Sukhdeo and ors. Vs. State

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Court : Allahabad

Decided On : Mar-08-1967

Reported in : AIR1968All151; 1968CriLJ438

Judge : S.D. Khare and ;Yashoda Nandan, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 299, 300, 302, 304 and 323

Appeal No. : Criminal Appeal No. 1481 of 1964

Appellant : Sukhdeo and ors.

Respondent : State

Advocate for Def. : Dy. Govt. Adv. and ;N.N. Singh, Adv.

Advocate for Pet/Ap. : P.C. Chaturvedi and ;Anand Deo Giri, Advs.

Disposition : Appeal partly allowed

Judgement :

S.D. Khare, J.

1. This is an appeal directed against an order dated 2nd July, 1964, passed by the learned Additional Sessions Judge, Varanasi convicting all the five appellants for offences of rioting, culpable homicide not amounting to murder and causing simple hurt and sentencing each of theappellants to imprisonment for life under Section

304/149 I.P.C. to two year's rigorous imprisonment under Section 147 I.P.C. and to one year's rigorous imprisonment under Section 323 or 323/149 I.P.C., the sentences to run concurrently.

[After discussing evidence and holding that it was sufficient to establish the Prosecution Case (Paras 2 to 23) the judgment proceeded.]

24. Baiju had received as many as 24 injuries. He must have been beaten by several persons. The prosecution evidence is that all the five appellants had taken part in beating Baiju with lathis, and that Sukhdeo and Ram Krit only had beaten Sita Ram with lathis. The participation of all the five appellants in causing lathi injuries to Baiju appears to be quite probable.

25. The only point that remains to be considered is whether the case against the appellants, so far as the offence against Baiju (deceased) is concerned, should fall under Section 304, Part I, or under Section 304, Part II or under Section 323, read with Section 149 I.P.C.

Section 299 I.P.C. provides as follows:--

'Whoever causes death by committing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death commits the offence of culpable homicide.'

26. Baiju had received 24 injuries out of which two only were on the head and also the rest were on arms, legs and other parts of the body. The assailants had full opportunity to cause as many injuries to Baiju and with as much force as they liked. However, it is clear that most of the injuries were on non-vital parts of the body and even those which were on the head did not cause any fracture of the skull bones. In the circumstances it cannot be said that the injuries were caused either with the intention of causing death or with the intention of causing such bodily injury as was likely to cause death.

27. It has therefore, to be seen whether the injuries were caused in the circumstances that it could be said that the appellants had knowledge that they

were likely by such act to cause death. Baijnath alias Baiju was quite unarmed at the time he was attacked. He was mercilessly beaten with lathis by as many as six persons and as many as 24 injuries were caused to him. He became quite unconscious a few hours after he had received the beating. He actually died three days after the occurrence

28. It is true that the injuries caused to Baijnath alias Baiju did not result in the fracture of bones. It has, however, to be remembered that six persons armed with lathis had launched an attack on him and caused as many as 24 injuries to him on all parts of the body. In the circumstances of the case it can be safely inferred that they had knowledge that by their act they were likely to cause the death of Baijnath alias Baiju. We are not at all impressed by the argument that in the circumstances of the case the offence committed would be of causing simple hurt only punishable under Section 323 I.P.C.

29. The learned counsel for the appellants has referred us to the following statement made by Dr. R.S. Seth during the course of his examination :--

'(1) At the time of the post-mortem examination I was not very certain as to what must be the cause of death;

(2) Had the viscera been normal the death could be due to shock;

(3) a person after having received so manv injuries could survive.'

30. in our opinion none of the three statements referred to above would go to show that in the circumstances of the case the appellants could not have knowledge that by their act they were likely to cause the death of Baijnath. It is true that the mere use of lathis by the assailants will not go to show that they could have such knowledge. However, when the lathis were used with such determination as to cause 24 injuries on various parts of the body it can be safely inferred that such knowledge was there.

31. Section 299 I.P.C. defines culpable homicide. It is of two kinds: (1) culpable homicide amounting to murder, and (2) culpable homicide not amounting to murder. The scheme of the Penal Code is that first the genus 'culpable homicide'

is defined, and then murder which is a species of culpable homicide is defined, in Section 300 I. P.C. What is left out of culpable homicide after the special characteristics of murder have been taken away from it is culpable homicide not amounting to murder. The Penal Code, therefore, does not contain any definition of culpable homicide not amounting to murder.

32. The words 'likely by such act to cause death' occurring in Section 299 I.P.C. can only mean that the injuries caused be such that either of the following probabilities may exists, that is to say. (1) that the man to whom such injuries are caused might die as a result of such injuries, or (2) the man to whom such injuries are caused might survive. In other words, either of these two things should be probable. In Section 300 I.P.C. the word 'likely' is used in the sense of a higher degree of likelihood only. In common parlance, however, the word 'likely' is used only to denote a lower degree of likelihood. It is in this sense that the word is used in decided cases to distinguish between the offence falling under Section 302 from that falling under Section 304 I.P.C.

33. We are supported in this view by the case of Behari v. State, 1952 All LJ 546= (AIR 1953 All 203). Where injuries are inflicted with the knowledge that they are so eminently dangerous that they must in all probability cause death or such bodily injury as is likely to cause death and death occurs, the offence committed would be murder -- vide Clause (4) of Section 300 I.P.C. -- and would be punishable under Section 302 I.P.C. provided that it does not fall within any of the Exceptions mentioned in the aforesaid section. However, where such knowledge extends only to a lesser degree of the injuries being likely to cause death but death occurs, the offence would amount to culpable homicide not amounting to murder punishable under Section 304, Clause II, of the Indian Penal Code.

34. Section 149 I.P.C. provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object every person who at the time of the committing of that offence is a member of the same assembly is guilty of that offence.

35. In the circumstances of the case all the appellants who had attacked Baijnath alias Baiju with lathis must have known that the probability existed that the victim could die as a result of the shock of so many injuries inflicted on him on all parts of the body.

36. We are, therefore, of the opinion that the offence committed by the appellants would amount to culpable homicide not amounting to murder punishable under Part II of Section 304 I.P.C. and that none of the three statements quoted above made by Dr. R.S. Seth would go to indicate that the offence committed was not of culpable homicide not amounting to murder.

In our opinion there is no force in the contention that the appellants are punishable only under Section 323 I.P.C. read with Section 149 I.P.C.

The ends of justice would be met if the appellants are sentenced to four years' rigorous imprisonment each under Section 304, Part II, I.P.C.

37. The appeal is partly allowed. Theconviction of all the appellants under Section 304, Part I, is set aside and they areconvicted instead under Section 304, Part II,read with Section 149 I.P.C. and each sentenced to four years' rigorous imprisonment.Their conviction and sentences under Section 147 and Section 323 or 323/149 I.P.C. aremaintained. The sentences shall run concurrently. They are on bail. They must surrender to their bail forthwith and serve out thesentence as modified by this Court.