

Ram Lal Singh and Others

Vs

State of Haryana

Criminal Appeal No. 391 of 1979

(S. R. Pandian, Smt. M. S. Fathima Beevi JJ)

26.09.1991

ORDER

1. The four appellants, namely, Ram Lal Singh, Shetan Singh, Pitram and Krishan, stand convicted under Sections 302 read with 34 IPC and 323 read with 34 IPC and sentenced to imprisonment for life and four months rigorous imprisonment respectively. The appellants have directed this appeal canvassing the correctness of the judgment of the High Court of Punjab and Haryana made in Criminal Appeal No. 1583 of 1976 dated November 12, 1976, dismissing the appeal and confirming the judgment of the trial court. The crux of the indictment of the prosecution is that on April 16, 1976 at about 12.50 p.m. at the Railway Station of Nangal Digrota, these appellants in furtherance of their common intention caused the death of the deceased, Smt Shugna. It is alleged that all the appellants dragged her out of the train, while returning to her village from Tehsil Court, and that appellant 2, Shetan Singh, indiscriminately cut her with a gandasa and that in the course of the same transaction they also caused simple injuries to Nanar, PW 10. The facts of the case are well set out in the judgments of the trial court and the High Court. Therefore, we are of the view that all those facts need not be reproduced in extenso, but for the purpose of the disposal of this appeal the relevant facts are given below :

2. Appellant 1, Ram Lal Singh, and appellant 2, Shetan Singh are brothers. Appellant 3, Pitram, is the son of appellant 1 and appellant 4, Krishan is the son of appellant 2. Nathu to whom the deceased was married and who died about 40 years ago was distantly related by third degree collateral to appellants 1 and 2. It seems that there was a dispute between the deceased and appellants 1 and 2 in the race of inheriting the property of Nathu. After the death of Nathu, the deceased was living with Nanar, PW 10 as husband and wife. On the date of occurrence, namely on April 16, 1976, the parties had to appear before the Tehsildar of Loharu, before whom the matter was pending, evidently for effecting the actual partition of the land in dispute. On that date, the Tehsildar did not hold the Court and the case was adjourned. Accordingly to the prosecution, when the deceased had gone to attend the Tehsil Court, she was accompanied by Nanar, PW 10 and her brother, Raghbir Singh, PW 11. After the case was adjourned, they were returning to the village by travelling in a train. When the train stopped at Nangal Digrota at about 12.50 p.m. according to the prosecution, all the appellants who also travelled by the same bogie dragged the deceased out. Appellant 2 gave the fatal injuries to the deceased with a gandasa, Ex. P. 5 which he had kept concealed in a bag. Nanar, PW 10, tried to intervene but he was given a danda blow by appellant 3, besides some fist blows. The deceased instantaneously died. All the appellants made good their escape from the scene of occurrence. PW 10 approached the Railway Guard, PW 3, and informed him about the occurrence. Thereupon, PW 3 conveyed the matter to PW 4, Station Master, who sent a telegram to the Government Railway Police Post at Loharu. On the basis of the telegram, a case was registered and investigated. After completing the investigation, the challan was filed against all

the appellants.

3. The entire prosecution case rests only on the evidence of two eye-witnesses - namely of PWs 10 and 11 of whom PW 11 is her brother. The learned counsel appearing on behalf of the appellants took us very meticulously through the recorded evidence and the judgments of the courts below and contended that the victim alone should have gone to the Tehsil Court and returned, that PWs 10 and 11 could not have accompanied her and that these two witnesses now are pressed by the prosecution into service to serve as direct witnesses to the occurrence. We are unable to accept this submission particularly in view of Ex. P.D./P.D-1 which is a telegram, purported to have been sent by PW 4 at the instance of PW 3. Under one of the columns reading "Particulars of accident" the message sent by PW 4 reads thus :

"Guard memo on 16/1 of 2 BRR at 2 P Begins and one woman murdered at NDRT halt as informed by Nanar village Digrota Dead Body at NDRT in possession of Nathu HT man DZB please inform police for investigation immediately."

4. The above telegram was sent within an hour of this incident. The particulars of the telegram clearly show that PW 10 was present at the scene of occurrence. After scanning through the evidence of PWs 10 and 11, we are of the firm opinion that safe reliance can be placed on the testimony of these two witnesses. Therefore, we see no force in the submission made by learned counsel that the victim woman alone should have returned from the Tehsil Court without being accompanied by anybody.

5. The next important question that falls for our consideration is whether all the appellants participated in the commission of the crime sharing common intention or whether the appellant Shetan Singh, who admittedly inflicted all the injuries is alone liable for the offence of murder.

6. Admittedly, there was a dispute regarding the claim over the land between the parties. On account of this dispute, there was a long standing and deep rooted animosity between them. Therefore, we have to approach the evidence in the background of such hostility that existed between them. Except a general statement that all the appellants dragged the deceased from the railway compartment, it is not the case of the prosecution that anyone of the appellants 1, 3 and 4 either was armed with any weapon or assaulted the deceased. Had these three appellants (appellants 1, 3 and 4) shared the common intention on account of any prior concert and pre-arranged plan each of the appellants would have carried some weapon and attacked her or at least fisted or kicked her. But in the present case, there is absolutely no evidence that except appellant 2, none of the other appellants assaulted the deceased nor any of these three appellants exhorted appellant 2 to attack the deceased. The evidence let in by the prosecution and the circumstances attending the case do not unfold any prior concert or meeting of minds of the appellants in sharing the intention of appellant 2, the perpetrator of the murderous assault on the victim.

7. Indeed, the deceased had received four incised wounds besides two abrasions at the hands of appellant 2 against whom the evidence adduced by the prosecution is overwhelming and formidable. All these injuries as repeatedly pointed out are attributed only to appellant 2. Under these circumstances, we are unable to agree with the courts below that appellants 1, 3 and 4, namely, Ram Lal Singh, Pitram and Krishan along with appellant 2 shared the common intention of committing the murder of the deceased. Hence we hold that appellants 1, 3 and 4 are not liable to be convicted with the aid of Section 34 IPC. Coming to the conviction under Section 323 read with 34 IPC for the injuries caused on PW 10, our opinion is that the evidence is very vague and stands

uncorroborated. Hence this conviction cannot be sustained. For the above said reasons we hold that appellant 2, Shetan Singh alone is liable to be convicted under Section 302 simplicitor but not under Section 302 read with Section 34 IPC. The convictions of appellants 1, 3 and 4 under Section 302 read with Section 34 IPC and the sentence of imprisonment for life imposed therefor and the conviction of all the appellants under Section 323 read with Section 34 IPC and the sentence imposed under that conviction are liable to be set aside.

8. In the result, we convict appellant 3, Shetan Singh under Section 302 simpliciter and sentence him to imprisonment for life. However, his conviction and sentence under Section 323 read with Section 34 IPC is set aside. The convictions and sentences imposed on appellants 1, 3 and 4 under both the charges are set aside and they are acquitted. The appeal is allowed so far as appellants 1, 3 and 4 are concerned, but partly dismissed so far as appellant 2 Shetan Singh is concerned in that his conviction is converted into one under Section 302 and the sentence of life imprisonment is retained but his conviction under Section 323 read with 34 IPC is set aside. Bail bonds of Shetan Singh stand cancelled.

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