

Bikrama and ors. Vs. the State

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Court : Allahabad

Decided On : Aug-26-1957

Reported in : AIR1958All348; 1958CriLJ588

Judge : H.P. Asthana and ;J.K. Tandon, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 146, 147, 149, 300, 302, 304 and 323; ;[Cattle Trespass Act, 1871](#) - Sections 24

Appeal No. : Criminal Appeal No. 873 of 1956

Appellant : Bikrama and ors.

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Suraj Nath Singh, ;R.B. Misra and ;S.N. Mulla, Advs.

Disposition : Appeal dismissed

Judgement :

J.K. Tandon, J.

1. Six persons Bikarma, Parshottam, Patiram and Debi sons of Sarup and Surat and Baleshar sons of Mahadeo, all residents of village Kaneri, have been convicted by the learned Sessions Judge, Azamgarh on charges under Sections

147, I. P. C., 24, Cattle Trespass Act read with Section 149, I, P. C., 323 read with Section 149, I. P. C., 302 read with Section 149, I. P. O. Bikarma, Debi and Baleshar have further been convicted under Section 302 read with Section 34, I. F. O., and Baleshar under Section 302, I. P. C.

Under Section 302 read with Section 149, I, P. C., all have been awarded life imprisonment. The sentence under Section 147 is to one year's rigorous imprisonment and under Section 24 read with Section 149, I.P.C., to three months' rigorous imprisonment, The sentence under Section 323 read with Section 149, I. P. C., is again to one year's rigorous imprisonment.

2. The facts leading to their conviction were as follows:

On 3-10-1955, a pahar before sunset Sripat, the deceased, found between 20-25 heads of cattle belonging to Sarup and Mahadeo grazing his arhar and paddy fields. He raised an alarm and began driving all the cattle to the cattle pound. On an alarm being raised his brother Bam Sukh also joined him.

While they were so driving the cattle, it is stated, the six accused armed with lathis arrived and stopped them from driving off the cattle. At first they asked Sripat and his brother Ram Sukh to desist from driving the cattle to the pound but when they refused to accede to their request, Bikarma, Debi and Baleshar are said to have belaboured Sripat, and Parshotam, Patiram and Surat belaboured Ram Sukh with lathis and also succeeded in rescuing the cattle.

In the attack that was launched on the two brothers, Sripat received ten injuries including a contused wound 3 1/2' x 1/3' scalp deep on the right side of the head, a fracture injury of the parietal bone, another injury 4'x 4' on the back of the left forearm and a compound fracture of the ulna. There were six other injuries including a contusion 3' x 1/2' on the right side of back transversely in the mid scapular region.

There was an injury on the right arm just below the shoulder also. Ram Sukh received four injuries, three of them contusions and one abrasion. All these injuries were of simple nature. Sripat, however, was seriously Injured and he became

unconscious. He was carried to the hospital where he died a few hours later at 1 a. m. in the morning of 4-10-1955.

3. All the six accused denied the charges against them, and pleaded that they had been entangled by the complainants and the witnesses on account of enmity. It is, however, significant that no specific enmity was pointed out. Another significant fact is that although the accused did not so plead in their statements before the Magistrate, or the learned Sessions Judge, an effort was made during the cross-examination of P. W. 1 and some other prosecution witnesses that the cattle belonging to the complainants had damaged the field belonging to Debi accused and then there was a marpit; obviously meaning that the marpit in which the complainants' party received injuries arose in those circumstances.

This suggestion was neither contained in the statements of the accused nor was any effort made to establish it otherwise. In fact no serious effort appears to have been made to pursue it either. We are not convinced that the marpit resulting in the death of Sripat, or injury to his brother Ramsukh, was the result of any such trespass by their cattle into the fields of Debi. (4) We have already noticed that the learned Sessions Judge convicted all the six accused on charges under Section 24, Cattle Trespass Act and Sections 323 and 302, I. P. 'C., read with Sections 34 and 149, I, P. C., as also under Section 147, I. P. C. The learned Advocate for the appellants has not addressed us so far as cases under Sections 147, 323 and Section 24, Cattle Trespass Act are concerned.

The case has been mainly discussed on the question whether the offence, so far as Sripat's killing was concerned, amounted to murder or was at the most culpable homicide punishable under Section 304, I. P. C. We have nevertheless glanced through the evidence in the case and have no doubt that, the prosecution story as stated by these witnesses is true.

Ramsukh, brother of Sripat, who received injuries in the course of the beating, deposed that while he and his brother Sripat were driving away the cattle to the cattle-pound, the six accused arrived there, armed with lathis, with determination to rescue the cattle by force. The accused asked Sripat and Ram Sukh to release the cattle but when they declined, Bikarma, Debi and Baleshar took charge of

Sripat and the remaining three of Ramsukh.

Bikarma then shouted and dealt a lathi blow to Sripat, next Debi gave a similar blow and lastly, it is stated, Baleshar inflicted a lathi blow on the head and fractured his skull and as a result Sripat fell on the ground. He also stated that Patiram, Parshotam and Surat gave lathi blows on him as well causing injuries on his person. Besides Ramsukh, the prosecution examined some other eye-witnesses also including Chandradeo, Tilesar, Baijnath and Panchu.

These persons, whose fields are close by or otherwise were present at the time of occurrence, for which presence they have given valid explanation, have similarly stated that the accused party, consisting of the six accused, arrived armed with lathis and demanded the release of the cattle, but when Sripat and his brother refused to do so, they started beating them with lathis with the object of releasing the cattle.

In fact after the two brothers had been beaten and injured the accused took away the cattle with them. There is nothing in their testimony to discard the version given by them, or to show that they are not independent witnesses. A faint suggestion was made during the cross-examination of Tilesar that he had some quarrel with Mahadeo over irrigation intending thereby that he was inimical.

This was denied by him and there is no reason to accept the defence suggestion against him. There is no evidence to support the suggestion. Likewise a suggestion was thrown as against panchu P. W. 5 also that there was some quarrel between him and the accused in connection with a mend, This was denied by him, and it does not appear that any report either about any such incident was lodged in the police. We entirely agree with the learned Sessions Judge that their integrity is not disproved.

5. From the above evidence it is clear that the six accused formed an unlawful assembly and used force in executing their common object, namely, the release of the cattle. It also is abundantly clear that the injuries to Ramsukh, and to Sripat were inflicted in the commission of the common object of the six accused, what ever was done by each one of them was in furtherance of the common intention

of all which was to have the cattle released from the custody of the complainant's party who were lawfully driving them to the cattle-pound.

There can be no doubt upon their evidence, subject to what we shall hereafter state with regard to the plea whether the offence fell under Section 304 or Section 302, that the accused were guilty of the offences under Section 24, Cattle Trespass Act, Sections 147 and 323, I. P.C., read with Sections 149 and 34, I.P. C.

6. As regards the charge under Section 302, it is clear that Sripat died a few hours after the beating which he received in the course of the attack by the accused party. These injuries numbered ten and were either on the head, or the two arms, or in the region between the shoulders. There was one wound 3 1/2' x 1/3' x scalp deep in the right side of the head. There was fracture of the parietal bone beneath this injury; there was another injury 4'x 4' in the left forearm on the back side about 5' above the wrist.

There was a compound fracture also from ulna as a result of this injury. There was again a contused wound 1/4' x 1/3' x 1' in the left forearm about 7' above the wrist; there was swelling 4'x4' on the back of the right hand; another contusion on the right arm just below the shoulder and contusion on the right shoulder. There were then two injuries in the scapular region.

It cannot be doubted, having regard to the nature of injuries, that the victim was subjected to severe beating and the blows were inflicted with force resulting in wounds and fractures. It also cannot be doubted, looking once again to the location of the injuries, that the attack was directed in the region of the head while he was standing. The oral evidence also is to the same effect.

Prosecution witnesses have stated that first Bikarma gave a lathi blow, then Debi inflicted another and lastly Baleshar hit him with a lathi on the head. We have no doubt that Sripat was mercilessly beaten. Our attention has been invited by the learned Advocate for the appellants to the omission in the testimony of the doctor as to what and which of the injuries were such as resulted in the death of Sripat.

This no doubt is so, but we nevertheless find that there is sufficient material otherwise to show that Sripat's death occurred as a result of the injuries in the head which were of a very serious nature. It is in evidence that Sripat fell on the ground after Baleshar hit him on the head. He became unconscious also soon after and died later within about six hours of the receiving of the injuries.

No doubt is left in our mind, having regard to all these facts, that Sripat died as a result of these injuries, and further that the injuries on the head were such as will in the ordinary course cause death,

7. The question that next arises is -- does the offence fall under Section 302 or is it a case punishable under Section 304, I. P. C? Section 300, I. P. C., in defining murder lays down that culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or secondly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or thirdly, if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or fourthly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

It cannot be said in the present case, looking to all the circumstances that it can fall under the first or the fourth category of cases contemplated by Section 300. The entire incident arose because the accused's cattle had trespassed into the fields of the complainants and while the latter were driving them to the cattle-pound. The accused party arrived with the object of getting their release through force. There was no intention initially to cause death.

The case will not fall under the fourth category either. As the act of beating cannot, in this case, be said to be so imminently dangerous that it must, in all probability, cause death. It remains, therefore, to be judged whether it will fall under the second or the third category. In our view it will not fall under the second category either, but the facts are fully covered by the third category, namely, if the act is

done with the intention of causing bodily injury to any person and the bodily injury intended to be' inflicted is sufficient in the ordinary course of nature to cause death,

8. There can be no doubt on the evidence that the accused intended to cause bodily injury to Sripat. They came armed with lathis, asked Sripat and his brother to release the cattle and when the two brothers declined to do so they started beating. The intention of causing bodily injury to Sripat is fully borne out. The question which will arise is whether the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death.

We have noticed earlier that the injuries on the head were of a serious nature and sufficient in the ordinary course of nature to cause death. But the mere presence Of the injury would not be sufficient as it will further be necessary to see what was the intention to cause such injury. There were ten injuries on the person of the deceased, two of them of a very serious nature are on the head.

The attack was concentrated in the region of the head. Head is a vital part of human body. Sripat was a young man and looking to the nature of the injuries inflicted at various places it is clear to presume that the lathis were wielded with force and that they were in fact aimed at the places where the injuries were actually made. The presence of the injuries on the two forearms may be well due to an effort on the part of the deceased who was not armed with any lathi etc., to save himself from the blows, but they once again show that the attack was both forceful, and deliberate and persistent.

We have no doubt on the material before us that the injuries actually caused were, in fact, intended to cause death and that those injuries were sufficient in the ordinary course of nature to cause death. The case is thus amply covered by the third category.

9. It would, however, need to be further considered whether the case fell in any of the exceptions contained in Section 300. The only relevant exception can be exception 4, as exceptions 1 to 3 cannot be applied to the facts proved. There is no suggestion or other evidence to show that there was grave and sudden

provocation such as to deprive the accused of the power of self-control.

Exception 4 says that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. While it may be true that the act of the accused was not a premeditated one but the question which will still arise is whether it was done in a sudden fight in the heat of passion upon a sudden quarrel.

The evidence does not show more than this, namely, that the complainants' party who had apprehended the cattle belonging to the accused because they had damaged their fields, were driving them to the cattle-pound and were not prepared to release them at the command of the accused party. It cannot be said that the complainant party had, if these cattle had actually trespassed in their fields, acted wrongly or without jurisdiction. Their refusal to release the cattle at the bidding of the accused party was again not unjustified.

It does not appear that the complainants' party offered any other provocation or took any other aggressive action. On the other hand, what is proved by the evidence is that the accused party who were determined to get their cattle released at any cost, retaliated the refusal by the complainant's party with an attack by three of them on Sripat and by the remaining three on Ramsukh. It could not be said that there was any sudden fight or that the accused acted in the heat of passion upon a sudden quarrel.

If at all, the way in which the beating was done to Sripat shows the accused party, who were armed with lathis, mercilessly attacked Sripat who was almost bare-handed and severely injured him. We are not convinced, therefore, that exception 4 either will take out the case from the purview of Section 300.

10. The act of killing Sripat, therefore, amounted to murder. In our opinion the appellants' contention that the case fell under Section 304 and not Section 302 cannot be sustained.

11. The learned counsel for the appellants has at this moment addressed us on the question whether all the six accused could be held liable under Section 302. It was urged that the cattle belonged to two groups one represented by Bikarma Parshotam, Patiram and Debi, sons of Saroop, and the other represented by Surat and Baleshar, sons of Mahadeo and each group was anxious to release its own cattle. The acts of one should be viewed independently of the others.

The contention appeared to be that there could be no common intention or common object --each group being eager to release its own cattle -- to render the members of Sarup's group liable for the action of Baleshar, who inflicted the fatal blow. There is no evidence to show that there was any separation of cattle after they had been apprehended by the complainants' party; on the other hand, they were mixed up and the complainants' party was driving them as one single herd to the cattle-pound.

All the six accused arrived together at the scene of occurrence armed with lathis--with the joint object, as clearly appeared, to have the cattle released. There was common object between the two, namely, to get the cattle released by force. The fact, therefore, that some of the cattle belonged to one group and the others to the other group, in our opinion, made no difference. Even if their motives were not identical the object nevertheless was common and that being so the responsibility for the crime will attach to all.

12. In view of what we have said above, the appeal fails and is accordingly dismissed. The appellants are on bail; they should surrender to their bail bonds and serve out the sentence awarded to them by the Sessions Judge.

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