

Dwarika Yadav and ors. Vs. the State

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Court : Allahabad

Decided On : May-13-1975

Reported in : 1976CriLJ239

Judge : Mohd. Hamid Hussain and; J.P. Chaturvedi, JJ.

Appellant : Dwarika Yadav and ors.

Respondent : The State

Advocate for Pet/Ap. : Sri. P.C. Chaturvedi

Judgement :

J.P. Chaturvedi, J.

1. This is an appeal by Dwarika Yadava, Mahesh Yadava, and Mangala Yadava. The three appellants were tried in Sessions Trial No. 47 of 1971 by the learned Sessions Judge, Ballia. He found Dwarika guilty of an offence under Section 302, I. P.C. and convicted and sentenced him to life imprisonment. He also found him guilty of the offence under Section 323, I. P- C. for causing simple hurt to Gauri Shanker and sentenced him to rigorous imprisonment for one year. He further convicted him under Section 323 read with Section 34, I. P.C. for causing simple hurt to Hardeep and sentenced him to undergo rigorous imprisonment for six months. The two appellants Mahesh and Mangala were convicted of the offence under Section 302 read with Section 34, I. P.C. and sentenced to life

imprisonment. Mangala was also convicted of the offence under Section 323, I. P.C. for causing simple hurt to Hardeep and he was sentenced to undergo rigorous imprisonment for six months. Mahesh was convicted under Section 323 read with Section 34, I. P.C. for causing simple hurt to Hardeep and he was sentenced to undergo rigorous imprisonment for six months. All the sentences of the three appellants were made to run concurrently.

2. The prosecution case was that Dwarika and Mahesh appellants are brothers. They are residents of village Mathia Jaidipur. Mangala appellant is their cousin. The complainant Satya Narain who is also resident of village Mathia Jaidipur is son of the deceased Manhgu. He has two brothers Hardeep and Gauri Shanker. At the time of the incident Gauri Shanker had been of unsound mind. There was a field belonging to Munni Teli at village Mathia Jaidipur. Manhgu and his sons raised potato crop in that field on wages. On 21st November, 1970 at 2.45 p.m. Dwarika appellant had been irrigating the field of Munni Teli whereupon Gauri Shanker gave him a push saying that he would turn him out of the field as they had sown crop in the field. Dwarika appellant gave a blow with his Kudal on the head of a Gauri Shanker resulting in a bleeding injury. Gauri Shanker's father Manhgu and his brother Satya Narain who were at their Palani which was at a distance of 15 paces came. In the meanwhile Dwarika had run away. While Manhgu and Satya Narain were taking Gauri Shanker to the house of the Pradhan abusing Dwarika for causing injury to Gauri Shanker, Dwarika and the other two appellants Mahesh and Mangala came. Mahesh exhorted to beat whereupon Dwarika who was armed with a spear inflicted a blow with his spear on the chest of Manhgu. Mahesh inflicted a blow with his lathi on the head of Manhgu. Manhgu fell down and died on the spot. Hardeep had come in the meanwhile. He was also beaten by Mangala with his lathi. The appellants thereafter ran away.

3. Satya Narain dictated a report to Paras Nath. It is Ext. Ka-1. Satya Narain submitted it at the police station at 4.30 p.m. on 21st November, 1970. Ram Daras Singh, Head Moharrir, police station Sahatwar prepared a check report Ext. Ka-13 on the basis of the written report of Satya Narain and registered a case in the general diary against the appellants.

4. Post-mortem examination on the dead body of Manhgu was performed by Dr. D. Misra, Medical Officer, District Hospital Ballia at 11.00 A. M. on 22nd November, 1970. Dr. Misra was examined as a witness by the prosecution in the court the committing Magistrate. The prosecution has tendered his statement which is Ext Ka-16. Ext. Ka-17 is the post-mortem examination report which he prepared at the time of examination. The deceased Manhgu had two ante-mortem injuries which were as follows:

1. Punctured wound $1\frac{1}{2}' \times 1\frac{1}{5}'$ x chest cavity deep on left side chest 3' above and lateral to the left nipple on the outer axillary line. Directing downwards and medially piercing the 3rd intercostal space in the left middle clavicular line.

2. Lacerated wound with contused margins $1\frac{1}{2}' \times 1\frac{1}{4}'$ x scalp deep on left side of head 2 $1\frac{1}{2}'$ above the root of left ear.

5. Internal examination revealed that the upper lobe of left lung was perforated through and through underneath injury No. 1. Left lung had collapsed and left side chest cavity contained about 16 oz. of blood. Pericardium was perforated below injury No. 1. Death was due to shock as a result of haemorrhage caused by injury No. 1.

6. Injuries of Hardeep and Gauri Shanker were examined by Dr. Harihar Singh, Medical Officer, Reoti dispensary, Ballia on 22nd November, 1970 at 11 A. M. and 11.15 A. M. Dr. Harihar Singh was also examined as a witness in the court of the committing Magistrate and his statement has been tendered by the prosecution. It is Ext. Ka-18 and Exts, Ka-19 and 20 are injury reports prepared by him. Hardeep had the following injuries:

(1) Abrasion $1\frac{1}{2}' \times 1\frac{1}{10}'$ on the left index finger.

(2) Swelling $1\frac{1}{2}'$ on right fore-arm front side. Both the injuries were simple and were caused by some blunt weapon like lathi. The injuries were one day old. Gauri Shanker had one injury which was as follows: (1) lacerated wound $1\frac{1}{2}' \times 1\frac{1}{2}'$ with swelling $1\frac{3}{4}'$ on head in middle 3' above root of nose.

This injury was also simple and was caused by some blunt weapon. It was one day old.

7. Investigation was made by the Sheo Adhar Misra, S. O. Sahatwar (P.W. 7). He conducted inquest and after completing the investigation he submitted a charge sheet against the appellants. After preliminary enquiry by the committing Magistrate they were committed to the Court of Session who tried and convicted the appellants as mentioned already.

8. The appellants pleaded not guilty. They denied that they inflicted injuries on Gauri Shanker, Hardeep and Manhgu. According to them Manhgu inflicted injuries on Hardeep and Gauri Shanker and Gauri Shanker and Hardeep inflicted injuries on Manhgu.

9. The prosecution examined eight witnesses. Satya Narain (P.W. 1), Subedar (P.W. 2) and Mohan (P.W. 3) are eye witnesses of the incident. Constable Narvadeo (P.W. 4) took the dead body of the deceased Manhgu to the mortuary and produced and identified it before Dr. D. Misra, Brij Ram (P.W. 5) is Malkhana Moharrir who remained in custody of the four sealed bundles containing the property of the case. Constable Ram Chandra Tewari (P.W. 6) took the sealed packets from the police station to the Malkhana and deposited there. Sheo Adhar Misra (P.W. 7), S. O. Sahatwar, investigated the case. Sri Ram Daras Singh (P.W. 8) prepared a check report on the basis of the written report of Satya Narain and registered a case against the appellants.

10. Sri P.C. Chaturvedi, learned Counsel for the appellants has contended that the prosecution witnesses Satya Naian, Subedar and Mohan were not reliable, that the only other witness Hardeep had not been produced by the prosecution, that so far as the appellant Dwarika is concerned he inflicted injuries on the deceased Manhgu on grave and sudden provocation and that the appellant Mahesh and Mangala did not share the common intention with Dwarika to cause death of Manhgu and, therefore, they could not be guilty of an offence under Section 302 read with Section 34, I. P.C. and that at worst they committed an offence under Section 326 read with Section 34, I. P.C. In support of his contention learned Counsel placed the statements of Satya Narain (P.W. 1), Subedar (P.W. 2) and

Mohan (P.W. 3).

11. Satya Narain stated that to the south of his house there is a Sahan and to the east of his Sahan is a field belonging to Munni Teli. They had sown potato in the field of Munni Teli on wages. About six months ago at 3.00 p.m. Dwarika was working in the field of Munni Teli which was being irrigated. Gauri Shanker who is of unsound mind gave Dwarika a push saying that he should get out of his field. Dwarika inflicted an injury with his Kudal on the head of Gauri Shanker. Gauri Shanker began to bleed from his injury. His father Manhgu deceased came. He pressed the injury of Gauri Shanker and abused Dwarika and asked the witness to accompany him to the Pradhan in order to show the injury to him. When Manhgu deceased and Gauri Shanker were going to the house of the Pradhan and they reached the field of Janardan Tewari, appellants Mahesh, Dwarika and Mangala came. Dwarika was armed with a spear. Mangala and Mahesh had lathis. Mahesh exhorted to beat whereupon Dwarika inflicted an injury with his spear on the chest of Manhgu. Mahesh also hit Manhgu with his lathi. In the meanwhile Hardeep also came. Mangala inflicted an injury on him with his lathi. The incident was seen by Mohan and Subedar. The deceased Manhgu died on the spot.

12. Subedar (P.W. 2) stated that about six months ago in the month of Aghan at 2.30 or 3.00 p.m. he was at his door. Mohan was also there. Manhgu had sown potato in the field of Munni Teli as a labourer. On the day of occurrence when Dwarika was working in the field with his Kudal Gauri Shanker came and pushed him. Dwarika thereupon inflicted an injury on Gauri Shanker on his head with his Kudal. Dwarika in the meanwhile ran away. Manhgu said that Gauri Shanker should be taken to the Pradhan. When Manhgu and Satya Narain were taking Gauri Shanker to the house of the Pradhan and were abusing Dwarika for inflicting an injury on Gauri Shanker and when they were in the field of Janardan Tewari appellants Dwarika, Mahesh and Mangala came. Dwarika was armed with a spear, Mangala and Mahesh were armed with lathis. On the exhortation of Mahesh Dwarika inflicted injury on the deceased with his spear and Mahesh himself inflicted injury on the head of the deceased. Manhgu fell down and died. When Hardeep came he was also beaten.

13. Mohan (P.W. 3) has given a similar version of the incident. He was at the house of Subedar (P.W. 2) when the incident took place. Both these witnesses stated that Gauri Shanker was insane. Satya Narain (P.W. 1) is the son of the deceased Manhgu and brother of the other two injured Gauri Shanker and Hardeep. The other two witnesses Subedar (P.W. 2) and Mohan (P.W. 3) are, however, not related to the injured and the deceased. They have denied that they belonged to the family or party of the deceased Manhgu. No suggestion has been made to them to show that they had any grudge against the appellants. They have also repelled the suggestion by the defence that there was a fight between Gauri Shanker and Hardeep on the one hand and Manhgu on the other and Manhgu died of the injuries sustained by him at the hands of Hardeep and Gauri Shanker

14. The site plan shows that the Sahan of the witness Subedar is at a short distance from the field of Janardan as well as from the field of Munni Teli and as such presence of Subedar and Mohan was natural and probable. We are, therefore, unable to accept the contention of the learned Counsel that these witnesses were not reliable. :

15. This brings us to the consideration of the next submission made by the learned Counsel for the appellants namely that Dwarika appellant did not commit an offence under Section 302, I. P.C. and that he inflicted the injuries on the chest of deceased Manhgu on grave and sudden provocation. The appellant Dwarika was armed : with spear. He had inflicted an injury on the chest of the deceased Manhgu resulting in perforation of upper lobe of the left lung as well as perforation of pericardium. The injury by itself was such as was sufficient in the ordinary course to cause death of the deceased.

16. learned Counsel for the appellants has referred to the statements of Satya Narain, Subedar and Mohan that when Gauri Shanker had been injured by Dwarika with his Kudal Manhgu abused Dwarika and thereby he provoked him to cause fatal injury.

16-A. Exception 1 to Section 300. Indian Penal Code provides that:

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control, by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

17. The person claiming the benefit of this provision has to show that he received provocation which was grave and sudden and that he was deprived of the power of self-control and that he caused the death of the person while he was still in that state of mind. In the present case no suggestion was made to any of the three eye witnesses Saiya Narain, Subedar and Mohan that the abuses .by their very nature were such that Dwarika [was provoked to the extent that he lost self-control and inflicted the fatal injury on the chest of Manhgu. Nor was the provocation sudden. Dwarika went home, came armed with a spear and brought his brothers who were armed with lathis. this interval was enough to cool him down.

18. On the other hand, the three witnesses stated that Gauri Shanker was of unsound mind and that Gauri Shanker merely gave a push to Dwarika. Dwarika being aware that Gauri Shanker was of unsound mind could not be said to have been provoked by Gauri Shanker to inflict an injury on his head with Kudal, he should have taken the push of Gauri Shanker in a sporting spirit. The fact that he inflicted an injury on the head of Gauri Shanker with Kudal resulting in bleeding on his head must have on the other hand given an occasion to his father Manhgu to feel aggrieved. There was nothing wrong in his conduct in declaring that he would show the injured Gauri Shanker to the Pradhan and in giving some abuses to Dwarika. In the circumstances of the present case, therefore, it cannot be said that Manhgu gave any grave and sudden provocation to Dwarika so as to justify infliction of the fatal injury in his chest.

19. learned Counsel for the appellants referred to a decision in Criminal Appeal No. 640 of 1971, Mansa Ram v. State, decided on 24-3-1975 : 1975 Cri LJ 1172) (All), in which it was held that

It is true that neither party elicited as to who initiated abuses and what were the actual words used but it is evident from the statements of the witnesses that the appellant is aged 19 or 20 years and carries on a shop in the market of Tatiri. No

shop-keeper would ordinarily behave in a manner which may affect his business and there is no reason why the appellant would have done so. On the other hand the deceased and Jaibir were students of the Mithili College. The appellant was justified in quoting his own rate of sugar and if Jaibir was not prepared to purchase it at this rate he could well have left the shop. He had no business to ask why the appellant was selling it at the rate of 10 paise per kilo more. If the appellant remarked that they were visiting the shop with empty pockets, there was no justification for Ranjeet to get enraged and threaten the appellant. No shop-keeper of a normal mind will deliver a knife blow to his customer without sufficient cause. In the circumstances of this case when Ranjeet became enraged and also threatened the appellant, the possibility of his as well as Jaibir initiating abuses and using filthy words cannot be ruled out.

In the instant case the quarrel was sudden. If the possibility of Ranjeet uttering filthy abuses to the appellant first cannot be ruled out, the latter could have grave provocation to deliver the knife blow to Ranjeet.

20. The facts of the above case were peculiar and materially different from those of the present one. In that case the deceased Ranjeet and Jaibir had gone to the shop of the appellant Mansa Ram for making purchases and Mansa Ram demanded ten paise more for one kilo sugar than the usual rate. There was some altercation and exchange of abuses between the deceased Ranjeet and his companion Jaibir with the appellant. In Criminal cases in which facts alone are involved a decision in one case can only be referred to by way of illustration and not by way of an appeal to precedent. In *Gur-charan Singh v. State of Punjab* : 1956 CriLJ827 it was held:

Reference to reported case when facts alone are involved can be by way of illustration only and not by way of an appeal to precedent, because on facts no two cases can be similar. Each case has its own peculiar facts and it is therefore always risky to appeal to precedents on questions of fact.

We are, therefore, of the view that in the instant case Manhgu did not give any grave and sudden provocation to the appellant so that he may have lost self-control and inflicted fatal injury on him. As such the case is not covered by first

exception to S. 300, I. P. C.,

21. It was next contended that Mahesh and Mangala appellants did not share the common intention to cause death of Manhgu with Dwarika. They came along with Dwarika from their house armed with lathis. Dwarika had a spear with him. They could be aware that Dwarika might cause an injury with his spear which may be grievous but they were not aware that he intended to cause or might cause such an injury as was sufficient to cause the death of Manhgu. As such we are of the view that Mahesh and Mangala did not commit an offence under Section 302 read with Section 34, I. P.C. and that they were liable for an offence under Section 326 read with Section 34, I. P.C.

22. The appeal is, therefore, partly allowed and partly dismissed. The appellants Mahesh and Mangala are acquitted of the offence under Section 302 read with Section 34, I. P.C. and the sentences of life imprisonment awarded to them are set aside. They are convicted of the offence under Section 326 read with Section 34, I. P.C. and each of them is sentenced to rigorous imprisonment for four years thereunder. Dwarika's appeal is dismissed and his conviction for the offence under Section 302, I. P.C. and sentence of life imprisonment are affirmed. The conviction of the appellant Dwarika for an offence under Section 323, I. P.C. for causing simple hurt to Gauri Shanker and sentence of rigorous imprisonment for one year is also affirmed. The conviction of the appellant Mangala for the offence under Section 323, I. P.C. for causing simple hurt to Hardeep and the sentence of rigorous imprisonment for six months is upheld. The conviction of Dwarika and Mahesh for the offence under Section 323 read with Section 34, I. P. C for causing simple hurt to Hardeep and their sentences of rigorous imprisonment for six months thereunder are also affirmed. All the sentences will run concurrently. The appellant Dwarika is in jail. He will remain there and serve out the sentences. Appellants Mahesh and Mangala are on bail. They will be taken into custody and will serve out the sentences affirmed and awarded to them.