

Ram Prasad and Others

Vs

The State of U. P.

Criminal Appeal No. 204 of 1971

(P. N. Bhagwati, P. K. Goswami, N. L. Untwalia JJ)

09.12.1975

JUDGMENT

UNTWALIA, J. -

1. The four appellants in this appeal by special leave are Ram Prasad alias Dhawdhar, Harbans, Mahabir and Kalwa. All have been convicted under Section 302, read with Section 34 of the Penal Code and each has been sentenced to undergo imprisonment for life under this count. All of them have also been convicted under Section 323 read with Section 34 of the Penal Code and a concurrent sentence of one year's rigorous imprisonment has been awarded to each of them for the said conviction. In substance only two points were urged in support of this appeal by the appellant's Counsel and they are as follows :

(1) That the appellants committed the assault on Ram Chandra - deceased and his brother Baljit, PW 15 in exercise of their right of private defence of property.

(2) That the conviction of none of the appellants under Section 302 with the aid of Section 34 of the Penal Code is sustainable.

We shall proceed to state only such facts of the case as are necessary for the decision of the above points.

2. The appellants and the members of the prosecution party namely Ram Chandra, the deceased, his son Karori, PW 1 and his brother Baljit, PW 15 are agnatic relations. There was bad blood and enmity inter se between them. On October 7, 1966 at about 10.30 a.m. in the village where the parties reside, the appellants wanted to forcibly stack their bundles of bajra in front of the enclosure (gher) of Ram Chandra where he had a hut. Ram Chandra asked the appellants not to do so stating that the land where they wanted to stack their bundles of bajra belonged to them. Appellants Ram Prasad and Mahabir were armed with lathis. They assaulted Ram Chandra with lathis. Appellants Harbans and Kalwa assaulted him with kicks and fists. When PW 15 tried to intervene, he was also assaulted with lathis by the two appellants Ram Prasad and Mahabir and with kicks and fists by the other two. As a result of the injury, Ram Chandra died the same day late in the evening.

3. The doctor who held the autopsy over the dead body of Ram Chandra found two lacerated wounds skull deep - one at the midline of the head and the other on the left side. On internal examination he found both the parietal and temporal bones fractured and the membranes lacerated. The doctor opined that the two injuries were sufficient in the ordinary course of nature to cause the death of Ram Chandra. The third injury found on his person was an abraded contusion over the left

side buttock upper part. The same doctor has medically examined Baljit, PW 15 and had found six simple injuries on his person in the shape of contusions or abrasions.

4. The land where the occurrence took place and where the appellants wanted to place their bundles of bajra was claimed on their behalf to be either in their exclusive possession or in joint possession with Ram Chandra. It was, therefore, submitted on their behalf that they had a right of private defence of property when they were obstructed by Ram Chandra and Baljit from placing their bundles of bajra upon it. We have no difficulty in rejecting this argument. Both the courts below have concurrently found that the piece of land where the appellants wanted to put their bajra bundles and where occurrence took place was in exclusive possession of the prosecution party. Having appreciated all that was said by the appellants in this regard, we find no ground to justify and interference by this Court on the question of exclusive possession of the prosecution party over the land in question. It is plain, therefore, that the appellants had no right of private defence of property.

5. The second submission made on behalf of the appellants has force in respect of only two of them, namely, appellants Harbans and Kalwa. We shall immediately show that their conviction under Section 302 read with Section 34 is not justified. On the other hand, we find, although for reasons slightly different from those given by the High Court, that appellants Ram Prasad and Mahabir have rightly been convicted under Section 302/34 of the Penal Code.

6. The High Court has recorded the following facts to justify the convictions of all the appellants under Section 302 with the aid of Section 34 :

1. That about ten days before October 7, 1966 (the day of occurrence) the appellants approached PW 1 Karori, and unsuccessfully asked him to give the land on which his enclosure was constructed to Smt. Anandi so that they may take the land which had gone to Smt. Anandi in the family partition, themselves. This is proved by the evidence of PW 1 Karori and we have seen no reason to doubt it.
2. That on the day of occurrence all the four appellants, two of whom are brothers and the other two father and son and all four of whom are collaterals and according to the prosecution witnesses from a party came together with bundles of bajra with them and two of the appellants were armed with lathis.
3. That the appellants forcibly wanted to stack their bajra bundles on the land adjoining the hut of Ram Chandra deceased.
4. That in view of the circumstance that two of the appellants were armed with lathis, and had come determined to forcibly occupy the land by putting the bundles of bajra on it, it can be safely presumed that all the appellants knew that in order to forcibly occupy the land they would go to the extent of fully and effectively using lathis.
5. That no sooner Ram Chandra objected to the appellants putting their bajra bundles on the land adjoining the hut, the appellants opened an assault on him without making the least effort to argue with him or to persuade him to let them do so. They did not withdraw nor did they have recourse to intervention of common friends or of public authorities.
6. That the appellants continued beating Ram Chandra and Baljit Singh until Ram

Chandra fell down unconscious and apparently dead. At no stage any of the appellants tried to relent or withdraw from the assault.

7. That all the appellants ran away together in the same direction.

Facts 1, 2 and 3 do not establish the sharing of any common intention by the appellants of committing the murder of Ram Chandra. The knowledge of the appellants as recorded in fact 4 that the lathis would be fully and effectively used in the process of forcibly occupying the land is not sufficient to establish the common intention of committing a crime punishable under Section 302. This could be a relevant fact if they would have been 5 in number and would have formed an unlawful assembly the common object of which was to forcibly occupy the land. Fact 7 also does not establish and common intention. Facts 5 and 6 are not accurately recorded. On the doctor's evidence Ram Chandra had only 3 injuries - two injuries on the head caused by lathis and only one at the buttock. In such a situation it is difficult to attribute common intention of causing the death of Ram Chandra to appellant Harbans and Kalwa. There is nothing to indicate that the appellant had arrived at the scene with a preplanned intention of causing the death of Ram Chandra. The manner of assault as deposed to by the prosecution witnesses does not necessarily lead to the conclusion that all the four appellant had developed a common intention at the time of the occurrence. Giving of two lathi blows by the two appellants who were armed with lathis did not suffice to show the common intention of the other two appellants.

7. So far the cases of appellant Ram Prasad and Mahabir are concerned they stand on a different footing. Reading the evidence of PWs 1 and 15 in the light of the medical evidence it is clear that each of the said two appellants simultaneously gave a blow with great force on the head of Ram Chandra resulting in the fracture of his parietal and temporal bones. The facts unmistakably show that when each of them gave a blow on the head of Ram Chandra, at the time of giving the blow they developed and shared common intention of causing such injury to him which in the ordinary course of nature was sufficient to cause his death. The High Court has said that assuming, as had been argued, that the two injuries on the head of Ram Chandra had been caused by the same appellant - one out of the two who were armed with lathis, still all were liable to be convicted with the aid of Section 34, of the Penal Code. This view is not correct. If the author of the two injuries on the head of Ram Chandra was a single person, then it was difficult to found upon this basis the conviction of others with the aid of Section 34. And then it was not known who that single person was. But in our judgment on the evidence of the prosecution which has been relied upon by the two courts below the irresistible conclusion is that appellant Ram Prasad and Mahabir had caused one injury each by hurling their lathis with great force on the head of Ram Chandra. We, therefore, sustain their conviction under Section 302, read with Section 34 of the Penal Code but not of the other two.

8. The appeal is partly allowed. The conviction and sentence of all the four appellants under Section 323 read with Section 34 of the Penal Code are upheld. The conviction and sentence of appellants Ram Prasad and Mahabir under Section 302 read with Section 34 of the Penal Code are also maintained, but those of appellant Harbans and Kalwa under this count are set aside.

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