

Fulchand Gope & Another

v.

State of Jharkhand

(Supreme Court Of India)

HON'BLE MR. JUSTICE DORAISWAMY RAJU HON'BLE MR. JUSTICE
ARIJIT PASAYAT

Criminal Appeal No. 377 Of 2003 With Criminal Appeal No. 378 & 379 Of
2003 | 16-12-2003

1. These three appeals are by four accused persons who faced trial for allegedly having committed homicidal death of one Jai Kumar Pandey (hereinafter referred to as 'the deceased'). The occurrence took place over a very small and trivial matter on 13.10.1981. The accused persons faced trial for alleged commission of offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short 'the IPC') so far as all the four accused persons are concerned, and Section 323 IPC relating to accused-appellants Bhola Gope and Gauri Gope. The Trial Court found the accused persons guilty of the aforesaid offences, sentenced each one to undergo rigorous imprisonment for life. Though Bhola Gope and Gauri Gope were convicted for the offence under Section 323 IPC, no separate sentence was imposed. Appeal before the Patna High Court did not bring any relief and a Division Bench by the impugned judgment confirmed the conviction and sentence.

2. In support of the appeal, Mr. A. Sharan, learned senior counsel appearing for the appellants submitted that the High Court has failed to notice the apparent inconsistencies in the evidence. Three of the accused persons were minors at the time of occurrence. Finally, it was submitted that the factual scenario, as noticed by the Trial Court and the High Court does not make out a case under Section 302 IPC, and in any event, so far as accused Fulchand Gope, Sahdeo Gope and Bhola Gope are concerned, even Section 304 IPC would not be applicable to their cases. Learned counsel for the respondent-State of Jharkhand supported the judgments of the Trial Court and the High Court. The factual background, as described by the Trial Court and noticed by the High Court is to the following effect:

3. On 13.10.1981, around 4.00 P.M., the accused Fulchand Gope was grazing the paddy crops of the informant, Arjun Pandey, PW-5 and his goats and sheep were destroying the crops. This was objected to by PW-7, Kalawati Devi, sister of PW-5. She was slapped by the accused Fulchand Gope. Kalawati Devi went home and informed about the occurrence and PW-5 went and asked him as to why his sister was slapped. At this, accused Bhola Gope brought a lathi and chased the informant who ran away. Subsequently, all the accused persons reached there armed with various weapons. The accused Gauri Gope had a Tangi in his hand and other had lathis. Bhola Gope gave a lathi blow to the informant and Gauri Gope gave a Tangi blow on the head of the deceased. The others pelted stones, causing injury to PW-1, Bhuneshwar Pandey. Thereafter, information was lodged at the police station and investigation was undertaken. The factual scenario, as noted above, goes to show that the occurrence which took place over a sudden quarrel and the accused persons acted in course of that quarrel and did not take any undue advantage. That brings the case under Section 304 IPC, so far as accused Gauri Gope is concerned. But so far as others are concerned, it is to note that they had not assaulted either the deceased or the informant. But their presence was there and to a certain extent, their indirect participation by asking the Gauri Gope to teach the deceased a lesson, and also of pelting stones. That being so, in the peculiar circumstances of the case, the conviction of Gauri Gope would be appropriately under Section 304 (Part-II) IPC. So far as others are concerned, it would be under Section 326 read with Section 34 IPC. So far as the question as to whether the accused persons are minors or not, does not appear to have been specifically urged before the Trial Court and the High Court and, therefore, we do not think it necessary to deal with that aspect.

4. Custodial sentence of eight years' rigorous imprisonment, so far as Gauri Gope is concerned, would suffice, while in the case of the other accused persons, it will be three years rigorous imprisonment. Since the custodial sentence is for three years, we extend the benefits under the Probation of Offenders Act so far as they are concerned. The necessary terms shall be fixed by the Trial Court before whom the concerned accused persons shall appear without further notice on 20.01.2004 to receive orders. The appeals are allowed to the extent indicated above.