that had no effect and Mehtab Singh, Than Singh and others started pelting stones at the Chamars. Misri (PW 11) was injured by one of the stones pelted by Mehtab Singh. In the meantime the accused picked up sticks and farsas from the hut of Jagannath for attacking the Chamars and on seeing this, the Chamars ran to their houses. Halku, Nanoo and Mithulal took shelter in a room in the hut of Halku and Prembai wife of Halku locked the room from outside. Mehtab Singh, Ram Singh, Pyare and some of the accused, however, broke open the lock and Ram Singh, pyare, Sukhram, Maniram and Nandram entered the room and dragged out Halku, Nanoo (PW 4) and Mithulal (PW 1). The other accused were at that time standing in the court-yard. Mehtab Singh then gave a knife blow on the neck of Halku and Pyare picked up a leg of bedstead which was lying there and struck a blow with it on the head of Halku. Than Singh abused and shouted : "all these persons should be beaten and finished off" and then Halku, who had in the meantime fallen on the ground, as also Nanoo (PW 4) and Mithulal (PW 1) were all beaten by the accused. It appears that there had also been some incident between Thakurs and the Chamars earlier in the garden of the temple and one Chandan Singh had given information about that incident to the Sub-Inspector of Police at Govindpura Police Station and he had stated that still both parties "are trying to make criminal assault on others and hence action should be taken by the police". L. S. Rathor, therefore, came down to the village but by the time he arrived, the incident resulting in the attack on Halku, Nanoo (PW 4) and Mithulal (PW 1) had already taken place and Halku, Nanoo and Mithulal were lying injured in the court-yard. L. S. Rathor thereupon wrote down a village complaint Ex. P-1 as dictated by Prema (PW 2) and forwarded it to there Govindpura Police Station where it was recorded as first information report Ex. P-30. L. S. Rathor thereafter sent Halku, Nanoo, Mithulal, Misri and other injured person to Hamidia Hospital, Bhopal where Dr. R. C. Joshi examined them and issued reports were serious and he died the next morning. The post-mortem examination of the dead body of Halku was performed by Dr. C. N. Dafal and he noted the external as well as internal injuries caused to Halku. The police thereafter recorded the statements of the witnesses and after the investigation was completed a criminal case was filed which ultimately resulted in the conviction of the appellants and Pyare.

3. The appellants before us are divisible into two groups, one group consisting of Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram and the other consisting of Than Singh and Bhawani. So far as Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram are concerned, both the Sessions Court as well as the High Court found that they were members of an unlawful assembly and force and violence was used by members of the unlawful assembly in prosecution of its common object and hence they were guilty of the offence under Section 147 and since this finding is a concurrent finding of fact based on appreciation of evidence, we do not thin we would be justified in reviewing it. It is true that the Sessions Court acquitted Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram of the offence under Section 302 read with Section 149 on the ground that the evidence did not show that the common object of the unlawful assembly was to kill Halku and in prosecution of that common object the murder of Halku was committed, but the High Court took the view that whatever might have been the original common object of the unlawful assembly when the accused stated abusing and pelting stones, it developed into the common object of killing Halku and it was in prosecution of that common object that Pyare killed Halku and committed the offence under Section 304, Part II and, therefore, Mehtab Singh, Ram Singh, Sukhram, Maniram, and Nandram were guilty of the offence under Section 304, Part II read with Section 149, This finding of the High Court was based primarily on the evidence of the eyewitnesses and particularly Mithulal (PW 1) and Prembai (PW 3). We have gone through the evidence of the eyewitnesses and though it might be possible to find fault with the evidence, in one

respect or another, so far as Prema (PW 2), Nanoo (PW 4) and Misri (PW 11) are concerned the evidence of Mithulal (PW 1) and Prembai (PW 3) is satisfactory and worthy of credence and must be regarded as sufficient to sustain the conviction of Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram. Both Mithulal (PW 1) and Prembai (PW 3) are natural witness whose presence at the scene of the incident cannot be doubted and on thing has been brought out in the cross-examination which would shake their testimony in regard to the role played by Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram. The evidence of Prema (PW 2), Nanoo (PW 4) and Misri (PW 11) also supports the broad features of the prosecution case against Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram, though there may be some minor infirmities in their evidence. The version of the prosecution in its essential features also receives support from the village complaint Ex. P-1 which was recorded by Sub-Inspector L. S. Rathor within an hour and a half from the commission of the offence. It is possible that when the accused started abusing and petition stones at the Chamars, their common object was only to cause hurt to the Chamars, but when they went after Halku and dragged him out of the room and Mehtab Singh struck him with a knife and Pyare picked up a leg of a bed-stead and gave a blow with it on the head of Halku and others also gave stick blows to Halku after he had fallen, there can be no doubt that they developed the common object to kill or at least to give him a beating with full knowledge that it would be likely to cause death of Halku and it was in prosecution of this common object that Halku was killed and an offence under Section 304, Part II was committed. This would be sufficient to sustain the conviction of Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram under Section 304, Part II read with Section 149. The learned Counsel appearing on behalf of the appellants, however, contended in a last desperate argument that, according to the evidence on record there were more than one person by the name of Ram Singh and Sukhram in the village and since there was no identification of Ram Singh and Sukhram, appellants Nos. 2 and 6, at an identification parade which would connect them with the crime, they at any rate were entitled to be acquitted. But this argument is also without force and cannot be accepted. The necessity for holding an identification parade can arise only where the accused are not previously known to the witnesses. But here Mithulal (PW 1), Prema (PW 2), Prembai (PW 3), Nanoo (PW 4) and Misri (PW 11) all knew the appellants and it was with reference to Ram Singh and Sukhram, appellants Nos. 2 and 6, that they gave evidence. It is clear from their evidence that they meant to refer not to any other Ram Singh or Sukhram, but to Ram Singh and Sukhram who were the accused before the Court. They actually assigned specific roles to Ram Singh and Sukhram who were arraigned as accused in the case. There was also no cross-examination directed against the identification of Ram Singh and Sukhram, appellants Nos. 2 and 6. This argument cannot, therefore, avail Ram Singh and Sukhram to escape conviction. We must, therefore, hold that Mehtab Singh, Ram Singh, Sukhram, Maniram and Nandram were rightly convicted by the High Court under Section 304, Part II read with Section 149 and the appeal in so far as it relates to them must be dismissed.

4. We have bracketed Than Singh and Bhawani in the second group because both of them were acquitted by the Sessions Court but their acquittal was set aside by the High Court in appeal and they were convicted under Section 147 and Section 304, Part II read with Section 149. The question which arises in their case is : was the High Court justified in reversing their acquittal ? The law is now well settled that where two views of the evidence are reasonably possible, the appellate Court ought not to disturb a finding of acquittal. There are numerous decisions of this Court laying down this proposition. They were all reviewed in a recent decision in *Ram Jag v. State of U. P.* ((1974) 4 SCC 201, 207 : 1974 SCC (Cri) 370, 376) where one of us (Chandrachud, J.) summarised the principled governing appeals against acquittal in the following words (SCC p. 207, Para 13, SCC Cri p. 376) :

The principles governing appeals against acquittal are thus firmly established and issue cannot now be re-opened. The Code of Criminal Procedure by Section 423, has accorded parity to appeals against conviction and appeals against acquittal; the Code makes no distinction between the powers of the appellate Court in regard to the two categories of appeals and therefore the High Court has powers as full and wide in appeals against acquittal as in appeals against conviction. Whether the High Court is dealing with one class of appeals or the other, it must equally have regard to the fundamental principles of Criminal Jurisprudence that unless the statute provides to the contrary, there is a presumption of innocence in favour of the accused and secondly, that the accused is entitled to the benefit of reasonable doubt. Due regard to the views of the trial court as to the credibility of witnesses in matters resting on pure appreciation of evidence and the studied slowness of the appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing and hearing the witnesses, where such seeing and hearing can be useful aids to the assessment of evidence, are well-known principles which generally inform the administration of justice and govern the exercise of all appellate jurisdiction. They are self-imposed limitations on a power otherwise plenary and like all voluntary restraints, they constitute valuable guidelines. Such regard and slowness must find their reflection in the appellate judgment, which can only be if the appellate Court deal with the principal reasons that influenced the order of acquittal and after examining the evidence with care gives its own reasons justifying a contrary view of the evidence. It is implicit in this judicial process that if two views of the evidence are reasonably possible, the finding of acquittal ought not to be disturbed.

Was the acquittal of Than Singh and Bhawani rightly reversed in the light of these principles ? So far as Than Singh is concerned, there was considerable evidence against him which could be regarded as satisfactory and reliable. Prema (PW 2) stated in his evidence that when the accused came towards the Mohalla of the Chamars, Mehtab Singh and Than Singh abused the Chamars and shouted : "Beat the ruffians" and this statement of Prema (PW 2) was corroborated by the village complaint Ex. P-1 which he gave to Sub-Inspector L. S. Rathor within one and a half hours from the commission of the offence. Mithulal (PW 1) also gave the same version and said that when the accused came from the direction of the temple, Mehtab Singh and Than Singh abused and said : "Cobblers let us decide the matter finally today" and thereafter Mehtab Singh, Than Singh and Bhawani started pelting stones at the Chamars. It was also stated by Mithulal (PW 1) that when he, Halku and Nanoo were dragged out of their room and Mehtab Singh and Pyare assaulted Halku, Than Singh exhorted the other accused to beat and finish off the Chamars and thereupon the accused gave stick blows to him, Halku and Nanoo. The evidence of Prembai (PW 3) also attributed a positive role to Than Singh in the incident which occurred in the court-yard of Halku's hut. It appears that the Sessions Court overlooked this clear and cogent evidence against Than Singh and acquitted him merely on the ground that the evidence of Dr. C. N. Dafal did not support the prosecution case that after Halku had been assaulted by Mehtab Singh and Pyare, Than Singh struck a stone on the testicles of Halku. It may be mentioned that at least three witnesses, namely, Prema (PW 2), Prembai (PW 3) and Nanoo (PW 4) deposed in their evidence that Than Singh had dealt a blow with a stone on the testicles of Halku, but this evidence was rejected by the Sessions Court on the sole ground that Dr. C. N. Dafal, who performed the post-mortem examination on the dead body of Halku, did not depose to any injury on the testicles. We may assume with the Sessions Court that in view of the fact that no injury on the testicles was deposed to by Dr. C. N. Dafal, this part of the evidence of Prema (PW 2), Prembai (PW 3) and Nanoo (PW 4) may not be accepted, but that does not mean that the whole of the evidence, in so far as it implicates Than Singh, should be rejected as unworthy of credence. The High Court adopted a critical approach and held, relying on the evidence of the eyewitnesses, that there was sufficient evidence to show that Than Singh "had joined the others and

shared the common object of committing the death of Halku". We think the High Court was right in reversing the acquittal of Than Singh and convicting him for the offences under Section 147 and Section 304, Part II read with Section 149.

5. The case of Bhawani, however, stands on a different footing. Not a single eyewitness stated that Bhawani exhorted the other accused to beat the Chamars and only two of the eyewitnesses, namely, Mithulal (PW 1) and Misri (PW 11) said that Bhawani pelted stones at the Chamars. No role in regard to breaking open the room was also attributed to Bhawani by any of the eyewitnesses. Even in regard to the incident of dragging out Halku, Nanoo and Mithulal from the room, none of the eyewitnesses, except Prembai (PW 3), implicated Bhawani. It is quite possible that Prembai (PW 3) may have been mistaken when she stated that Bhawani was one of the persons who dragged out Halku, Nanoo and Mithulal from the room. Mithulal (PW 1) and Prema (PW 2) also attributed one further act to Bhawani and that was that Bhawani gave two blows with Lohangi on the head of Mithulal. But this statement of Mithulal (PW 1), and Prema (PW 2) was rejected by the Sessions Court and rightly so, because there was no panchnama of the injuries received by Mithulal (PW 1) nor did Dr. R. C. Joshi, who examined all the Chamars who were sent to him for medical examination immediately after the incident, give any report or state in his evidence that Mithulal (PW 1) had received any injuries. The High Court, however, totally ignored this circumstance and held that Bhawani was a member of the unlawful assembly which developed the common object of killing Halku. We do not find in the judgment of the High Court any discussion of the substantial reasons given by the Sessions Court for not accepting the testimony of the eyewitnesses in regard to Bhawani. The view taken by the Sessions Court was in any event a reasonably possible view of the evidence in so far as the case against Bhawani is concerned. We are, therefore, of the view that the High Court was in error in reversing the acquittal of Bhawani and the appeal, in so far as it relates to him, must succeed.

6. We accordingly allow the appeal in so far as it relates to Bhawani appellant No. 4. We acquit Bhawani appellant No. 4 of the offences charged against him and since he is on bail, we direct that he need not surrender to this bail and that the bail bonds be discharged. So far as other appellants, namely, Mehtab Singh, Ram Singh, Sukhram, Maniram, Nandram and Than Singh are concerned, the appeal is dismissed. These appellants will surrender to their bail.

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