

Badruddin

Vs

State of U.P.

Criminal Appeal No. 290 of 1990

(D. P. Wadhwa, S.M. Quadri JJ)

21.09.1998

JUDGMENT

QUADRI, J. –

1. This criminal appeal, by special leave, is directed against the judgment of the High Court of Allahabad in Criminal Appeal No. 878 of 1977 dated 24-7-1984, confirming the conviction and sentence of the appellant for offences under Sections 302/34 and 323/34 IPC and sentencing him to life imprisonment and rigorous imprisonment for six months respectively for the said offences. The appellant and three others (Nizamuddin, Hafiz and Siddiqui), on their denial of charges, were tried for offences under Sections 302, 303/34 and 323/34 IPC by the learned Second Additional Sessions Judge, Azamgarh, for committing the murder of Shaukat Ali (hereinafter referred to as "the deceased") on 19-3-1976 at 2 p.m.

2. The gravamen of the charge against the appellant is that the said persons of whom Nizamuddin was armed with a knife and the appellant, Hafiz and Siddiqui were armed with lathis, beat the deceased and killed him. PW 1 Mohammad Umar, PW 3 Ali Hamza and PW 5 Mohammad Hanif are eyewitnesses. Their statements before the Court show that Nizamuddin dealt blows with the knife and Siddiqui dealt blows with the lathi. Mohd. Umar, Mohd. Hanif and Ali Hamza tried to intervene but they were attacked with lathis by the appellant and Hafiz. It is thus clear that no over act in regard to assaulting the deceased is attributed to the appellant. In the FIR also, no overt act is attributed to the appellant.

3. Dr. G. S. Chaturvedi, Senior Physician, who conducted the post-mortem examination on the dead body of the deceased, found the following ante-mortem injuries on the body of the deceased :

"1. Incised wound oblique 2 cm x 1/4 cm x muscle-deep over left arm below parts 6 cm below lap of shoulder.

2. Incised wound oblique 4 cm x 1 cm x scalp-deep over the left side of back of the head, 12 cm back (back) and above left ear.

3. Stab wound oblique 2 cm x 1 cm x chest cavity-deep over left back of chest, 2 cm below inferior angle of left scapula. Direction of wound from behind forward and medially cutting the muscle and soft tissues. It had also cut pleurae and lower end of left lung through and through 1 1/4 cm x 1/4 cm.

4. Incised wound vertical 1 1/4 cm x 1/4 cm x muscle-deep over left side of strive.

5. Incised wound 2 cm x 1/4 cm x muscle-deep oblique over left side back chest 24 cm below the angle of left scapula."

(Quoted from the paper-book)

The death was caused due to the said injuries. All these injuries were caused by a sharp-edged weapon. None of the injuries can be said to have been inflicted with a blunt weapon like a lathi.

4. The High Court noted that the relations between the deceased and the others were strained on account of a dispute with regard to "sahan" (open yard) of the Mosque of Shah Bhukhari and that after Friday's prayer, there was some altercation between the two groups; the one consisting of the said four persons and the other consisting of the deceased and PW 1. Thereafter, the appellant and the said three persons came armed with a knife and lathis, as noted above, surrounded the deceased near his door while Nizamuddin dealt blows to him with a knife, Siddiqui beat him with lathi. PWs 3 and 5 stated that the appellant, Hafiz and Siddiqui inflicted blows on the said three eyewitnesses with lathis. From the above facts, it is difficult to sustain the conclusion that there was common intention between the appellant and other persons to kill the deceased. Though establishing common intention is a difficult task for the prosecution, yet, however difficult it may be, the prosecution has to establish by evidence, whether direct or circumstantial, that there was a plan or meeting of mind of all the assailants to commit the offence, be it prearranged or on the spur of the moment but it must necessarily be before the commission of the crime. Where direct evidence is not available, it has to be inferred from the circumstantial evidence. In the instant case, it is stated that the deceased alone was assaulted by Nizamuddin with a knife and Siddiqui with a lathi. The appellant dealt blows with a lathi not to the deceased but to other witnesses. There is no direct evidence of common intention. There is no case nor evidence of exhortation by him or of the fact that with a view to keep the said witnesses away from interfering and to facilitate Nizamuddin to kill the deceased, the appellant assaulted the said witnesses. Having regard to the facts and circumstances of the case, it is not possible to arrive at the conclusion that the appellant and others shared common intention to kill the deceased Shaukat Ali. Consequently, we are unable to sustain the conviction of the appellant for the offence under Sections 302/34 IPC. However, on the facts, we confirm the conviction and sentence under Sections 323/34 IPC awarded by the courts below. As the appellant has already served out the sentence for the offence convicted, therefore, he is directed to be released forthwith unless he is required to be detained in any other case. The appeal is accordingly allowed.