

Ghurey and anr. Vs. Rex

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Court : Allahabad

Decided On : Nov-29-1948

Reported in : AIR1949All342

Appellant : Ghurey and anr.

Respondent : Rex

Advocate for Pet/Ap. : Mr. S.N. Mulla

Judgement :

Agarwala, J.

1. Raghunath, Ghurey and Panaru were prosecuted under Section 802 read with Section 34, Penal Code, for having committed the murder of one Sukhdeo on 27th June 1947, at about nine o'clock in the morning in village, Raniabagh, police station Adalhat, district Mirzapur. Raghunath was acquitted, but Ghurey and Panaru were convicted of the offence with which they were charged and sentenced to death. The latter have come up in appeal to this Court, and the learned Sessions Judge has also submitted the record to this Court for confirmation of the death sentence.

2. The deceased Sukhdeo Kunbi son of Bishwanath, was a resident of village Khajraul. Raghunath accused was also a resident of this village, Panaru and Ghurey, appellants, are residents of village Baradih which is situated to the east of

village Khajraul about four furlongs away. Village Terhua is about 11/2 kos from village Khajraul to the north connected by means of a metalled road. On the morning of 27th June 1947, Sukhdeo deceased and two other villagers, Lakhan and Bhaggal, were returning from Terhua to Khajraul. Lakhan and Bhaggal were on foot and behind them was Sukhdeo on a cycle. The Canal Patrol, Abdul Karim, was also on Sukhdeo's cycle sitting on the luggage-carrier. Village Raniabagh is midway between Terhua and Khajraul. The prosecution case was that when Sukhdeo came near Raniabagh between the canal culvert and the road culvert, Panaru and Ghurey, appellants and Raghunath assaulted Sukhdeo. The Patrol who was on the luggage-carrier jumped away, while Sukhdeo fell down. Lakhan and Bhaggal saw this occurrence and ran to the rescue of Sukhdeo. There were two betel leaf shops nearby - one belonging to Sita Ram and the other to Matai. These persons also came out of their shops and saw the occurrence. It was alleged that Panaru had a lathi and Ghurey had a spear. One empty ekka was coming from the north. Sukhdeo was seated in the ekka and taken to Khajraul and from there was taken to the police station Adalhat. Sukhdeo himself lodged the first information report at the police station at 10 a.m. As his condition was serious he was taken to Ahraura for medical examination. Dr. S.L. Sharma, Medical Officer in charge of Ahraura dispensary, examined his injuries at 1-30 p. m., and also got his dying declaration recorded in the dispensary at about 2 p. m. Sukhdeo died while the dying declaration was being recorded at 2.30 p. m.

3. The injury report prepared by Dr. S.L. Sharma, Medical Officer in charge of Ahraura dispensary, showed thirteen injuries on the person of Sukhdeo. One was a compound fracture; seven were punctured wounds; two were contusions; and three were contused wounds. In the post-mortem examination conducted by Dr. Vishwanath Singh in charge of the Chunar dispensary, only twelve injuries could be detected; one was a contused wound; seven were punctured wounds; three were incised wounds; and one was a bruise. It appears that what Dr. S. L. Sharma had noted as contused wounds were, in the opinion of Dr. Vishwanath Singh, really incised wounds. Thus, according to the post mortem examination, at the most, two injuries could be said to have been inflicted by a lathi, i.e., the contused wound on the head and the braise on the left knee. The incised and punctured wounds were on the eye-brows, elbow, right forearm, left leg, left ankle, and left

hand. Death was due to shock and haemorrhage produced by the multiple injuries, especially the injuries on the right arm and elbow. It will be noticed that though there was no punctured or incised wound on a vital part of the body, yet death was caused very soon after the incident, on account of shock and hemorrhage produced by the multiple injuries.

4. The defence of both the appellants was that they did not beat Sukhdeo and that they had been implicated on account of enmity. That there was previous enmity between Dayal, father of Panaru appellant, and the deceased Sukhdeo has been amply proved upon the record. The prosecution case is that Panaru, Ghurey and Raghunath beat Sukhdeo to death on account of this enmity.

5. In support of the prosecution case two sets of witnesses were examined. Lakhan, Bhaggal, Sita Ram, Matai and Mustafa Shah were the eye witnesses of the occurrence: while Ram Subhag, Lachman and Bishwanath were witnesses to prove the previous enmity and the motive for the crime.

6. We have gone through the entire evidence on record and have come to the same conclusion ourselves as did the learned Sessions Judge, namely, that the appellants attacked Sukhdeo in the manner alleged by the prosecution and that the defence version is untrue. (His Lordship reviewed the evidence and continued.)

7. So far as Ghurey is concerned, the multiple injuries inflicted by him with a spear were sufficient, in the ordinary course of nature, to cause death or, at any rate, were such as were likely to cause death. He is, therefore, clearly guilty of murder and is liable to be punished under Section 302, Penal Code.

8. So far as Panaru is concerned, the case is slightly different. Since there were only two injuries which could have been inflicted by a lathi, Panaru could have given, at the most, two lathi blows. It is clear that Sukhdeo did not die as a result of these two lathi blows. The prosecution suggested that the beating to Sukhdeo was given in accordance with a pre-arranged plan and under Section 34, Penal Code, Panaru was equally guilty with Ghurey for causing the death of Sukhdeo. Mr. S.N. Mulla, appearing for the appellants, argues that, in the first place, Ghurey and

Panaru had no common intention within the meaning of Section 34, Penal Code, as there is no evidence of a pre-arranged plan; and, in the second place, even if there was a common intention, it could only be to give a beating to Sukhdeo and it could not be said that the common intention extended to the causing of death of the deceased.

9. So far as the question of 'common intention' is concerned, we think that; an inference can legitimately be drawn from the circumstances on record as to its existence. Panaru and Ghurey were both going towards the place which the deceased was expected to reach. One of them was armed with a deadly weapon, namely, a spear, and the other was armed with a lathi. They had previous enmity with the deceased. As soon as the deceased arrived at the place of occurrence, both the appellants, without any provocation by the deceased, attacked him. On these facts we think an inference of a common intention to cause injuries to the deceased may be safely inferred. In this connection we may refer to the Privy Council decision reported in *Mamand and Ors. v. King-Emperor* A.I.R. (33) 1946 V.C. 45 the facts of which were similar to the present case.

10. The next question is, 'what was the appellants' common intention'? Since Panaru gave only one or two lathi blows and did not take part in the subsequent beating, we are prepared to assume, as urged by Mr. Mulla, that the common intention should be limited to the giving of beating to Sukhdeo. We are prepared to hold that there is no evidence that the common intention of the appellants was to cause the death of the deceased. Mr. Mulla argues that if the common intention was limited to the giving of beating to the deceased, Panaru is not responsible for the consequences of that beating, namely, the death which was caused by the multiple injuries inflicted by Ghurey. Learned; counsel invites our attention to Section 38, Penal Code, and urges that it is possible to convict Panaru and Ghurey of different offences, al-though they were both concerned in the commission of one criminal act. On the other band, on behalf of the prosecution our attention has been drawn by Mr. C.S. Saran to the recent decision of this Court in *Nazir v. Emperor* : AIR1948 All229 . Mr. C.S. Saran points out that that case is practically on all fours with the present. In that case also the Court held that common intention was merely to give a beating' to the deceased: and

although one of the conspirators was not present on the scene of occurrence at the time when the beating was given, yet it was held that he was equally guilty of murder along with the person who actually caused the death of the deceased. There is no-doubt that where several persons are engaged or concerned in the commission of a criminal act,. they may be guilty of different offences by means of that act. This expressly is so provided in Section 38, Penal Code. Does Section 38, Penal Code, however, apply to the facts of the present case?

11. In Nazir's case A.I.R. (35) 1918 ALL. 229 (ubi supra), it seems to have been held that even though the common intention of several persons engaged or concerned in the commission of a criminal act be limited to merely beating a person, yet if the beating leads to death, all of them are equally guilty of the consequences that follow from the beating, namely, of causing death. In that case, all the persons concerned in the criminal act were held to be guilty of murder. Upon the principle of that case, Panaru (in the present) would be guilty of murder as Ghurey has committed that offence. It is unnecessary for us to consider that case at great length, as we have arrived at the same conclusion in the present case but on different considerations. Even if we accept Mr. Mulla's contention that where persons have a common intention of beating, everybody may not be guilty of causing death, yet we think that in the present case Panaru is guilty of murder even though his intention was merely to cause injuries to Sukhdeo. We arrive at this conclusion because, in our opinion, it must be held that Panaru had knowledge that the beating that would be given was likely to cause the death of the deceased.

12. Where several persons are concerned in committing an act which is criminal only by reason of its being done with a criminal knowledge, each of such persons who joins in the act with such knowledge is liable for the act in the same manner as if the act were done by him alone with that knowledge. This principle is embodied in Section 35, Penal Code, which supplements the principle embodied in Section 34 of the same Act. 13 the present case, even though Panaru's intention was to give a beating, yet, since both he and Ghurey must be deemed to have knowledge that death would be the likely result of the beating that they were going to administer, both of them would be guilty of the offence under Section 302,

Penal Code. We attribute ' knowledge of the likelihood of death being caused' to both Panaru and Ghurey as the instrument of attack with which the beating was to be given was of a deadly nature. Where an assault is made with a sharp-edged or piercing weapon or with a firearm, one may be presumed to know that the result of the causing of injuries with such deadly weapons will very likely be death, and, if death actually results from the beating, everyone of the persons concerned in the act will be guilty of murder and the case would then fall under Clause (2) of Section 300, Penal Code. Where the attack is made with fists and kicks merely, or even with lathis merely, we may not readily infer that knowledge. No hard and fast rule can be laid down on the subject. Each case will be governed by its own facts. In the present case, we have got an additional fact, viz., that Panaru himself participated in the beating and was present all the time that Ghurey was giving blows to the deceased with his spear. He made no attempt to intervene and tell Ghurey that he was exceeding the limits of the pre-arranged plan. In the circumstances we have no doubt that Panaru must have known that the causing of injuries with a spear and a lathi was likely to result in death. Panaru is, therefore, equally guilty with Ghurey of murder and is liable to be punished under Section 302, Penal' Code.

13. As regards the sentence, we think that the lesser sentence provided by law would be sufficient to meet the ends of justice. We are led to this conclusion by several factors. The appellants are very young in age. Panaru is aged twenty and Ghurey is twenty-five. The enmity with the deceased was not with the appellants in particular but with Panaru's father Dayal. It is quite possible that the appellants may have attacked Sukhdeo under the influence of Dayal. Then again, as we have already observed, we cannot hold that the appellants intended to cause the death of the deceased. In the circumstances we think that both the appellants should be awarded the sentence of transportation for life.

14. The result, therefore, is that we dismiss this appeal with this modification that, instead of the sentence of death, we award the sentence of transportation for life to each of the appellants. The reference is rejected.