

Rambilas Singh and Others

Vs

State of Bihar

Criminal Appeal No. 84 of 1979

(S. Natarajan, Kuldip Singh JJ)

06.04.1989

JUDGMENT

NATARAJAN, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Patna in Criminal Appeal No. 407 of 1971 preferred by the State against the acquittal of A-1 to A-15 by the 1st Additional Sessions Judge, Muzaffarpur of charges under Section 302 read with Section 149/302 read with Section 34 IPC for having committed the murder of one Kumar Gopal Singh at about 9.30 p.m. on February 24, 1969 at village Bishunpur Kamdeo, District Muzaffarpur. A-16 Dinesh Singh was directly charged under Section 302 IPC in addition being charged under Section 302 IPC read Section 149 and 34 IPC. The 1st Additional Sessions Judge, Muzaffarpur convicted A-16 Dinesh Singh under Section 302 IPC but acquitted A-1 to A-15 of the charges under Section 302 read with Sections 149 and 34 IPC. During the pendency of the appeal against acquittal, A-2 and A-6 died and hence the appeal abated as against them. The High Court confirmed the acquittal of A-1 and A-9 as their names were not mentioned in the fardbeyan and convicted the rest of the accused viz. A-3 to A-5, A-7, A-8 and A-10 to A-15. The appeal preferred by A-16 Dinesh Singh was dismissed by the High Court and he has not preferred any appeal to this Court. The accused who have been convicted by the High Court have preferred this appeal. Appellant Shital Singh is reported to have died during the pendency of the appeal and hence the appeal has become infructuous as far as he is concerned.

2. The prosecution case was that on the morning of February 24, 1969, deceased Kumar Gopal Singh found A-2, A-16 and a female relation of them plucking khesari crops from his field and so he abused them and snatched away the plucked plants and their baskets and in relation for it the 16 accused persons had lain in wait for him on that night and attacked him at about 9.30 p.m. when he was returning home with his brother PW 22 and two other witnesses PWs 1 and 18 after attending a barat. In the fardbeyan given by PW 22 it was stated that 16 persons surrounded Kumar Gopal Singh and then Dinesh Singh inflicted a stab injury on the neck of Kumar Gopal Singh as a result of which he died a short while later. On hearing the alarm raised by PWs 1, 18 and 22, some villagers came running and on seeing them the accused ran away from the scene. Kumar Gopal Singh told the villagers who came there that he had been stabbed by Dinesh Singh. PW 22 went to the police station and lodged the first information report. After completion of investigation, charge-sheet was laid against A-1 to A-16.

3. The 1st Additional Sessions Judge accepted the prosecution evidence but came to the conclusion that accused Dinesh Singh alone deserved conviction under section 302 IPC and that the other accused cannot be held constructively liable for the offence committed by Dinesh Singh and convicted under Section 302 read with Section 149 or Section 34 IPC because non of them had

indulged in any overt act to cause the death of Kumar Gopal Singh.

4. The High Court, however, has taken the view that even though the appellants herein had not committed any overt act, they would be constructively liable under Sections 149 and 34 IPC for the offence of murder committed by Dinesh Singh and accordingly convicted them and sentenced them for imprisonment for life.

5. Mr. S. K. Mehta, learned counsel for the appellants contended that there is no evidence in the case to conclude that all the 16 persons had either formed a common intention or had formed themselves into an unlawful assembly with the common object of murdering Kumar Gopal Singh and it was in furtherance of their common intention or in prosecution of the common object of the unlawful assembly that Kumar Gopal Singh had been stabbed by Dinesh Singh. The learned counsel pointed out that in the fardbeyan it was only stated that the informant and Kumar Gopal Singh were surrounded by the accused persons and then suddenly Dinesh Singh stabbed Kumar Gopal Singh on the neck, but in the evidence the witnesses viz. PWs 1, 18 and 22 have made improvements to make it appear that Kumar Gopal Singh and the three witnesses were caught hold of by different sets of accused and it was thereafter Kumar Gopal Singh was stabbed by Dinesh Singh. The learned counsel stated that this improvement over the version given in the fardbeyan has been made in order to make it appear that all the accused had shared a common intention or that they had formed themselves into an unlawful assembly with the common object of causing the death of Kumar Gopal Singh and in prosecution of the common object of the members of the assembly, Kumar Gopal Singh was stabbed by Dinesh Singh. The learned counsel argued that the High Court was therefore in error in taking the view that the appellants also merited conviction for the stabbing outrage committed by Dinesh Singh.

6. Mr. D. Goburdhan, appearing for the State attempted to sustain the conviction of the appellants by pointing out that unless there was a common design for murdering Kumar Gopal Singh, all the accused would not have lain in wait for Kumar Gopal Singh or surrounded him before he was stabbed by Dinesh Singh.

7. On a consideration of the matter, we find that the view taken by the High Court for convicting the appellants cannot be sustained. Even accepting the prosecution case in full and holding that the appellants were present at the scene at the time of occurrence, the materials on record would not warrant a finding that the individual act of Dinesh Singh had been perpetrated in furtherance of the common intention of all the accused assembled there or in prosecution of a common object formed by all of them. It is true that in the morning, there was an incident in which Kumar Gopal Singh had abused A-2, A-16 and one of their womenfolk for plucking khesari crops from his land and had snatched away the plants as well as their baskets but it is highly improbable that by way of retaliation for that incident, the accused would have all joined together and planned to commit the murder of Kumar Gopal Singh and for that purpose as many as sixteen persons had come together to commit the murder. Even if they had wanted to have an encounter with the deceased, it could have been only to pick up a quarrel with him for the abuse hurled by him in the morning and for his snatching away the baskets along with the khesari plants that had been plucked. A significant factor to be borne in mind is that there is no evidence to show that the appellants had known that Dinesh Singh was carrying a knife when they surrounded him. If they has no knowledge that Dinesh Singh was carrying a knife, they could not even have remotely thought that he would be inflicting a stab injury on the deceased. If it was the intention of all the appellants that Kumar Gopal Singh should be done to death, it is inconceivable that they would have come without any weapons except for the knife brought by Dinesh Singh and that they would not have launched an attack on Kumar Gopal

Singh but would have rested content with the single stab, inflicted by Dinesh Singh. This would not be the conduct of persons if they had come to the scene with the common intention or common object of committing the murder of Kumar Gopal Singh and were lying in wait for him. Another important factor to be noticed is that the prosecution seems to have realised that the version of the occurrence given in the fardbeyan would not be enough for fastening constructive liability on the other accused for the overt act of Dinesh Singh and hence some overt acts must be attributed to them in order to make it appear that the attack on the deceased had been planned by all of them. It is obvious that with that end in view PWs 1, 18 and 22 had tried to make out in their evidence that three of the accused had caught hold of PW 1, four of the accused had caught hold of PW 22, and four others had caught hold of the deceased and one of the accused had caught hold of the deceased's cycle. There is inter se discrepancy in the evidence of PWs 1, 18 and 22 regarding the names of the accused who had caught hold of the deceased and the witnesses but even if the discrepancies are overlooked, there remains the fact that there is no mention whatever in the fardbeyan about some of the accused person catching hold of the deceased or the witness before Kumar Gopal Singh was stabbed by Dinesh Singh. There is therefore room for genuine doubt whether PWs 1, 18 and 22 have purposely made embellishments in their evidence in order to make the other accused constructively liable for the offence committed by Dinesh Singh. The High Court has failed to take note of all these factors and has too readily acted on the assumption that since all the appellants and Dinesh Singh were present at the scene and Dinesh Singh had inflicted a stab injury on the deceased, it must necessarily be held that all the accused should have forged a common intention or arrived at a common object viz. to commit the murder of Kumar Gopal Singh and in pursuance of it the murder was committed and hence all of them are constructively liable under Section 302 read with Section 149/34 IPC. It is true that in order to convict persons victoriously under Section 34 or Section 149 IPC, it is not necessary to prove that each and every one of them had indulged in overt acts. Even so, there must be material to show that the overt act or acts of one or more of the accused was or were done in furtherance of the common intention of all the accused or in prosecution of the common object of the members of the unlawful assembly. In this case, such evidence is lacking and hence the appellants cannot be held liable for the individual act of Dinesh Singh.

8. The appeal is, therefore, allowed and the judgment of the High Court is set aside. The conviction of the appellants under Section 302 read with Sections 149 and 34 IPC are set aside and they are acquitted of the charge. As already stated the appeal has become infructuous insofar as appellant Shital Singh is concerned.

9. As the appellants are on bail, their bail bonds will stand discharged.

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