

Basanta Gohain Vs. the State

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Court : Guwahati

Decided On : Aug-09-1956

Judge : Sarjoo Prosad, C.J. and Deka, J.

Appellant : Basanta Gohain

Respondent : The State

Judgement :

Deka, J.

1. The appellant in this case was convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment by the Sessions Judge who agreed with and accepted the unanimous verdict of the jury. The appellant Basanta Gohain and his brother Nandeswar were charged under Section 302 read with Section 34 of the I. P. Code and committed to the Court of-Sessions for trial for causing the death of late Maneswar Gogoi, by an assault on the night of 11th December 1952.

2. The prosecution case was that on the evening of 11th December, 1952 there was a feast known as 'Na-khowa' ceremony in the house of P. W. 4 Sopin Barua of village Bagdung Bharaluagaon to Which he invited some of his co-villagers and the family of Maneswar who was related to him through his son's marriage.

Maneswar came to the feast with his younger sister P. W. 2 Mst. Labhoti Gogoi and his brother Budheswar (P. W. 1) joined them a little later at Sopin's place. It is

alleged that while the people had gathered at the house of Sopin the two accused persons Basanta and his brother Nandeswar came and surreptitiously attacked Maneswar because of some old grudge.

Basanta stabbed Maneswar on the back with a knife and in that injured condition Maneswar ran to the main house of Sopin which is shown as Ext. 'C' in the sketch map exhibited in the case. Maneswar's sister Mst. Labhoti took out the knife but immediately the two accused Basanta and Nandeswar broke into the house, or strictly speaking, forced into the house with a view to assault Maneswar.

Maneswar tried to avoid them and soon came out of the house and ran towards the granary of Sopin being chased by the two accused with daos in their hands with which they dealt several blows on Maneswar. Both the accused are alleged to have taken part in the assault.

The evidence mainly is that Basanta was seen inflicting the injuries on the person of Maneswar Who lay senseless near the granary of Sopin Barua within a few yards of the main house from which the two accused persons chased Maneswar. Soon after committing the assault the two accused persons fled away. Budheswar left the place out of fear.

The first information report was made by him at Chabua than a in the early morning of the day following and the police sent the injured who was in a precarious condition, to the Barbari Hospital Where he died on 13-12-1952. The Police after investigation sent up both Basanta and Nandeswar under Section 302 read with Section 34 of the Indian Penal Code.

The two accused persons pleaded not guilty and their plea was that they had not taken any part in the assault on Maneswar but they were implicated out of grudge.

3. Sufficient evidence has been led in the matter and though Budheswar Gogol, brother of Maneswar who lodged the information with the Police, does not appear to have seen the assault on his brother to the finish as on his own admission he fled away out of fear as soon as his brother was attacked by the accused proves the beginning of the assault. Must. Labhoti - a girl of about ten or twelve - definitely

says that she took out the knife from the back of Maneswar in the main house of Sapin Barua.

The story of assault by Basanta accompanied by his brother is specifically brought out by Sapin, the host at whose place the 'Na-khowa.' ceremony took place. The accused made no attempt to deny that there was a 'Nakhowa' ceremony at the house of Sapin Barua on the night of the occurrence and that Maneswar had actually come there and was severally injured in his compound, as is the prosecution case.

No definite suggestion has been made against Sapin as to why he should tell an untruth and implicate the accused falsely. Even no grudge has been suggested against him. Sapin in his deposition says that Maneswar and Must. Labhoti had come to his feast and even though Budheswar had come he did not come face to face with him.

He saw from the courtyard Maneswar being chased by accused Basanta who was armed with a dao; he tried to stop Basanta by holding him by his waist but Nandeswar, his brother, threatened him to release his brother or he would meet With sad consequences. Nandeswar had also a dao in his hand, He saw Maneswar entering his main house and the two accused forcing open the door.

He could see Maneswar coming out from the main house chased by the accused Basanta and Nandeswar and saw Basanta cutting Maneswar; Nandeswar was only following him. Maneswar fell down in front of his granary seriously injured from where he was taken to the Police Station and then to the hospital where he died. His version is not materially challenged except that a suggestion was made that he had not seen the occurrence at all.

It is not suggested that the occurrence took place at any other house or at any other place or in any other manner. Of course, the burden was on the prosecution to prove the case against the accused and there is sufficient evidence on the point, P. W. 5 Ponai Gogol is an old man of about 75 years of age who had assembled for the purpose of the (east at Sapin's place.

He supports Must. Labhoti as to the first part of the assault and assisted her inside the house. He did not see the latter part of the occurrence in detail but he saw Maneswar coming out being closely followed by the two accused who threatened other persons not to obstruct them. He saw Manes-war falling down that night injured in front of the granary of Sapin with entrails coming out as a result of the injuries received by him.

Nothing has been challenged as to his veracity except that he had short sight. P. W. 7 is one Dina Dihingia, a co-villager of Sapin who saw Maneswar running into the main house of Sapin after raising a cry that he was assaulted. He saw the accused Basanta trying to break open the door and when he stopped Basanta, Basanta resisted him and freed out of his grip.

He could see in the courtyard of Sapin, Basanta cutting Maneswar with a dao who fell down as a result of the injury in front of the granary. Nothing has been suggested why this man would be lying or should implicate the accused persons unnecessarily. There are other co-villagers of Sapin who support the prosecution story of assault on Maneswar by Basanta and he being followed by his brother Nandeswar.

4. It has been further suggested by the defence and put to the investigating officer that Must. Labhoti had not mentioned Nandeswar's name as one of the culprits while she made her statement before the Police. This question could be put to the investigating officer after drawing the attention of the witness itself to the statement. But that was not done and as such, it was irregular that it should have gone to the Jury.

But the learned Judge addressed the jury on the point and said that Must. Labhoti had not mentioned the name of Nandeswar as an accused While she was first examined by the investigating officer. This might have helped Nandeswar's acquittal, otherwise evidence is preponderating as to his liability.

5. The learned Advocate appearing for the accused-appellant has stressed before us one point mainly, and that is, that there can be no conviction under Section 302, I. P. Code of accused Basanta after his brother Nandeswar was acquitted. or

was found not guilty of the offence charged, that is, under Section 302 read with Section 34, I. P. Code.

In support of this contention he has relied on - 'Prabhu Babaji v. State of Bombay' : 1956 CriLJ147 . There the facts were that no definite part was ascribed to the accused Prabhu Babaji leading to the murder, and the only evidence was that there was a small blood mark in his dhoti and their Lordships were of the opinion that that was not sufficient evidence unless there was some other evidence or a concerted action by the accused with other accused persons was proved.

The other accused persons were all acquitted and therefore there was no scope for a concerted action and nothing was proved to show that this accused had taken any independent part. The facts of that case are, therefore, widely different and the ruling as such does not apply in this case.

Another decision of the Supreme Court : - 'Rawalpenta Venkalu v. State of Hyderabad' (S) AIR 1956 SC 171 (B), would show that if there were Independent evidence and even if other co-accused were acquitted, conviction could be maintained under Section 302, I. P. Code or under Section 302 read with Section 34 of the I. P. Code if the evidence justified a conviction of the accused even though originally no charge was framed under Section 34, I. P. Code.

In 'Wasim Khan v. State of U.P. : 1956 CriLJ790 , it was held that even if there was no suggestion that the charge was one under Section 302 read with Section 34 of the I. P. Code, or as committed in furtherance of a common intention, a conviction could be passed under Section 302 read with Section 34, I. P. Code or under Section 302, I. P. Code if the evidence so justify.

For a converse case we can refer to the case of - 'W. Slaney v. State of M.P. (S) AIR 1958 SC 116 (D), where the charges were under Section 302 read with S. 34, I. P. Code but the conviction of W. Slaney was under Section 304, I. P. Code on the acquittal of the co-accused R. Slaney, - as he was found to have given the Fatal blow.

6. Here there is sufficient evidence on the side of the prosecution to prove that the accused Basanta had taken definite part in the matter of committing injuries on the person of Maneswar, who died as a result of the injuries received. There-is pointed evidence that there was stabbing on his back which caused the injury No. (6) on the back or on the shoulder.

On this point the evidence is that the accused. Basanta had stabbed the deceased with a knife and the knife was extracted by the deceased's sister Must. Labhoti. She could see further that her brother was assaulted by the two accused and Basanta came armed, and her brother was being chased by these two accused persons.

The evidence of P. W. 4 is quite definite on the point that Basanta gave several blows on the person of Maneswar who lay bleeding and unconscious within a few yards from his main house and in his compound. The jury, therefore, on the evidence could have justifiably found the accused guilty under Section 302 I, P. Code or under that section read with Section 34, I. P. Code.

The learned Judge would have done much better to place the evidence on this point at some length before the jury and direct them as to how to treat the evidence in case one of the accused is not found to have participated in the offence, or the offence was not committed in furtherance of the common intention. The individual liability in such cases should have been stressed.

The case of W. Slaney is a case on the point and one of the accused could be convicted of murder even if the co-accused charged under Section 302/34, I. P. Code was acquitted. - provided of course the evidence justified it. That there was no alternative charge under Section 302, I. P. Code against the convicted person is not of much consequence.

The prosecution evidence as I have discussed above, fully justifies the conviction of the accused under Section 302. I. P. Code and the jury's verdict is based on sufficient materials - though the charge of the learned Judge might not be quite clear and helpful on the point. There was no other misdirection pressed before us.

7. In these circumstances, we hold that there is no misdirection in the charge nor any illegality in the conviction. The result is that the appeal fails and is dismissed.

Sarjoo Prosad, C.J.

8. I agree.

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