

Bhagwan Bux Singh and Another

Vs

The State of Uttar Pradesh

Criminal Appeal No. 161 of 1976

(Syed M. Fazal Ali, P. S. Kailasam JJ )

27.09.1977

JUDGMENT

FAZAL ALI, J. -

1. Appellant 1 Bhagwan Bux Singh has been convicted under Section 302 and sentenced to death, while Mohan Singh appellant 2 has been convicted under Section 302/34, IPC, for having aided appellant 1 in causing the death of the deceased, and sentenced to imprisonment for life. The trial Court as also the High Court have given full narration of the prosecution case, which appears to be the result of an old family feud between the parties. The murder of the deceased took place on October 9 at about 6 p.m. in a bazar when Mohan Singh appears to have entered into an altercation with the deceased and caught hold of him, and thereafter appellant 1 inflicted several banka (a sharp cutting instrument) blows on the various parts of the body of the deceased, as a result of which he fell down and died. There are as many as nine incised injuries on the various parts of the body of the deceased, particularly the skull, and according to the doctor, the death of the deceased was due to shock and haemorrhage caused by the skull injury.

2. The defence was that the deceased was assaulted by somebody else and the appellants have been falsely implicated due to the enmity. Both the Courts below have carefully scanned the evidence and have come to the conclusion that the prosecution case is proved beyond reasonable doubt. The High Court has repelled almost all the arguments and comments that were made against the prosecution evidence and found that the deceased was murdered by appellant 1, as alleged by the prosecution. In these circumstances, therefore, we do not see any reason to disbelieve the evidence of PWs. 4, 9 and 10 who are independent and natural witnesses and have been believed by the two Courts of fact. The FIR was also lodged promptly within half an hour of the incident, and the broad details of the occurrence are mentioned therein. We are, therefore, satisfied that the conviction of appellant 1 does not call for any interference.

3. As regards appellant 2, Mohan Singh, it appears from the FIR that he was not catching hold of the hands of the deceased at the time when the deceased was being assaulted by appellant 1 as is the prosecution case developed in the court. In the FIR all that is stated is as follows :

In the meantime Bhagwan Baksh Singh alias Pahari and Mohan Singh sons of Putai Singh, Thakur, resident of the village came to the shop of Munna. Mohan Singh caught hold of the hands of my brother Mahipal Singh and said that as he did not agree for compromise he would be set right.

All that is said is that Mohan Singh merely caught hold of Mahipal Singh and said that he would be set right. There is no allegation whatsoever that when appellant 1 opened the banka assault on the

deceased, Mohan Singh in any way aided or abetted the first appellant. Even in his evidence, PW 4, when asked as to what had happened at the time of occurrence, stated thus :

In the meantime Bhagwan Baksh accused started assaulting Mahipal Singh deceased with banka. At that time Mahipal deceased was towards south from the shop of Munna. Mahipal fell down wounded on the ground and the cycle also fell on the ground.

4. Here also, there is no mention that Mohan Singh had caught hold of the hands of the deceased for the purpose of aiding appellant 1. Thus, there is no reliable evidence to show the participation of appellant Mohan Singh in the assault on the deceased, and in these circumstances, therefore, Section 34 would have no application so far as appellant 2 is concerned.

5. As regards the question of sentence of appellant 1 is concerned, in the peculiar circumstances of the case and having regard, particularly, to the fact that the said appellant was sentenced to death 2 1/2 years ago, we feel that the extreme penalty of death is not called for and should be commuted to imprisonment for life.

6. For these reasons, therefore, we allow the appeal of Mohan Singh, appellant 2 and acquit him of the charge framed against him. So far as appellant 1 is concerned, his conviction under Section 302 is upheld but his sentence is commuted to life imprisonment, and his appeal is allowed to the extent indicated above.

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