

Faquira
Vs
State of U. P.
And
Shiamlal
Vs
State of U. P.

Criminal Appeal Nos. 207 and 167 of 1974

(P. K. Goswami, M. H. Beg JJ)

12.11.1975

JUDGMENT

BEG, J. -

1. The appellant Faquira was convicted under Section 302, Indian Penal Code and sentenced to death by the Sessions Judge of Rampur. He had been tried with two coaccused Shiamlal and Bhukan, who had been acquitted for offences punishable under Section 302 read with Section 34, Indian Penal Code, but on a government appeal having been filed against their acquittals, these acquittals were set aside and they were convicted and sentenced to life imprisonment. There are two appeals before us now : one by Faquira, and the other by Shiamlal. It appears that Bhukan, who, together with Shiamlal, had been convicted under Section 302/34, I.P.C., does not question the correctness of his conviction and sentence.

2. The prosecution case was that Bhukan, the convicted accused, who has not appealed and the murdered man Jamil Ahmed alias Chhanga were both rickshaw pullers who used to keep their rickshaw near the chabutra of Mozzam Ali at Darakhat Kait, where two main roads, in police station Ganj in the city of Rampur crossed. One Smt. Uttamia, aged about 35 years, used to keep a khoncha on the opposite side of the crossing facing the chabutra. She used to prepare a potato chops to her customers. It appears that the deceased Chhanga was sitting near khoncha while she was preparing a potato chop for him at about 7.45 p.m. on April 23, 1972. It is in evidence that Bhukan brought Faquira and Shiamlal appellants in his rickshaw from which they got down and the rickshawala and its two occupants came and asked Smt. Uttamia to give some potato chops to them. She is said to have replied that she would serve them only after the deceased Chhanga had been served. Faquira and his two companions are said to have taken offence and to have insisted on having priority over the deceased Chhanga. Thereupon, Chhanga is said to have objected on the ground that he was getting a chop prepared for himself and must have it first. He told the three men, who had left the rickshaw behind, that they could only get theirs after he had been served. An exchange of hot words and abuses is said to have followed. We do not know whether it was hunger or something else behind the whole affair or the nature of abuses hurled by the deceased that provoked the appellants

so much. All we know is that the three accused became suddenly so infuriated that Bhukan and Shiamlal are said to have caught hold of Chhanga and dragged him to the chabutra and told Faqira to attack him as Chhanga was "a great bully". Thereupon Faqira is said to have brought out a knife from the folds of his pyjama and inflicted a succession of knife blows on Chhanga whilst Bhukan and Shiamlal held him down. It was alleged that Mozzan Ali, PW 1, and Farzand Ali, PW 2, and one Nabu Khan and Matloob Ahmed (not produced) who were sitting on the chabutra, near which an electric bulb lit the scene, saw the whole incident in addition to Smt. Uttamia, PW 4. An F.I.R. of the incident was lodged at about 8.40 p.m. on April 23, 1972 at police station Ganj setting out the facts which have been duly supported by the three eye-witnesses, mentioned above, who stood cross-examination well.

3. Dr. Sabir Hussain, PW 3 who conducted the post mortem examination on the body of Chhanga, the victim who died almost immediately as a result of the injuries, proved the following injuries on the person of the deceased :

1. Incised punctured wound 4 cm. x 1/2 cm. x cavity deep on left side back 6 cm. below the ribs direction horizontal.
2. Incised punctured wound 2.5 cm. x 1.5 cm x chest cavity deep on right side 5 cm. below right clavicle direction from upward to downward.
3. Incised wound 1 cm. x 1/2 cm. x 1/4 cm. on left side chest 11 cm. below left nipple horizontal.
4. Incised punctured wound 4 cm. x 2 cm. x cavity deep on front on chest upper part inner to medial end of left clavicle horizontal.
5. Incised wound 5 cm. x 2 cm. x 2 cm. on left side neck 3.5 cm. below angle of left jaw horizontal.
6. Incised wound 7 cm. x 2 cm. x 3 cm. on left side neck 1/2 cm. below injury No. 5 horizontal.
7. Incised wound 5 cm x 5 cm. x 2 cm. on left side neck behind injury No. 6 horizontal.
8. Incised wound 1 cm. 1/2 cm. x 1/2 cm. on left side neck 2.5 cm. below injury No. 7.
9. Incised wound 1 cm. x 1/2 cm. x 1/2 cm. on left side neck 7 cm. below left ear from upward to downward.
10. Two linear abrasions 5 cm. on left cheek.
11. Incised punctured wound 3 cm. x 1.5 cm. x 7 cm. deep on front of right upper arm upper part joint the shoulder joint vertical direction of depth towards axilla.

4. We have been taken through the relevant evidence against which some criticism, which is not sufficient to enable us to discard this evidence, was levelled. This Court does not interfere with findings or questions of fact on the strength of minor discrepancies which only indicate that the

witnesses were not tutored. The fact that the apparent motive was too flimsy is no reply to the unshaken testimony of creditable and natural eyewitnesses who had no motive whatsoever to implicate the appellant falsely. It was also sought to be shown that the appellant Faqira and Shiamlal had not been on good terms with each other and would not, ordinarily, join in an attack on Chhanga. This suggestion was made as Faqira was shown to have got Shiamlal arrested in some gambling case. We, however, do not think that this is ground to disbelieve the prosecution case. People of the kind to which Faqira and Shiamlal seem to belong do not generally attach much importance to such matters. The evidence indicates that they were on quite good terms with each other at the time of the incident whatever may have been their past relations. They came together like friends, to have some potato chops.

5. The only question that has been pressed upon up with some plausibility is that the motive being too weak for such a desperate attack, right in front of witnesses at the crossing of two public roads, it is likely that the deceased had provoked the appellant Faqira by the kind of abuse he indulged in or there was something else which had not come out in evidence. It was admitted by prosecution witnesses that the deceased had abused, but they were not asked how offensive was his language or what he had said. The statement attributed to Bhukan and Shiamlal, by prosecution witnesses, also shows that the deceased was thought to be a bully by the accused. The injury on the deceased also shows that Faqira, the assailant, must have been incited over something. These circumstances to indicate that the deceased had said something which strongly disturbed the mental balance of Faqira and his companions. All we can do, in such circumstances, is to reduced the sentence of Faqira from one of death to one of life imprisonment. We according, do so.

6. Subject to the modification mentioned above, we dismiss these two appeals.

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