

Molu and Others

Vs

State of Haryana

Criminal Appeal No. 12 of 1973

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

23.08.1976

JUDGMENT

FAZAL ALI, J. -

1. In this appeal under Section 2A of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. appellants Molu, Hoshiara and Ishwar have been convicted under Sections 302/34 I. P. C. and have been sentenced to imprisonment for life and a fine of Rs. 1000 each. They have also been convicted under Sections 325/34 I. P. C. and sentenced to one year's rigorous imprisonment, by the High Court by its order dated September 25, 1972 after reversing the order of the Additional Sessions Judge Hissar acquitting all the accused.

2. The police had submitted a chargesheet against five persons namely Chandu, Mam Chand, Mou, Hoshiara and Ishwar all of whom were acquitted by the Additional Sessions Judge, but the High Court, while reversing the judgment of the Additional Sessions Judge, maintained the acquittal of Chandu and Mam Chand who, were brothers being the sons of Udmi. The appellant Molu is also the son of Udmi and Hoshiara and Ishwar are the sons of Mam Chand the acquitted accused. Put briefly, the prosecution case was that on December 28, 1969 PW. Chhailu son of Ram Nath deceased had come from his village to his father's house and had stayed for the night. In the morning at about 8 a.m. the deceased Banwari along with PWs. Ram Sarup and Suraj Bhan went out to ease themselves in the field which was situated at a distance of 40 karams from the house of the deceased in village Dhani Chandrapul, police station Hansi, in the district of Hissar. It was alleged that while they were in the process of easing themselves, all the five accused variously armed with lathis, pharsis and gandasi, appeared on the scene and pounced upon Banwari causing him several injuries. The attack on deceased Banwari is said to have been opened by Chandu who was armed with a pharsi, and the others followed suit. On alarm being raised by Banwari and others, Banwari's father Ram Nath deceased, his mother Chand Kaur PW 7 and his wife Phuli PW 8 rushed to the scene of occurrence to protect the deceased Banwari. On arrival at the scene of occurrence they were also assaulted by the accused. Ram Nath was also beaten up by the accused persons with their respective weapons and by the time Chhailu PW 5 arrived at the spot the accused fled away. It is said that CWs 1 and 2 Ram Kumar and Pat Ram had also come to the spot. Thereafter a tempo was requisitioned and the injured were first brought to the house and then taken to the hospital at Hansi a mile away from the village. The injured persons reached the hospital 10 a.m. and Banwari was first to be examined by Dr. Jai Singh who found as many as eleven injuries, one of them being grievous. Banwari was then referred by the doctor to the Civil Hospital at Hissar, but before he could be removed to the said hospital he succumbed to the injuries at about 11.45 a.m. The police was informed of this incident by a ruqa Ext. P. C. The doctor found thirteen injuries on the person of Ram Nath and he also expired on the same day. PW 8 Phuli and PW 7 Chand Kaur, the wives of Banwari and Ram Nath respectively, had

also a number of injuries on their person. The first information report was lodged by PW. 5 Chhailu son of Ram Nath at 12.3 p.m. at police station Hansi and the said F.I.R. was despatched to the magistrate on December 29, 1959 at 8 a.m. The Sub-Inspector visited the spot at about 5.30 p.m. and after the usual investigation submitted chargesheet against the five accused persons with the result indicated above.

3. The defence pleaded innocence and contended that they had been falsely implicated due to enmity and had absolutely no motive to commit the murder of the deceased persons. It was a very unfortunate case in which two persons have lost their lives on account of enmity which is said to have existed about eighteen years ago. It may be necessary at this stage to examine the nature of the injuries received by the two deceased persons. Dr. Tyagi who examined the deceased and conducted the post mortem examination found the following injuries on the persons of Ram Nath :

1. Bruise 10" x 6" on tip and front of right shoulder joint and upper part of left upper arm.
2. Bruise 12" x 8" on front of whole of upper part.
3. Abrasion 1/3" x 1/6" and back of elbow joint.
4. Lacerated wound 2 1/4" x 1/4" on the back of middle of right forearm. Whole of right forearm and upper half of forearm was swollen. On further dissection, there was laceration and echymosis of underlying muscles, no fracture was seen.
5. Stitched wound 1 1/4" x 1/6" on dorsum of right hand 1/6" deep.
6. abrasion 1/4" x 1/4" on back of base of right little finger.
7. Punctured wound 1/2" x 1/6" and 1/4" deep on front of upper one third of right leg.
8. Punctured wound 1/6" x 1/8" and 1" deep on front of upper end of left leg.
9. Punctured wound 1/4" x 1/6" and 1/2" deep on outer lower end of right leg.
10. Stitched wound 1/6" x 1/8" and 3/4" deep on outer middle of left forearm.
11. Stitched wound 1/4" x 1/6" and 1/6" deep on outer lower one-third of left forearm about 2" below from injury 10.
12. Stitched wound 1/2" x 1/6" x 1/4" on outer lower one-third of left upper arm.
13. Bruise 1 x 1/2" on upper side of left tip.
14. Stitched wound 1 1/2" x 1/3" and 1/6" deep on tip of scalp more on left side, antero-posterior in direction, scalp, skull, and vertebrae, membranes brain healthy.

According to the evidence of the doctor death of the deceased Ram Nath was due to shock and hemorrhage as a result of multiple injuries received by him.

4. The same doctor performed the post mortem examination of the deceased Banwari and found the

following injuries :

1. Bruise 2" x 3/4" on inner middle of right upper arm.
2. Lacerated wound 1" x 1/6" just below the middle of injury 1.
3. Lacerated wound 3/4" x 1/6" on outer lower one-third right upper arm.
4. Stitched wound 1 1/6" x round 1/6" deep on outer middle of right fore-arm. On further dissection there was fracture of right ulna in the middle.
5. Stitched wound 1" x 1/8" on back of right ring finger.
6. Abrasion 2/3" x 1/6" on inner side of right wrist joint.
7. Stitched wound 3/4" x 1/6" on tip of front of right knee joint.
8. Swelling right ankle joint.
9. Abrasion 1/2" x 1/4" on front of upper one-third of left leg
10. Swelling left foot.
11. Stitched wounds in an area of 1 1/2" x 1 1/2" eight in numbers varying in size from 1/2" x 1/4" to 1/6" x 1/6" on outer lower one-third of left upper-arm. Big blood vessels out. On further dissection crack fracture vertical in direction on outer lower side of left humerus bone.
12. Abrasion 3" x 1/6" on outer middle of left forearm.
13. Abrasion 1/4" in diameter on back of base of left index finger and swelling left forearm of palm.
14. Multiple abrasions in an area of 2 1/2" x 2" on the back of left shoulder joint.
15. Stitched wound 1 3/4" x 3/4" and 1/2" deep on top of the left side of scalp.
16. Stitched wound 1 1/2" x 1/6" skin deep on the front of middle of scalp.

According to the opinion of the doctor death was due to shock and hemorrhage as a result of the fracture of right ulna and bleeding from big blood vessels due to injury 11. It would, therefore, be noticed that both the deceased persons had sustained quite a number of injuries but none of the injuries appear to have been given on any vital part of the body except injury 14 in the case of Ram Nath deceased and injuries 15 and 16 in the case of Banwari deceased. All these injuries were, however, extremely superficial and could not have caused the deaths of the deceased. This fact will have a serious bearing on the question of the nature of offence that the accused may have intended to commit. Similarly PW 8 Phuli and PW 7 Chand Kaur had also received injuries.

5. The central evidence in the case consisted of evidence of PW 6 Ram Sarup, PW. 7 Chand Kaur, PW. 8 Phuli and PW 9 Suraj Bhan. PW 5 Chhailu who was the first informant is said to have arrived at the spot immediately after the occurrence and saw the accused running away. The learned

Sessions Judge disbelieved all these witnesses mainly on two grounds. In the first place he found that the witnesses were either interested or had no occasion to be present in the village at the time when the occurrence took place. Secondly, the learned Sessions Judge found that the consistent evidence of all the eyewitnesses being that all the accused persons had assaulted the two deceased, yet no injury was found which could be caused by pharsi or gandasi as would appear from the medical evidence. In other words, the learned Sessions Judge discarded the ocular evidence as it was inconsistent with the evidence of the doctor who did not find any sharpcutting or piercing wounds on the deceased persons and the injuries which he found could only be caused by a lathi or sua. The learned Judge was also influenced by the fact that the motive on the part of the accused to commit the offence was wholly inadequate which went to show that the case was not proved.

6. The High Court on a fresh appraisal of the evidence rejected the reasons given by the learned Sessions Judge as being unreasonable and unsound and found no good reasons to distrust the evidence of PWs. 5, 6, 7, 8 and 9. According to the High Court they were natural witnesses and bore no animus against the accused and there was no reason for them to have falsely implicated the appellants.

7. Mr. Kohli appearing for the appellants submitted that while it was open to the High Court to reappraise the evidence it could not in law reverse the order of acquittal merely because it took a different view of the evidence led by the prosecution. He drew our attention to the judgment of the learned Sessions Judge in order to support his contention that the learned Sessions Judge had given good reasons for disbelieving the eyewitnesses, and in the circumstances it could not be said that the view taken by the learned Sessions Judge on the evidence led before him was reasonably possible. Thus if two views were possible the High Court ought not to have reversed the order of acquittal passed by the Sessions Judge.

8. We have been taken through the entire evidence and the judgment of the Sessions Judge and we are unable to agree with the arguments advanced by Mr. Kohli. The learned Sessions Judge has taken an extreme view and has not given good and sound reasons for rejecting the testimony of the eyewitnesses particularly PWs 7, 8, and 9. The learned Sessions Judge has no doubt given some reasons to reject the evidence of PW. 5 Chhailu which are that whereas Chhailu stated that he had gone to his father's house the evening previous to the occurrence, other witnesses have contradicted him by saying that he had come two or three days before or a week before. PW. 5 Chhailu was not an eyewitness on his own showing, therefore, any discrepancy relied upon by the Sessions Judge was not at all germane to the question. The fact, however, remains that the F.I.R. was lodged by PW 5 Chhailu and he was also found at the spot by the Investigating Officer who came to the village at 5.30 p.m. In these circumstances, therefore, the presence of this witness in the village soon after the occurrence cannot be doubted.

9. As regards PW 6 Ram Sarup the reasons given by the learned Sessions Judge are that there was absolutely no occasion for this witness to have stayed at the house of the deceased, because the purpose for which he is said to have visited the house was purchase a buffalo, which did not materialise. Furthermore, the learned Judge found that as this witness lived only about a mile away from the place of occurrence there was no reason for him to come to the village a day before, even if he had to purchase a buffalo. For the purpose of this case we shall accept the reasons given by the learned Sessions Judge and exclude the evidence of PW 6 Ram Sarup. Even then we find absolutely no convincing and cogent reasons to disbelieve the evidence of PW 7 Chand Kaur and PW 8 Phuli who had sustained injuries and their presence at the place of occurrence could not be doubted. PW 9 Suraj Bhan who was a young boy of 15-16 years has been disbelieved by the learned Sessions Judge

merely on the ground that he did not receive any injuries any if he had been present at the spot he should have also received injuries like others. This reasoning of the learned Sessions Judge is based on pure speculation. Various persons react differently in similar circumstances and it is difficult to probe into the minds of the accused as to how they act in a particular way. In the instant case the accused persons had already assaulted two persons with various weapons as also two ladies and they may have thought that it should be enough and in view of the young age of Suraj Bhan they might have spared him. However, this could not be a valid ground for rejecting the entire testimony of Suraj Bhan. The reason given by the learned Sessions Judge for rejecting the evidence of this witness was, therefore, unreasonable and unsound and was not legally acceptable.

10. As regards the evidence of PW 7 Chand Kaur and PW 8 Phuli the comment of the Sessions Judge was that both these witnesses with one voice have stated that all the five accused had assaulted the deceased and both of them with pharsi and gandasi but not a single sharpcutting wound was found on the deceased according to the evidence of the doctor. The Sessions Judge thus suggested that these two witnesses had bolstered up a false story. But so far as the injuries received by PW 7 and PW 8 are concerned, their evidence did not suffer from this infirmity. In fact the injuries received by PW 7 Chand Kaur and PW Phuli are clearly corroborated by the medical evidence. Even most of the injuries caused on the deceased are corroborated by the medical evidence inasmuch as they were inflicted by blunt weapon like a lathi. It is only in respect of the two accused Chandu and Mam Chand that some doubt regarding their participation arises in view of the absence of any sharpcutting injuries on the deceased persons. In these circumstances the learned Sessions Judge was not at all justified in rejecting the entire prosecution case merely because a part of it was inconsistent with the medical evidence. We have gone through the evidence of PW 7 Chand Kaur and PW 8 Phuli and do not find any reason to distrust their evidence. They have come out with straightforward and consistent facts and their evidence contains a ring of truth. Apart from enmity between the parties which existed long time back there does not appear to be any animus against the accused which might have impelled these witnesses to implicate the accused falsely. Another consideration which seems to have weighed with the judge for rejecting the evidence of these two witnesses was that they were not natural witnesses. This process of reasoning is wholly unintelligible to us. PW 7 Chand Kaur and PW 8 Phuli were the family members and the closest relations of the deceased persons and it was quite natural for them to rush to the scene of occurrence after hearing the alarm given by the deceased Banwari. This by itself does not detract from the testimony of these witnesses and the reason given by the learned Judge is wholly wrong. The Sessions Judge as also the High Court gave benefit of doubt to Chandu and Mam Chand merely because of the inconsistency in the medical evidence so far as the injuries caused by Chandu and Mam Chand were concerned. These two accused have merely been given the benefit of doubt which does not necessarily show that the eyewitnesses have perjured themselves or have conspired to implicate innocent persons by giving false statements. It is well settled that the mere fact that out of many accused some are acquitted is not sufficient to entitle the rejection of the entire prosecution case. On the other hand this Court has pointed out on times without number and particularly in the cases *Abdul Gani v. State of Madhya Pradesh* (AIR 1954 SC 31 : 1954 Cri LJ 323); *Kanbi Nanbi Virji v. State of Gujarat* ((1970) 3 SCC 103 : 1970 SCC (Cri) 520) and *Dharam Das v. State of U. P.* ((1973) 2 SCC 216 : 1973 SCC (Cri) 765) that the court should make every effort to disengage the truth from the falsehood and to sift the grain from the chaff rather than take the easy course of rejecting the entire prosecution case merely because there are some embellishments. In our opinion all the infirmities pointed out by the learned Sessions Judge were neither vital nor did they affect the real substance and core of the prosecution case. For these reasons, therefore, we find ourselves in complete agreement with the view taken by the High Court that the learned Sessions Judge was not

at all justified in rejecting the evidence of these two witnesses. The view taken by the learned Sessions Judge so far as this aspect of the matter was concerned was manifestly unreasonable and was not legally supportable. The High Court was fully alive to the propositions laid down by this Court regarding interference in an appeal against an order of acquittal namely : (i) the slowness of the appellate Court to disturb a finding of fact; (ii) the non-interference with the order of acquittal where it is indeed only a case of taking a view different from the one taken by the High Court. The High Court rightly found that on the evidence, if properly appreciated, the only view which could be taken was the one taken by the High Court. The High Court was, therefore, right in reversing the order of acquittal.

11. Finally it was argued by the appellants, following the reasons given by the Sessions Judge, that there was no adequate motive for the accused to commit murder of two persons and to cause injuries to others. It is well settle that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eyewitnesses is credit worthy and is believed by the court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant. For these reasons, therefore, we agree with the High Court that the prosecution has been able to prove the case against the appellants beyond reasonable doubt.

12. The next point that falls for consideration is what is the nature of the offence that the accused have committed on the evidence led before the trial Court. To begin with as pointed out above, multiple injuries were received by the deceased persons which were caused by blunt weapons like lathis and are of minor character. Furthermore, the injuries are not on any vital parts of the body and even those which are on the scalp portion appear to be very superficial. There is nothing to show that the accused intended to cause the deliberate murder of the two deceased persons. There is no evidence to show that any of the accused ordered the killing of the deceased persons or incited or in any way expressed a desire to kill the deceased persons at the spot. In these circumstances we are satisfied that there is no legal evidence in this case that the accused intended to cause the murder of the deceased. The fact, however, remains that the accused have caused multiple injuries on both the deceased persons on various parts of their bodies and, therefore, they undoubtedly had the knowledge that the cumulative effect of the injuries would result in the death of the deceased. As all the accused appear to have acted together and under a preconceived plan which developed at the spot and which is clear from the fact that they suddenly pounced on the deceased and went away together they must be deemed to have possessed a common intention to assault the deceased with the knowledge that the injuries caused by them were likely to cause the death of the deceased. In these circumstances, the accused have committed an offence under Section 304 Part II of the Indian Penal Code and not on under Section 302 I. P. C. We would, therefore, allow this appeal only to this extent that the conviction of the appellants is altered from that under Section 302 to that under Section 304 Part II I. P. C. and their sentences reduced from life imprisonment to seven years' rigorous imprisonment while maintaining the fine. The conviction and concurrent sentence passed by the High Court under Sections 325/34 I. P. C. is maintained.

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