State of Haryana

Vs

Prabhu and Others

Criminal Appeal No. 322 of 1975

(N. L. Untwalia, O. Chinnappa Reddy JJ)

12.12.1978

JUDGMENT

UNTWALIA, J. -

1.There are nine respondents in this appeal filed by the State of Haryana on grant of special leave by this Court. The trial Court convicted each of the said respondents under Section 302 read with Section 149 of the Indian Penal Code and awarded life imprisonment to each. They were further convicted under Section 325 read with Section 149 and for the offence of rioting. The High Court of Punjab and Haryana has acquitted Prabhu, respondent 1 and Hoshiar, respondent 6 of all the charges accepting their plea of alibi. It has maintained the conviction of seven other respondents only under Section 325 read with Section 149 of the Penal Code and not under Section 302 read with Section 149. A sentence of seven years' rigorous imprisonment has been awarded to Sheoram plus a fine of Rs. 2000 and the others have been given a sentence of three years' rigorous imprisonment plus Rs. 1000 fine each. They did not challenge their conviction in this Court filing any appeal. We were informed at the Bar that all the convicted respondents have served out their sentences. The State had presented this appeal for setting aside the acquittal of Prabhu and Hoshiar and convicting them along with other respondents under Section 302 read with Section 149 of the Penal Code.

2. Since after careful consideration of the submission made before us we did not feel persuaded to interfere with the decision of the High Court and to allow the appeal, we need not elaborately deal with the facts or the points involved in them. A short judgment will be sufficient to dispose of this appeal.

3. Respondent Prabhu is the Sarpanch of the village in the outskirts of which the occurrence took place. He had some enmity with Mohar Singh, PW, one of the injured persons in the occurrence. Respondent Sheoram had greater and more direct enmity with him. The persons injured in the occurrence and a few others were related to Mohar Singh PW or belonged to his group and the respondents and one Harphool acquitted by the trial Court were related to and belonged to the group of Prabhu and Sheoram. On June 7, 1973 Kalu, the deceased, Mohar Singh, Ganpat, Rameshwar, Mainpal and Sultan, PWs went in the morning to Narnaul to attend C.I.A. office. They were there till 5.00 or 6.00 p.m. They boarded a railway train at Narnaul and got down at Ateli railway station at about 9.00 or 10.00 p.m. Their village was at a distance of about three miles from Ateli railway station. When they were going to their village and were at a distance of about 3/4th of a mile from it they are said to have been attacked by the respondents and the acquitted accused Harphool. The respondents were armed with lathis and it is said that Harphool had a kulhari (hatchet). The complainant's party was attacked near the well of Sheotaj. The lathi injuries inflicted on Kalu proved fatal. Some of the PWs also received injuries, a few of them being grievous. The prosecution

case against Harphool was not accepted by the trial Court at all as he was almost blind at the time of occurrence and was an old man of 75 years of age. It may be mentioned here that this Harphool is the brother of respondent Prabhu. The injured witnesses are Mohar Singh, PW 3, Ganpat PW 4 and Rameshwar, PW 6, Mainpal, PW 9 and Sultan, PW 10 were also in the party of the complainant. They witnessed the occurrence but themselves were not hurt.

4. We shall take up the points urged on behalf of the State one by one. The first submission was that the High Court committed an error in converting the conviction of the seven respondents from one under Section 302 read with Section 149 to Section 325 read with Section 149 IPC. It was strenuously urged before us that the mob had not only the common object to kill Kalu but on the facts of this case they had even the common intention. In any event, the submission was that the members of the unlawful assembly knew that in prosecution of the common object of assaulting the members of the complainant's party murder was likely to be caused. Therefore, their conviction ought to have been maintained for such an offence in view of the second limb of Section 149. We do not think that the argument is sound and is fit to be accepted. There was neither any charge of any common intention of committing the murder of anybody nor on the facts of this case such an inference was at all possible. It is clear that the common object of the assembly was merely to give a beating to the members of the complainant party, the main target being Mohar Singh, PW, as held by the High Court. There was no common object to commit the murder of Kalu. All the members of the mob were armed with lathis. The case against Harphool being a member of the mob armed with a kulhari was rightly rejected by the trial Court. The members of the mob used their lathis in assaulting Kalu, Mohar Singh and others. But the nature of the injuries clearly show that neither the common object was to kill nor is it possible to infer that any member of the mob had the knowledge that death was likely to be caused in prosecution of the common object of assault. The inference drawn by the High Court on the facts of this case is correct and justified and does not call for any interference. Some decisions of this Court were cited on the point but every decision has got to be read in the light of the facts of that case and none was applicable for the advancement of the argument put forward on behalf of the State.

5. The second submission was that respondent Sheoram could be and ought to have been convicted under Section 302 simpliciter and the High Court has committed an error of law in refusing to do so on the ground that in absence of a charge under Section 302, the charge being under the said provision read with Section 149, he could not be convicted under Section 302 simpliciter. It may well be that the High Court was not quite right in its legal approach to this question, but we do not propose to detain ourselves on this aspect of the matter, as, in our opinion, it has not been satisfactorily established on the medical evidence that Sheoram was responsible for the fatal injury on the person of Kalu. The doctor who performed the autopsy over his dead body found injury numbers 3 and 6 as follows :

> 3. Bruise on the middle right clavicle.
>
> 6. Multiple bruise on the right back just below the lower angle of scapula.
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> On internal examination the right clavicle was found fractured as also the third, forth and fifth ribs. Laceration on the right lung in the lateral side was also found. This laceration of the lung was the cause of the death of Kalu and in the opinion of the doctor it was by itself sufficient in the ordinary course of nature to cause his death. But the doctor did not say further whether the fracture of the right clavicle and all the ribs on the right side was as a result of injury 3, the author of which according to the

> prosecution evidence was respondent Sheoram. He had not caused injury 6. This was caused, probably, by respondent Sohan. In our opinion it may well be that the fracture of the ribs or at least of some of them was caused as a result of injury 6. In such a situation the laceration on the right lung could not be connected positively with injury 3 alone. It might have been caused by injury 6. Respondent Sheoram, therefore, on the facts of this case could not be and cannot be convicted under Section 302 IPC.

6. Now we come to the cause of acquittal of respondents Prabhu and Hoshiar. We are constrained to observe in this regard that the High Court ought not to have accepted the evidence of alibi adduced by these two respondents as easily and in a cryptic manner as it has done. The trial Court had given some cogent reasons for rejecting that evidence. But having examined the matter carefully we have come to the conclusion that we shall not be justified in differing from the view of the High Court in regard to the evidence of alibi adduced by Hoshiar. But surely the evidence adduced on behalf of Prabhu in regard to his plea of alibi was wholly untrustworthy and ought not to have been accepted. Even so, for the reasons to be shortly stated hereinafter, we do not feel persuaded to interfere with the order of acquittal recorded by the High Court in his favour.

7. In his statement under Section 342 CrPC, 1898, Prabhu stated :

> On the day of occurrence, I was admitted in Civil Hospital Rewari as indoor (patient) Hospital ? . Again said, I was admitted in Gohana Hospital.

In Session Court he said :

> I was not present at the spot and was admitted in the Bawana dispensary of Municipal Corporation Delhi at the time of the alleged occurrence.

Dr. Ashok Nagpal proved certain records of the Bawana dispensary but they were not trustworthy as held by the trial Court for cogent reasons. The High Court was not justified in brushing aside all these infirmities in the defence plea of alibi even to probabilise this plea and in accepting the evidence of Dr. Ashok Nagpal on its face. Be that as it may, the prosecution case cannot be said to have been proved against Prabhu merely because he came out with a plea of alibi, the evidence in support of which was untrustworthy. Having examined the evidence of the prosecution witnesses who gave the ocular version of the occurrence in the light of the First Information Report lodged by PW Mohar Singh we have come to the conclusion that the case against him is doubtful. He was a sarpanch of the village and at the time of the occurrence he was not less than 60 years of age. It was not necessary for him to have himself participated in the occurrence. The part of assault attributed to him was not specific in the First Information Report nor was the story of the Lalkara mentioned therein. His brother Harphool, it seems, was falsely implicated and although that was not sufficient to cast a doubt on the prosecution story as a whole, it is sufficient to cast a doubt in our mind as to the participation of respondent Prabhu in the occurrence. According to the evidence of PW Mohar Singh, respondent Prabhu gave a lathi blow on the head of Kalu and respondent Sohan gave one lathi blow on the right temple of Kalu and one lathi blow on this left leg. Apart from the injury found on his left leg, apparently two injuries were found towards the right temple side of Kalu and they were very close to the right pinna. In all probability they could not have been caused by two blows on the head or the temple part of the head of Kalu. They seem to have been caused only by one lathi blow which was given by Sohan. Thus on this ground also Prabhu's participation in the assault becomes doubtful. We do not think that justice requires the setting aside of the order of

acquittal in his favour and sending him to jail now.

8. Hoshiar's plea of alibi of having been admitted in the Rewari Hospital was consistent. Although the records of the Hospital proved by Dr. Mohinder Kumar, DW were not very reliable, the suggestion in cross-examination on behalf of the prosecution seems to be that Hoshiar had gone out of the Hospital on the night of the occurrence and taken part in it. Such a suggestion postulates that the prosecution was not seriously challenging his admission in the Rewari Hospital. We do not think that we shall be justified in differing from the High Court that he had left the Hospital without leave of the doctor in the night of the occurrence to take part in it. We, therefore, maintain his acquittal also by the High Court.

9. In the result fails and is dismissed.

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