

Mohan

Vs

State of Uttar Pradesh

(M.K. Mukherjee, S. Saghir Ahmed JJ)

29.07.1997

JUDGMENT

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M.K.MUKHERJEE, J.

1. Five persons, namely, Mohan Yadav, Tapsi Yadav, Chhotkun Yadav, Muneshwar Yadav and Kantoo Yadav were arraigned before the Sessions Judge, Azamgarh for rioting, murder and other allied offences. The trial ended in conviction of all of them under Sections 302/149 IPC, 307/149 IPC and 323/149 IPC. In addition, Mohan was convicted under Section 148 IPC and the other four under Section 147 IPC. For the convictions so recorded, they were sentenced to different terms of imprisonment, including life, with a direction that the sentences would run concurrently. As the appeal preferred by them in the High Court was dismissed, they filed the instant appeal after obtaining special leave. During the pendency of the appeal, two of them, namely Tapsi and Chhotkun died and hence, the appeal so far as they are concerned abate.

2. The prosecution case briefly stated is as under:

(a) The chak belonging to Kumar (P.W.3), father of Bandhoo (the deceased) and Chhotai (P.W.4), is just in front of the house of Tapsi. For sometime past Tapsi was trying to acquire that chak and he had even asked Kumar to sell it to him. Kumar, however, did not agree to such proposal. Over that issue there was a long standing dispute between them. Besides, there were other disputes between Kumar and his sons on the one hand and persons on the other.

2(b). In the morning of October 13, 1977, when the deceased went to plough the chak with bullocks, Tapsi and the other accused resisted him and tried to beat him up. Leaving his bullock and plough in the chak, Bandhoo then ran towards his house. The five accused persons then chased Bandhoo armed with various weapons. While Mohan had a country-made pistol with him, Tapsi and Chhotkun had ballams (spears), Kantoo a bursha and Muneshwar a lathi. When Bandhoo reached the sehan (courtyard) of his house, Mohan fired at him with his country-made pistol. The shot, however, did not hit Bandhoo. Thereafter, Tapsi and Chhotkun beat Bandhoo with their respective weapons. When Kumar and Chhotai rushed there to save Bandhoo, Muneshwar hit Kumar with the lathi and Knatoo hit Chhotia, with his bursha. Thereafter, all the five accused persons ran away. Bandhoo was then taken to the district hospital where he succumbed to his injuries in the same evening.

(c) A written report of the incident was given to the police station by Kumar on the

same day at 9.30 A.M. and on that information a case was registered against the five accused persons. Both Kumar and Chhotai were medically examined at the District Hospital, Azamgarh for the injuries they had sustained.

(d) Sub-Inspector Dhaghathi Singh (PW-7) took up Investigation of the case and went to the spot. He prepared a site plan and seized some blood stained earth from there. On completion of investigation, he submitted charge-sheet against the above-mentioned five accused persons.

3. The accused persons pleaded not guilty to the charges levelled against them and their defence was that Kumar met with his death in a dacoity that was committed in his house by some unknown persons. In support of its case, the prosecution examined ten witnesses, of whom Kumar and Chhota; figured as eye witnesses. No witness was however examined on behalf of the defence. The Trial Court found the evidence of the above two witnesses reliable and as, according to it, their evidence stood corroborated by the evidence of Jhingur (PW-6), who claimed to have seen the accused persons running away immediately after the incident, the medical evidence and the FIR that was lodged with utmost dispatch, it convicted the five accused persons in the manner as stated earlier. The High Court concurred with each of the findings of the Trial Court in dismissing the appeal preferred by the five convicts.

4. Since the concurrent findings of fact arrived at by the learned Courts below are based on proper discussion of the evidence and since convincing reasons have been given for relying upon the same, we do not find any justifiable ground to disturb the same. However, having regard to the manner in which the incident took place, it is difficult for us to conclusively hold that the accused persons had the common object of committing the murder of Bandhoo. It appears to us, on going through the entire record that they (the accused persons) wanted to teach Kumar and his sons a lesson for not selling the chak to them and not to kill them. It is, of course, true that according to the prosecution, accused Mohan fired a shot from a country-made pistol but there is no satisfactory evidence to conclusively prove that it was aimed at Bandhoo. If the common object of the unlawful assembly of which he (Mohan) was a member was to commit the murder nothing prevented him from firing further shots to achieve that object. In arriving at the above conclusion as regards the common object of the unlawful assembly, we have also drawn inspiration from the fact that except the punctured wound on the left side of the chest of Bandhoo which was caused by Tapsi and which resulted in his death, the other three injuries which were found on his persons, were simple injuries inflicted on non-vital parts of the body, namely, right thigh, left arm and right arm. Similar is the injuries that were found on the person of Chhotal and Kumar. Considering all these aspects of the matter, we hold that the common object of the unlawful assembly was to cause grievous hurt and not to commit murder; and the injury that was inflicted by Tapsi to cause the death of Bandhoo was his individual act for which he would have been liable for conviction under Section 302 IPC (Simpliciter).

5. For the foregoing discussion we alter the convictions of the three surviving accused-appellants, namely, Mohan, Muneshwar and Kantoo under Sections 302/149 IPC and 307/149 IPC to Section 326/149 IPC (two counts) but maintain their conviction under Section 323/149 IPC. We also maintain the conviction of Mohan under Section 148 IPC and that of Kantoo and Muneshwar under Section 147 IPC.

6. Coming now to the sentence, we find that the appellants have already served five years of rigorous imprisonment. Considering the fact that since the offences were committed almost twenty

years have elapsed, we reduce the sentence of Mohan, Muneshwar and Kantoo for their altered convictions under Section 326/149 IPC to the period already undergone. Since they have already served out the sentences imposed for their other convictions, we direct that they be released forthwith unless wanted in connection with any other case.

7. The appeal is thus disposed of.