

Munna and Ayyia

Vs

State of U.P

Criminal Appeals Nos. 735 and 736 of 1981

(A. M. Ahmadi, Kuldip Singh, N. Venkatachala JJ)

14.08.1992

JUDGMENT

1. The two appellants were charged for the murder of one Nafis. On the previous day, there was a quarrel between Munna (appellant in Criminal Appeal No. 735/81) and Nafis wherein the latter is stated to have given a beating to the former. Smarting under this insult, on the next date, i.e. 6th April, 1975, at about 2.15 p.m., when Nafis was sitting at the Baithak of PW 1 Izlamullah, the appellant Munna and his brother Ayyia (appellant in Criminal Appeal No. 736/81) went there, Munna was armed with a knife and Ayyia was carrying a razor. After abusing Nafis they pulled him out of the Baithak and took him to the nearby lane towards the house of one Nisar. Ayyia had caught hold of Nafis but had not used his weapon but his brother Munna took out his knife and stabbed him in the abdomen. After causing this fatal injury both of them ran away. The occurrence was witnessed by PW 1 Izlamullah, PW 2 Abdul Wahid and PW 3 Abdul Shakoor as well as one Salim (not examined).

2. Both the accused surrendered before the Chief Judicial Magistrate. Bijnor on 18th April, 1975. At the trial, they pleaded not guilty. The defence of Ayyia was that he was not present at the site and had been falsely implicated whereas Munna admitted his presence and set up a plea of private defence. In this connection, he placed reliance on the fact that he had sustained five injuries, four possible by a hard and blunt substance and fifth by a sharp cutting weapon as noticed by PW 9 Dr. Zuberi at 1.30 a.m. on 8th April, 1975. It also appears that after he surrendered he was examined by Dr. Pandey who found that the incised wound on the right plain had become septic and the scabbed abrasion on the front of right leg had peeled of. Both the Courts below accepted the eye-witness account and came to the conclusion that the fatal blow was given by Munna. They rejected the defence version that in the course of the incident Nafis has caused injuries to Munna. The evidence in this behalf was considered by both the Courts below to be suspect and not worthy of credence. On that line of reasoning Munna was convicted under S. 302 and sentenced to imprisonment for life. The defence of Ayyia as regards his absence at the time of occurrence was not accepted and lie too was convicted for the murder of Nafis with the aid of Section 34, IPC.

3. Counsel for the appellants contended that the Courts below were wrong in concluding that Munna did not have a right of private defence and in doubting the correctness of his version that he had sustained injuries in the course of the incident. We have perused the reasoning of the trial Court as well as the High Court in this behalf and we too are inclined to think that the story regarding Munna sustaining injuries in the course of the incident is not acceptable. It is also true that he after causing the injury chose the odd hour of 1.30 a.m. on 8th April, 1975 to go to the Medical Officer for

treatment when he had full one and a half day at his disposal within which he could have gone there. Dr. Zuberi has also stated that the injuries were 4 to 6 hours old which rules Out the possibility of Munna having suffered them on the 6th at about 2.15 p.m. His story, therefore, in regard to his having sustained the injuries In the course of the incident is highly suspect and improbable and, therefore, we think, both the Courts below were justified in refusing to place reliance on it.

4. So far as Ayyia is concerned, his case stands on a different footing. The motive for the commission of the crime is stated to be the incident which had taken place on the previous day i.e. 5th April, 1975 between Munna and the deceased. On the next day, when the deceased was seen sitting at the Baithak of Izlamullah the two brothers went there and abused the deceased. Thereafter they caught hold of him and took him to the nearby lane. Ayyia though armed with a razor did not choose to use the same. Ayyia had no idea that his brother would take out the knife and cause the fatal injury to the deceased. In the circumstances, it is difficult to attribute to him a common intention to kill the deceased and convict him with the aid of Section 34. At the most since he knew his brother has carrying a weapon and was smarting under an insult he could be said to be aware of the fact that there was a possibility of Munna causing injury. One can infer that he shared the common intention to beat up or assault the deceased though not to kill him. In the circumstances, we think that his conviction under Section 302/ 34 needs to be altered to Section 326/34. We, therefore, allow his appeal and alter his conviction to Section 326/34. Counsel for the appellant states that Ayyia has put in more than 4 years in prison as disclosed by the record. A statement which is not disputed by counsel for the State of U.P. We, therefore, accept and act on that statement. We think that the sentence suffered by Ayyia should serve the ends of justice. We, therefore, direct that Ayyia should suffer the sentence already undergone. Since he is on bail, his bail bond will stand cancelled. The appeal of Munna will stand dismissed. The appeal of Ayyia will stand partly allowed as above. Order accordingly.

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