

Ram Jattan and others

Vs

State of U.P

Criminal Appeal No. 45 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ)

12.02.1992

JUDGMENT

1. There are eight appellants. They along with four others were tried for the offences punishable under Sections 147, 148, 302 read with 149, 307 read with 149, 324 read with 149, IPC by the learned Second Additional Sessions Judge, Azamgarh. All of them were convicted for the said offences and the substantial sentence awarded was life imprisonment. They were also awarded various sentences of imprisonment on other counts. An appeal preferred by all of them was dismissed by the High Court. Only eight of them filed a special leave petition which was granted by this court. Hence this appeal.

2. The prosecution case is as follows:

The accused Dal Singhar's maternal uncle left behind five bighas of land at Village Bhanpur. This land was inherited by the widow, of Ramjas Smt. Badaki. Accused Dal Singhar is said to have obtained a fictitious sale deed in his name and in the name of his three brothers from Smt. Badaki, who on coming to know of it, filed an objection in the mutation proceedings. A suit was also filed for the cancellation of the said sale deed which was pending at the time of the incident. A few days before the date of incident, the appellants along with certain other persons forcibly harvested the barley crop belonging to Smt. Badaki. This led to a riot and gunshots are said to have been fired by accused Dal Singhar and others in which the appellants and some others received injuries and a criminal case was registered. On the date of occurrence. i.e. 8-4-1974 deceased Kharpat, injured Patroo and Balli, P.W. 8. were going towards their village through Village Dubari. It is alleged that the accused including the eight appellants who belonged to one group were lying in wait when the above mentioned three persons reached the place which is about 150 paces from the house of P.W. 1. All these accused attacked the three persons. Among them some were armed with barchhas and pharsas and the rest with lathis. All of them are alleged to have inflicted injuries on the three persons. When the victims raised alarm, P.W.1 Ram Awadh Singh along with Surju Singh and Ram Kishan Singh came there and on seeing them the accused left the scene of occurrence. Coming to know of the occurrence some villagers from Village Bhanpur also came there. The injured persons were carried to the Madhuban Police Station. On the way Patroo got a report written by P.W. 7 and that was presented in the Police Station. The S.H.O., who was present in the Police Station, registered the crime and sent the injured persons to the Hospital. The medical aid was given to all the three injured persons. It is stated that Patroo who is said to have given the report was subsequently killed. The inquest was

held on the dead body on the next day and the post-mortem was conducted. The Doctor, who conducted the post-mortem, opined that the death was due to shock and haemorrhage and after investigation the challan was filed. The case rested mainly on the evidence of P.Ws.1 and 8 who figured as eye-witnesses. Among them. P.W. 8 is the injured witness. Both the courts below have pointed out that P.Ws.1 and 8 are highly interested witnesses. The learned Sessions Judge however, relying on their evidence convicted all the 12 accused. In an appeal before the High Court, it was contended that P.Ws.1 and 8 are highly interested witnesses and the prosecution has failed to examine some independent witnesses and that at any rate the 12 accused could not have been convicted on omnibus allegation by applying Section 149, IPC. A further submission was that having regard to the nature of injuries found on the deceased, the common object of the members of the unlawful assembly. whoever they may be, was not to commit the murder The High Court observed that P.Ws.1 and 7 were interested witnesses and the evidence of P.W. 8 supports the evidence of P.W. 7 because P.W. 8 was the only surviving injured witness. In that view of the matter. the High Court dismissed the appeal.

3. In this appeal. the learned counsel for the appellants submits that it is highly unsafe to place any reliance on the evidence of P.Ws.1 and 8. We have perused the evidence of P.Ws.1 and 8. It is difficult to reject their evidence on the sole ground that they are interested witnesses. No doubt, they made omnibus allegation that all the 12 accused who were armed with various weapons surrounded and attacked the three persons but on that ground alone particularly having regard to the number of injuries found on the three persons it cannot be said that such an allegation should be rejected.

4. The learned counsel, however, further submitted that in any event the offence committed by the members of unlawful assembly cannot be held to be one of murder and therefore the common object of unlawful assembly was not one which attracts the provision of Section 302 read with Section 149, IPC. We find considerable force in this submission. Though, in general, right from the first report onwards the prosecution case is that all the 12 accused armed with sharp edged weapons and lathis surrounded the three persons and inflicted the injuries but from the doctor's report we find that no injury was caused on the vital organs. So far as Patroo is concerned, who got the report written by P.W. 7 and gave it in the Police Station. we find 13 injuries but all of them were abrasions and lacerated injuries on the legs and hands. The doctor opined that all the injuries were simple. On Balli, P.W. 8, the doctor found 12 injuries and they were also on arms and legs. There was only one punctured wound, injury No. 8 and it was not a serious injury and it was also a simple injury. Now, coming to the injuries on the deceased, the doctor who first examined him, when he was alive, found 11 injuries. Out of them, injuries Nos. 1 and 2 were punctured wounds. Injury No. 5 was an incised wound and injury No. 6 was a penetrating wound. All these injuries were on the upper part of the right forearm and outer and lower part of right upper arm. The remaining injuries were abrasions and contusions. The doctor opined that except injuries Nos. 7 and 9 all other injuries were simple. He did not say whether injuries. Nos. 7 and 9 were grievous but simply stated that they were to be kept under observation. The deceased, however, died the next day i.e. 9-4-74 and the post-mortem was conducted on the same day. In the post-mortem examination 11 external injuries were noted but on the internal examination the doctor did not find any injury to the vital organs. He, however, noted that 8th and 9th ribs were fractured. Now, coming to the cause of death, he opined that death was due to shock and haemorrhage. It is not noted that any of the injuries was sufficient to cause death in the ordinary course of nature. It could thus be seen that neither clause I nor clause III of Section 300 are attracted to the facts of this case. This contention was also put forward before the High Court but the learned Judges rejected this contention observing that the fracture of 8th and

9th ribs Must have resulted in causing death and therefore these injuries must be held to be sufficient in the ordinary course of nature to cause death. We are unable to agree with this reasoning. In the absence of proof by the prosecution in an objective manner that the injuries caused were sufficient in the ordinary course of nature to cause death, the same cannot be interfered with unless the Injuries are so patent. As we have noted above except fracture of ribs there was no other injury to any of the vital organs. As a matter of fact internally the doctor did not notice any damage either to the heart or lungs. Even ill respect of these two injuries resulting in fracture of the ribs, there were no corresponding external injuries. Again as already noted all the injuries were on the non-vital parts of the body. The learned counsel for the State, however, submitted that a forceful blow dealt on the arm might have in turn caused the fracture of the two ribs. Even assuming for a moment it to be so, it is difficult to hold that from that circumstance alone the common object of the unlawful assembly of 12 persons to cause the death of the deceased is established.

5. The common object has to be gathered or inferred from the various circumstances like nature of the weapons, the force used and the injuries that are caused. After carefully going through the medical evidence we find that it is difficult to conclude that the common object was to cause the death. The injuries on Patroo, P.W. 8 as well as on the deceased were more or less of the same nature except that in the case of deceased, there were few punctured wounds which were not serious but only simple. He died due to shock and haemorrhage the next day. In any event there is no indication anywhere in the evidence of the doctor or in the post-mortem certificate that any of the injuries was sufficient in the ordinary course of nature to cause death. No doubt in his deposition the doctor, P.W. 4 has stated in the general way that these injuries were sufficient to cause death in the ordinary course of nature. We have already held that there was no external injury which resulted in the fracture of the ribs. In such all event clause III of Section 300, IPC is not attracted. Likewise clause I of Section 300, IPC is also not attracted i.e. intentionally causing death. If their intention was to cause death, they would have used the lethal weapons in a different way and would not have merely inflicted simple injuries on the non-vital parts like legs and hands.

6. In the result we set aside the convictions of these eight appellants under Section 302 read with Section 149, IPC and the sentence for imprisonment for life. Instead we convict them under Section 304 Part 11 read with Section 149, IPC and sentence each of them to undergo rigorous imprisonment for five years. The sentences and convictions imposed on other counts are confirmed. The four other accused who were convicted by the trial court as well as by the High Court are not before us. However, we are of the view that they must also get the same benefit. They are Ram Chander (A-2), Dal Singhar (A-7), Barai (A-8) and Birju (A-11). Accordingly their convictions under Section 302 read with Section 149, IPC for imprisonment for life are set aside and instead they are also convicted under Section 304 Part 11 read with Section 149, IPC and are sentenced to undergo rigorous imprisonment for five years. The other convictions and sentences imposed on other counts are, however, confirmed.

7. The appeal is accordingly partly allowed. Appeal partly allowed.

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