

Puran

Vs

State of Rajasthan

Criminal Appeal No. 2 of 1972

(M.H. Beg, P.N. Bhagwati, R.S. Sarkaria JJ)

22.08.1975

JUDGMENT

BHAGWATI, J. -

1. This appeal, by special leave, arises out of an internecine fight between two brothers and their respective families. The deceased Kana and Birdha were brothers and they had fields adjoining to each others. There was a small mudwall constructed on the boundary line dividing the two fields. It appears that the deceased Kana and his sons Babulal, Chauth Mal, Lalu and deceased Bhanwaria demolished this mudwall. This provoked the ire of Birdha and his sons Sohan, Kalyan and the appellant and on the fateful day, namely, April 4, 1969 at about 7 a.m., when both the rival groups were in their respective fields, Birdha shouted to the deceased Kana and his sons and called them to his field. The deceased Kana and one Chanda, who was present in the field at that time, went to the field of Birdha followed by the sons of the deceased Kana, Birdha asked the deceased kana and his sons as to why they had demolished the mudwall between the two fields and this led to exchange of abuses between the two groups. The altercation soon developed into an usual fight and according to the prosecution, Birdha struck one below with a lathi on Babulal and another on the deceased Kana and on Lalu intervening, the appellant, who was armed with dantli (sickle), gave a below with the dantli on the backside of the head of Lalu. Sohan had an axe with him and he gave an axe below on the hand of Lalu and followed it up by giving another axe below on the elbow of Babulal. Here, according to the prosecution, ended what may be called the first state of the fight. The appellant and Sohan proceeded towards the village and Birdha, Kalyan and one Benilal, who was also with them, retired to the well in their field. But this respite was shortlived because after about ten minutes the appellant and Sohan returned with Ramnath and Ramu and this time they were armed with axes. Birdha, Kalyan and Benilal also returned to the fray and the second stage of the fight began. Sohan inflicted an axe below on the one eye of the deceased Kana and Birdha gave a lathi below which landed on his other eye and the appellant gave an axe blow on the head of the deceased Bhanwaria. The injuries received by the deceased Kana and Bhanwaria were serious and they resulted in the death of both of them. Thus on the side of the deceased Kana, two persons died, namely, the deceased Kana and Bhanwaria and three persons were injured, Babulal, Chauth Mal and Lalu. There were also injuries received by two persons on the side of Bridha and these two persons were Birdha and Sohan. Both sides lodged first information reports at the police station and two cross-cases were field, one against Birdha, Sohan, the appellant, Kalyan and Benilal and the other against Lalu, Chauth Mal and Babulal. We are not concerned in the present appeal with the latter case and we need not, therefore, pause to consider what happened in that case. So far as the former case is concerned, Birdha, Sohan, the appellant and Benilal were charged under Section 147, 148, 302 and 326 read with Section 149 of the Indian Penal Code for rioting, committing murder of the deceased Kana and Bhanwaria and causing grievous hurt with dangerous weapons to Babulal, Chanda,

Chauth Mal and Lalu in prosecution of the common object of the unlawful assembly constituted by them.

2. The learned Additional Sessions Judge, who tried the case took the view, on an appreciation of the evidence, that the fight between the groups of the deceased Kana and Birdha "was not preplanned and it developed suddenly as a result of abuses given by deceased Kana or his sons when Birdha reprimanded them for the demolition of the existing mudwall" and it was, therefore, a case of free-fight in which no party could claim the right of private defence. So far as the prosecution account of the fight was concerned, it split up the fight into two stages, as pointed out by us while narrating the prosecution case. But this version of the fight was not accepted by the learned Additional Sessions Judge. The learned Additional Sessions Judge took the view that the version of the prosecution witnesses that "the incident took place in two stages and after the first attack" Birdha, Sohan the appellant, Kalyan and Benilal "retreated and resumed the attack after ten minutes" appeared to be a subsequent improvement since the earliest version of the incident given in the first information report did not show that these persons retreated, the appellant and Sohan went towards the village and came back after ten minutes armed with axes and accompanied by Ramnath and Ramu and then they resumed the attack on the deceased Kana and his sons. The entire fight, according to the learned Additional Sessions Judge, took place in one single stage and in the course of this fight Birdha, Sohan, the appellant, Kalyan and Benilal inflicted the various injuries attributed to them. The learned Additional Sessions Judge accordingly convicted Birdha, Sohan, the appellant, Kalyan and Benilal of the various offences charged against them, and sentenced them to suffer various terms of imprisonment for those offences. The appellant was convicted inter alia of the offence under Section 304 for committing culpable homicide not amounting to murder of the deceased Bhanwaria by giving an axe below on his head and for this offence the appellant was sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 300 or in default to suffer rigorous imprisonment for a further period of nine months.

3. Birdha, Sohan, the appellant, Kalyan and Benilal preferred an appeal against their conviction and sentence to the High Court of Rajasthan. The High Court agreed with the learned Additional Sessions Judge that this was a case of sudden mutual fight between the parties and, therefore, there could be no question of any unlawful assembly with a common object and none of the accused persons could be held constructively liable by invoking the aid of Section 148. The accused could be convicted only for the injuries caused by the individual acts attributed to them. The High Court also took the same view as the learned Additional Sessions Judge in regard to the manner in which the incident took place and held that "the whole incident took place at one time and not in two stages" as alleged by the prosecution. The High Court in this view set aside the conviction of the accused under Section 147, 148, 304 and 326, read with Section 149 and barring Benilal, who was acquitted, the High Court convicted each of the other four accused for his individual acts. We are not concerned in this appeal with Birdha, Sohan and Kalyan since they have not been granted special leave to appeal against their conviction and we need, therefore, state only what was the fate of the appellant. The conviction of the appellant for causing the death of the deceased Bhanwaria by giving him an axe below on his head was maintained by the High Court, but since it was not made clear by the learned Additional Sessions Judge as to which was the part of the section under which the appellant was liable to be convicted, the High Court held that the appellant was guilty under Part II of the section and observed that the maximum sentence of ten years' rigorous imprisonment and fine of Rs. 300 imposed on him was not excessive. The appellant thereupon preferred the present appeal with special leave obtained from this Court.

4. Now, two important circumstances clearly emerge from the evidence and they are based on

concurrent findings of fact recorded by the learned Additional Sessions Judge as well as the High Court. First, this was a case of sudden mutual fight between the parties and there could, therefore, be no question of invoking the aid of Section 149 for the purpose of imposing constructive criminal liability on the appellant. The appellant could be convicted only for the injuries caused by him by his individual acts. Secondly, the fight between the parties took place in one stage and not in two stage as deposed to by the prosecution witnesses. There was no break of ten minutes during which the appellant and Sohan went to the village and came back armed with axes and accompanied by Ramnath and Ramu. The version of the prosecution that the appellant and Sohan proceeded to the village and returned after ten minutes armed with axes was clearly not believable. The appellant and Sohan continued in the fight without any interruption. Once these two circumstances are accepted, it becomes impossible to sustain the conviction of the appellant. When the fight began, it was the case of the prosecution that the appellant was armed with a dantli and it was with the dantli that he gave a blow on the backside of the head of Lalu. But the injury, which resulted in the death of the deceased Bhanwaria, was, according to the prosecution, caused by an axe blow. The evidence of Dr. Duggar, who examined the deceased Bhanwaria and performed the post-mortem examination of his dead body, also shows that the injury received by the deceased Bhanwaria was a severe injury on the left frontal parietal and temporal region resulting in comminuted fracture of left temporal and parietal bones and it appeared to Dr. Duggar that this injury must have been caused by a heavy blow with some sharp cutting object like an axe, since the injury had gone "deep into the brain matter". We thus have the position that the injury resulting in the death of the deceased Bhanwaria was caused by a heavy blow with an axe while the appellant was armed only with a dantli. Obviously, the appellant could not have been responsible for causing the fatal injury to the deceased Bhanwaria, unless it could be shown that at some stage the appellant picked up an axe. It was precisely for this reason, in order to implicate the appellant by fobbing off on him the murderous assault on the deceased Bhanwaria, that the prosecution witness invented the story that the fight was in two stages and after the first stage was over, the appellant and Sohan went to the village and returned after ten minutes armed with an axe. But this story was manifestly incorrect as it did not find even the faintest echo in the first information report lodged by Lalu immediately after the incident and in fact both the learned Additional Sessions Judge and the High Court disbelieved it. If this story of the prosecution explaining how the appellant who was armed with a dantli, could not have inflicted the fatal blow on the head of the deceased Bhanwaria. In fact this story appears to have been invented by the prosecution witnesses with a view to falsely implicating the appellant in the offence of causing the death of the deceased Bhanwaria. The falsity of this story reflect adversely on the prosecution case that it was the appellant who gave an axe blow on the head of the deceased Bhanwaria resulting in his death. We do not think that the evidence led on behalf of the prosecution is sufficient to establish beyond a reasonable doubt that the appellant was responsible for causing the death of the deceased Bhanwaria by giving an axe blow on his head.

5. We accordingly allow the appeal, set aside the conviction and sentence recorded against the appellant and acquit him of the offence under Section 304, Part II of the Indian Penal Code. We direct that the appellant be set at liberty forthwith.

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