

Ramnath and ors. Vs. Emperor

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Court : Allahabad

Decided On : Mar-12-1943

Reported in : AIR1943All271

Appellant : Ramnath and ors.

Respondent : Emperor

Judgement :

Plowden, J.

1. This is an appeal from the judgment of the Sessions Judge of Benares dated 30th June 1942. The prosecution case is that about sunset on 5th February 1942, four men attacked Munnu Teli near village Sanghti and a fifth man, Shyam Sunder instigated them. Munnu was severely injured but was able to make the first information report at Alinagar thana at 10 P.M. He was sent with Bisheshar Nath constable to the hospital but at 4 A.M. Bisheshar Nath returned with the dead body, reporting that Munnu had died on the way. The medical evidence shows contused wounds on the left and right sides of the head and fracture and swelling of the left hand which caused great loss of blood and other injuries. There was no fracture of the skull. Death was due to shock and haemorrhage but not to any fracture of the head. The accused deny all knowledge of this occurrence and from the prosecution evidence it appears that Munnu was unarmed. So prima facie the case is one of murder. Without giving any reason why he did not frame a charge

under Section 302, the Magistrate committed the case under Sections 147 and 304/149, Penal Code. The learned Judge redrafted the charge but did not make any substantive alteration. Prima facie, of course, this was a case under Section 302 and a charge should have been framed under that section. It is, however, just possible to bring the case under Section 304 second part, because Munnu did not die from any fracture of the head. The learned Judge found that there was no case against Shyam Sunder, and, therefore, the accused were acquitted of the offence under Section 147 and could not be found guilty under Section 304/149.

2. The accused have been found guilty of causing Munnu's death by doing an act with the knowledge that they were likely by such act to cause his death. If, therefore, five or more accused had been convicted, they could have been found guilty under Section 304/149 because they knew that death was likely to result from their attack on Munnu, but since there are now only four accused, Section 34 is involved and the definition is stricter. There must be the furtherance of the common intention. Under Section 304, second part, however, there is no intention of causing death. Section 34 was substituted for the original section in 1873. The second part to Section 304 is to be found in the original Act 45 of 1860, but it could not have been part of the original draft. In order to make Section 84 applicable to the second part of Section 304, it will be necessary to widen it in terms of Section 149. Until that is done, accused persons cannot be found guilty under Section 304, second part, read with Section 84. Consequently, as the learned Judge has acquitted the accused under Sections 147 and 304/149, he could not find them guilty under Section 304 but must find them guilty under Section 325. They intended to cause or knew themselves likely to cause grievous hurt by attacking in force an unarmed man. As far as the facts are concerned, Ram Nath and Ram Nandan who are brothers are undoubtedly guilty. Ram Nath is mentioned in the first information report as having been on bad terms with Munnu because of a debt of Rs. 30 due from him. It is quite natural that Ram Nandan should have taken part with his brother in this cowardly attack. Meghu has not appealed. He is related to them. Bhagwan is an older man of over fifty and belongs to a different sub-caste, although the sub-inspector stated that during the investigation he learnt that Bhagwan's sister was married to some member of Meghu's mother's family. This however is denied by the defence witnesses and the sub-inspector admits that he

had no personal knowledge.

3. In the first information report it is stated that all the accused live in the same village, Tara Jiwanpur. It appears however that Ram Nath, Meghu and Ram Nandan live in a village called Tara Jiwanpur or simply Jiwanpur while Bhagwan lives in Tarapur and, according to the defence evidence, Tarapur is a thousand paces from Jiwanpur. It is quite possible that there was a slip in the first information report which was taken down under Section 323 and that the father's name of Bhagwan, resident of Jiwanpur, was incorrectly given. There is certainly a mistake because Bhagwan accused does not live in Jiwanpur and it cannot be said that a village more than half a mile away is the same village. At that time it was not expected that Munnu would die and if the case had been brought under Section 325, he could have explained this discrepancy to the investigating officer. It is true that Maghu absconded and was not seen until 23rd March when he presented himself in Court but when he knew that his name had been entered in the report and that Munnu had died, it is not surprising that he should lose his nerve and abscond. The witnesses saw this occurrence about sunset and they may easily have been mistaken about the identity of all the assailants. I think there is a reasonable doubt about Bhagwan, considering that he is not related to any of the accused, does not live in Jiwanpur and is a man of over fifty. I therefore give Bhagwan the benefit of doubt and acquit him. He is ordered to be set at liberty unless required for some other purpose. The appeal of Ram Nath and Ram Nandan is dismissed.