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Court : Allahabad

Decided On : Oct-15-1947

Reported in : AIR1948All223

Appellant : Bodhan and ors.

Respondent : Emperor

Judgement :

Wali Ullah, J.

1. This is an appeal by Bhura and his two sons, Bodhan and Manrakhan, Lohars of village Biharwan, district Banda, against their conviction under Sections 304(ii) and 323, Penal Code, and various sentences of imprisonment passed upon them by the learned Sessions Judge.

2. On 28th August 1945, about two Gharis after sunrise, she buffaloes belonging to the appellants when let loose began to fight with the cattle of Ram Prasad and his relations. In consequence of this, admittedly, Ram Prasad and his two nephews, Sheo Ghulam and Ram Ghulam on the one side and Bhura and his two sons on the other, indulged in exchange of abuses. It led to a scuffle and a lathi fight ensued with the result that Ram Prasad received some injuries as the result of which his skull was fractured and he succumbed to his injuries at his house on the same evening, about 8 P.M. Sheo Ghulam and Ram Ghulam are also said to have received injuries. Sheo Ghulam's injuries were examined by the Doctor

whose report is on the record, but there is no medical testimony with regard to the injuries of Ram Ghulam. Of the appellants, Bodhan undoubtedly received a number of injuries and there is medical evidence to that effect. Manrakhan alias Pulao absconded and when he surrendered on 20th October 1945, no marks of injuries were traceable on his person. The defence in substance was to the effect that lathis were plied by the appellants in exercise of their right of private defence. In support of the prosecution case, the learned Sessions Judge had the testimony of Sheo Ghulam, Ram Ghulam, the two nephews of Ram Prasad deceased, and Ram Bahori and Shital P.Ws. The defence produced a witness, named Ram Bhawan Singh, the Mukhia of a certain village other than village Biharwan.

3. The learned Sessions Judge has given very good reasons for rejecting the testimony of Ram Bhawan Singh who was merely a casual witness and was not produced before the police. On the rejection of the testimony of the solitary defence witness Ram Bhawan Singh, there is no evidence left in support of the defence version. Of the four eye-witnesses produced by the prosecution two, namely Sheo Ghulam and Ram Ghulam, are the nephews of Ram Prasad deceased. On the evidence both these persons must be considered to have received some injuries as the result of the lathi fight. Both of them no doubt are interested witnesses in the sense that they are closely related to the deceased and the fight between the appellants on the one hand and Ram Prasad and his two nephews on the other took place in which each of them played an active part, but, to my mind, that is no ground in itself for the rejection of the testimony of these witnesses. Bahori and Shital are independent witnesses. The evidence of Bahori is not very satisfactory as has been pointed out by the learned Judge in the course of his judgment. He had made some contradictory statements with the result that his statement recorded in the Magistrate's Court was brought on the record under Section 288, Criminal P.C. However, no such criticism is possible against the evidence of Shital Brahman which fully supports the prosecution case. On the evidence of Sheo Ghulam Ram Ghulam and Shital Prasad the learned Judge came to the conclusion that they had given a correct version of the occurrence and that was in support of the case of the prosecution. He, however, specifically found that the lathi fight took place between the three appellants on the one side and Ram Prasad and Sheo Ghulam on the other. Ram Ghulam apparently joined in later

without any lathi and he himself was hit. The learned Judge finally convicted the appellants under Sections 304 and 323, Penal Code, and sentenced Bhura appellant to one and a half year's rigorous imprisonment in view of his infirmity and old age and he sentenced Bodhan and Manrakhan to three years' rigorous imprisonment each under Section 304, Penal Code. All the appellants were sentenced to one month's rigorous imprisonment each under Section 323, Penal Code. The sentences were to run concurrently.

4. Learned Counsel for the appellant has strenuously contended that no conviction under Section 304, Penal Code was possible in this case. His contention is that the learned Sessions Judge has not used Section 34, Penal Code, in convicting these appellants. The argument of the learned Counsel is that none of the three appellants is specifically shown to have brought about the injuries on the head of Ram Prasad which resulted in his death. None of them therefore, can be convicted of that offence. Learned counsel, however, concedes that the evidence of the four eye-witnesses, if believed, would prove that all the three appellants participated in the assault with lathis on Ram Prasad deceased. It seems to me that the evidence in this case fully establishes that all the three appellants participated in the assault on Ram Prasad and caused no less than four injuries on his person including an injury on the head. According to medical evidence, the contused wound on the head of Ram Prasad which brought about the fracture of the skull, which in its turn caused shock and haemorrhage and resulted in his death, might be due to two lathi blows on the head. However, on a consideration of the whole evidence including the evidence given by the doctor who performed the post mortem examination on the body of Ram Prasad, I am satisfied that the learned Judge was right in convicting all the appellants of the offence under Section 304.

5. Another argument addressed by the learned Counsel is that the report made at the thana by Bodhan appellant was not admissible in evidence. I fail to see why such a report made by Bodhan appellant, when it did not amount to a confessional statement, pure and simple, could not be used as a statement of admission by Bodhan so far as the case of Bodhan was concerned. Learned Counsel has not been able to invite my attention to any provision of law which would exclude a first information report made by an accused person. On the other hand, Mr. J.R. Bhatt,

the learned Counsel who is holding the brief of the Assistant Government Advocate for the Crown, has invited my attention to the case in *Dal Singh v. Emperor* ('17) 4 A.I.R. 1917 P.C. 25 in which their Lordships of the Privy Council are reported to have held in somewhat similar circumstances that the report made at the police station by the accused person giving his version of the occurrence, which did not amount to a confession, was clearly admissible in evidence.

6. Lastly, learned Counsel has strongly urged that the appellants should be given the benefit of the right of private defence on the principle laid down by a Full Bench of this Court in *Parbhoo v. Emperor* : AIR1941 All402 . It seems to me that, in the circumstances of the present case, where there is no evidence in support of the right of private defence set up by the appellants, the principle upheld by the Full Bench has no application. The principle laid down by the Full Bench following the ruling of the House of Lords in *Woolmington v. Director of Public Prosecution* (1935) 1935 A.C. 462, would be applicable, to my mind, only in a case where the defence put up by an accused person is to the effect that he acted in the exercise of the right of private defence and the Court is in doubt whether or not the accused has been able to substantiate completely to its satisfaction the plea set up by him. That principle, to my mind, has absolutely no application to a case where an accused person sets up a plea of self-defence, but completely fails to establish it or fails to adduce any evidence in support of it. As indicated above, in the present case, to my mind, the learned Judge very rightly rejected the solitary testimony of Ram Bhawan Singh and after rejecting that testimony there was nothing on the record which could substantiate the right of private defence. Nothing was brought out in the cross-examination of the prosecution witnesses which could in any way assist the appellants in establishing their right of private defence. It seems to me therefore, that the learned Judge was right in convicting the appellants of offences under Sections 304 and 323, Penal Code.

7. The sentence of three years' rigorous imprisonment imposed on Bodhan and Manrakhan and of eighteen months' imprisonment on Bhura appellant does not, in my opinion, err on the side of severity.

8. The result, therefore, is that the appeal is dismissed. The appellants who are on bail must surrender and serve out the balance of the sentence.

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