

Jagdish S/O Daryao Singh

Vs

State of Madhya Pradesh

Criminal Appeal No. 378 of 1975

(A.D. Koshal, V.B. Eradi, R.B. Misra JJ)

18.02.1981

JUDGMENT

KOSHAL, J. -

1. This is an appeal by special leave from a judgment dated January 28, 1975 of the High Court of Madhya Pradesh upholding the conviction of the appellant for an offence under Section 302 of the Indian Penal Code and a sentence of imprisonment for life in consequence.

2. The facts of the case may be better appreciated with reference to the following pedigree table :

# Bahadur Singh \_\_\_\_\_ | \_\_\_\_\_ | |Dule Singh Dhul Singh (accused 3) | |Arjun Singh (deceased) Daryao Singh (accused 2) | |Bharat Jagdish (accused 1 - appellant)###

3. The occurrence in which Arjun Singh lost his life took place around noon on May 13, 1971 and its details, according to Faku (PW 10), are as follows : On the fateful day, Faku (PW 10) was returning to his house from his field when he met the deceased. At the latter's instance the two of them went to the field of the deceased which was being ploughed by his employees, namely, Budhiya (PW 11), Gulab (PW 12) and one Beria. After giving some instructions to his employees, Arjun Singh proceeded to his well accompanied by Faku (PW 10). There they found that Dhul Singh, accused was plucking mangoes from a mango tree. Arjun Singh protested with a remark that his own share had not been left intact and that Dhul Singh had no business to denude the tree of the entire fruit. Dhul Singh retorted with a shout directing Jagdish appellant to finish the deceased. Jagdish then helped himself to a saliya from a bullock-cart which was parked nearby and gave a blow therewith on the head of Arjun Singh. Faku (PW 10) ran immediately away to seek the assistance of Arjun Singh's employees and while doing so he looked back and found that Daryao Singh had also armed himself with a saliya and had joined his son Jagdish in the assault. Faku (PW 10) appeared on the scene soon afterwards accompanied by Budhiya (PW 11), Gulab (PW 12) and Beria. This party found the deceased seriously injured, and he died later on.

4. The autopsy revealed the presence of 9 extensive lacerated wounds on the dead body of Arjun Singh. They were all antemortem injuries and 5 of them were located on the head region. The skull had been practically smashed to smithereens.

5. The trial Court acquitted Dhul Singh and Daryao Singh but convicted and sentenced Jagdish as stated above. The acquittal of Daryao Singh was set aside by the High Court in an appeal by the State while the conviction and sentence of Jagdish were maintained. Apart from the present appeal

Daryao Singh also filed an appeal under Section 2(1)(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, but he is now dead and, therefore, that appeal has become infructuous.

6. Learned counsel for the appellant has vehemently argued that both the courts below erred in accepting the testimony of the three eyewitnesses. According to him that testimony was full of discrepancies and in fact indicated that three different versions were put forward by the prosecution from time to time. This aspect of the matter fully engaged the attention of the trial Court and the High Court and we find ourselves in agreement with them in the view that the discrepancies pointed out are comparatively of a minor character which do not go to the root of the prosecution story and need not be given undue importance. We are specially impressed by the testimony of Faku (PW 10), about whose presence at the time and place of the occurrence we do not entertain any doubt. For that reason we need not advert to the depositions of Budhiya (PW 11) and Gulab (PW 12) although that does not mean that we find their word to be unreliable.

7. Another point pressed by Mr. Gambhir is that the genesis of the occurrence as stated by Faku (PW 10) is so unnatural that the entire prosecution story should be discarded. We do not agree. It is true that the motive for the assault was a trivial one but human nature being what it is, murders are known to have taken place for lesser motives. It is pertinent to point out that the father of Dhul Singh accused is also the grandfather of Arjun Singh deceased and that there is not even a suggestion that any bad blood existed between the two branches of the family prior to the occurrence. We do not see, therefore, how Faku (PW 10) and the employees of the deceased would take into their head to falsely implicate the present appellant, in a heinous crime like murder.

8. The only other contention put forward in support of the appeal is that the offence committed did not amount to murder. That contention is based on a stray sentence in the earlier portion of the deposition of Faku (PW 10) to the effect that the appellant gave a blow on the head of the deceased. It is stressed that the said blow could not be identified in the matter of its precise location and that consequently it would be too much to say that it was that blow which proved fatal. The contention finds no favour with us. The deposition of Faku (PW 10) has to be read as a whole. So read, it shows unmistakably that Jagdish was responsible not for one blow but for more because after Faku (PW 10) started running away, the assault was continued jointly by the appellant and his father. However, we have no hesitation in holding that even if the part played by Jagdish in the assault was a limited one, the beating was accomplished by him and his father in furtherance of the common intention of both. Each one of the 5 injuries suffered by the deceased in the head region was caused by a blow intended to kill and the appellant cannot be absolved of liability for any of them. He was thus properly held liable for the offence of murder punishable under Section 302 of the Indian Penal Code.

9. The appellant had already been visited with the lesser penalty of the law. The appeal, therefore, fails and is dismissed. Steps shall be taken forthwith for the arrest of the appellant who is on bail, so that he may undergo the unexpired portion of the sentence awarded to him.

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