

Maula Bux and Others

Vs

State of Rajasthan

Criminal Appeal No. 345 of 1974

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

15.02.1980

JUDGMENT

SARKARIA, J. –

1. The two appellants, Maula Bux and Abdul Rasheed, were tried (along with the convict Abdul Hameed) for the murder of one Ramjan. Abdul Hameed was convicted under Section 302, Indian Penal Code, while the appellants were convicted under Section 302 read with Section 34, Indian Penal Code, and each of them was sentenced to imprisonment for life. The High Court on appeal, has upheld their convictions and sentences.
2. The prosecution story was that on June 8, 1978 these three appellants and several other persons were in a religious congregation known as Milad-e-Shariff at the house of Khuda Bux. Roshan Khan, father of the deceased was also present in that congregation. According to the prosecution, Rahim Bux informed Maula Bux that under the influence of drinks, the deceased was abusing and threatening him. The three accused persons followed by Roshan Khan (PW 4) and Khuda Bux (PW 6) proceeded to the place where the deceased was. The appellants, were carrying lathis while Abdul Hameed, who has not been granted leave under Article 136, had a knife. The appellants and Abdul Hameed chased and overtook the deceased. The appellants, it is alleged, gave lathi blows while Abdul Hameed gave two knife blows to the deceased. The deceased was carried in an injured condition to the hospital where he died, the same night.
3. The sole question to be considered in this appeal is, whether the appellants can be held victoriously liable for the murder of the deceased by the operation of Section 34, Penal Code. Dr. Sati Punjab, who conducted autopsy, found six injuries in all on the dead body of the deceased. Two of these injuries were penetrating wounds which could be caused with the knife. The remaining four injuries were mere abrasions which in the opinion of Dr. Sati Punjab could have been the result of a fall. The trial court also expressed that these injuries were possibly the result of a fall, and not of lathi blows. It, therefore, held that it was doubtful whether the appellants had given any lathi blows to the deceased. The High Court has not agreed with this finding of the trial court. In its opinion, Dr. Punjabi was an inexperienced medical officer and she, 'through inadvertence or by design' had failed to notice some contusions which were noted by the Investigating Officer in Panchnama (Ex. P-3). The High Court, therefore, preferred the Panchnama prepared during the inquest by the Investigating Officer, to the sworn testimony of the medical witness who had conducted the post-mortem examination. It may, however, be noted that about 22 days thereafter, the Investigating Officer addressed a query to Dr. Sati Punjabi as to whether she had found any alcohol in the stomach of the deceased. But no enquiry was made by him with regard to contusions or other injuries which did not find mention in the post-mortem report. It may be observed that Dr. Punjabi

was thoroughly questioned with regard to this discrepancy. In cross-examination she agreed that if a violent blow is given with a lathi, one inch thick in diameter, it would not cause a mere abrasion. She asserted that no copy of the Inquest Panchnama (Ex. P-3) was sent to her. Dr. Modi's Medical Jurisprudence, 16th body., p. 233, Dr. Punjabi opined that the staining marks of post-mortem lividity are sometimes mistaken for bruises caused by violence during life.

4. On this basis the learned Trial Judge held that the bruise marks on scapular region and waist of the dead body noted in the Inquest Panchnama by the Investigating Police Officer, "were nothing but the marks of post-mortem stainings". This view of the evidence taken by the trial court could not be said to be palpably wrong. Nor was the High Court fair enough to the medical officer, Dr. Sati Punjabi, inasmuch as it held that she had failed to note some contusion marks mentioned in the Inquest Panchnama, through sheer 'inadvertence or by design'. The Police Officer who prepared the Inquest Panchnama was not an expert in medical jurisprudence. The possibility of his having mistaken the post-mortem staining marks on the waist and shoulder of the deceased, for ante-mortem bruises, could not be ruled out. In any case, in such a situation, as a matter of judicial caution, the benefit of this discrepancy between medical evidence and the inquest report, on this point in issue, ought to have been given to the appellants. At the trial PWs 1, 2 and 3 stated that when the three accused persons set out in search of the deceased they were proclaiming that they would break his legs and kill him. This fact, however, appears to be a subsequent improvement. It does not find mention in the police statements of these witnesses that the appellants had proclaimed their intention to kill the deceased.

5. In the light of what has been said above, it could not be held beyond all manner of doubt that these appellants assaulted deceased with lathis or shared the intention of Abdul Hameed accused to kill the deceased. At the most, they are liable to cause simple hurt to the deceased. It may be noted that the injuries attributed to the two appellants were not grievous in nature.

6. For the foregoing reasons, we partly allow this appeal and alter the conviction of the appellants Maula Bux and Abdul Rashid to one under Section 323 read with Section 34, Penal Code and reduce their sentences to one year's rigorous imprisonment each, which, we are told, exceeds the imprisonment already undergone by them.

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