

Ram Swarup

Vs

The State of Haryana

Criminal Appeal No. 147 of 1971

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

09.08.1976

JUDGMENT

FAZAL ALI, J. -

1. In this appeal for special leave, Ram Swarup has been convicted under Section 302 of the Indian Penal Code by the High Court, which acquitted the other accused who were tried along with the other appellants. Briefly put, the prosecution case was that on August 29, 1968 at about 4.00 p.m. Rattan Singh let loose 5 buffaloes who trespassed into the field of PW 4 Sukhi and appeared to have caused damage to the field. Thereafter, the buffaloes were caught hold of and impounded in the village cattle pound nearabout. This seems to have annoyed the accused persons who lay in wait for the complainant's party and when at about 6.00 p.m. Ram Gopal and Sukhi passed near the scene of occurrence, the five accused then started remonstrating with them regarding the cause as to why their cattle had been impounded. Soon thereafter, the complainant's party were joined by three others including the deceased Budha. It is admitted that excepting Budha, all other members of the complainant's party were also armed with lathies. After the complainants were joined by the others, an altercation ensued in which the appellants and other accused are said to have assaulted the deceased and other persons. According to the prosecution, the appellant, Ram Swarup was armed with jaili, with which he gave a blow on the head of the deceased not with the jaili portion but only with the lathi portion. The Sessions Judge accepted the prosecution case in its entirety and convicted all the accused. In appeal, however, the High Court acquitted the other accused of the charge under Section 302/149 I.P.C. but convicted the appellant under Section 302 I.P.C. only. The appellant then presented this appeal and after obtaining special leave, the appeal has now been placed for hearing before us.

2. Mr. Kohli, the learned Counsel for the appellant submitted a short point before us. His contention was that on the facts found and proved it would appear that this was not a case of premeditated or deliberate murder by the appellant but the deceased died as a result of a mutual fight which developed at the spur of the moment without any premeditation. In these circumstances, it was pointed out that the case of the appellant could not fall within the purview of Section 302 I.P.C. at all and at the most the appellant could only be convicted under Section 304 Part I of the Indian Penal Code. In our opinion, the contention raised by the learned Counsel is well-founded and must prevail. At page 61 of the paper book, the High Court has found in very clear terms that it was not a case of premeditated assault on the deceased but one of mutual fight. In this connection the High Court observed as follows :

It is conceded on all hands that there was no previous enmity between the parties. It may also be the common case that rounding up and impounding of cattle was the

main cause that had made the parties resort to the use of implements or weapons of everyday use. Budha's death was a turn in the events which could not have been intended or expected by everyone taking part in the fight. The liability for Budha's death has, therefore, been rightly fixed on individual basis and not vicariously.

At another place at page 62 of the judgment, the High Court finds thus :

Blows were raining freely on members of both the parties and the absence of any fresh injuries on the person of Deep Chand may appear significant.

3. Even the Sessions Judge at page 55 of the paper book has come to a clear finding that the murder of Budha was not premeditated. In view of these findings, therefore, it cannot be argued with any show of force that the murder was a premeditated one and the accused had been lying in ambush for the purpose of murdering the deceased. The learned Counsel, appearing for the State, has however submitted that the High Court has not disbelieved the case of ambush as put forward by the prosecution and its observations even at page 61 of the judgment seem to indicate that the story of ambush was accepted. As we read the findings, which is based on the evidence of PWs 4 and 5, we find that the question of ambush has created some sort of confusion. What the courts below really meant was that the accused was no doubt waiting for the complainant's party but it was not for the purpose of assaulting or murdering them, but in order to remonstrate them for their conduct in impounding the cattle of the accused. This is supported by the evidence on PWs 4 and 5 who have clearly stated that when PW 4 Sukhi arrived at the scene he was questioned by the accused regarding the impounding of the cattle. No assault started at that time. If the intention of the accused was to assault the prosecution party, they would have pounced upon Sukhi and Ram Gopal as soon as they reached the scene of occurrence. Actually the assault started only after Sukhi was joined by other witnesses; some of whom were also armed. The evidence clearly shows that there was a mutual assault between both the parties and even the witnesses for the prosecution admit that they had used lathis, according to them, in self-defence, and this is how the prosecution witnesses sought to explain the injuries on some of the accused.

4. Another important feature which rules out the theory of premeditation is the fact that so far as the appellant is concerned, although he was armed with a deadly weapon like jaili, he took care to assault the deceased only with the lathi portion of it and not with the iron portion of it which would have caused much more severe injury. The High Court has rightly held that in view of the fact that the fight started on the spur of the moment. The accused would have to be guilty only for the individual assault caused by them. According to the prosecution, the appellant had caused only one injury on the head out of two injuries. Dip Chand who had caused the other injury was acquitted by the High Court as his plea of alibi was accepted. Taking therefore an overall picture of the entire story it seems to us that this was not a case of premeditated or calculated murder. The deceased who was undoubtedly unarmed was assaulted in the course of the mutual 'marpit' when according to the High Court, blows were raining freely by members of both the parties. In these circumstances, therefore, we are satisfied that the established facts in the present case would prove that the appellant could be guilty of an offence under Section 304 Part I of the Indian Penal Code rather than one under Section 302 I.P.C. In our opinion all the conditions mentioned in Section 300 Exception 4 have been fulfilled in this case. For these reasons, therefore, we allow the appeal, alter the conviction of the appellant from one under Section 302 I.P.C. to that under Section 304 (Part I) I. P.C. and reduce the sentence from life imprisonment to the period already served as we understand that the appellant has already served about 8 years in jail.

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