

Jagpat and ors. Vs. State

Jagpat and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/466759

Court : Allahabad

Decided On : Feb-08-1957

Reported in : AIR1957All764; 1957CriLJ1205

Judge : Roy and ;Sahai, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 32

Appeal No. : Criminal Appeal No. 293 of 1955

Appellant : Jagpat and ors.

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : P.C. Chaturvedi, Adv.

Disposition : Appeal partly allowed

Judgement :

Roy J.

1. The appellants Jagpat and Chunbad are cousins and are by caste Araks. The other two appellants Ram Saran and Billa are also cousins and are by caste Brahmins. They are all residents of village Umrehnda within police circle Bilsenda

in district Banda. They have been convicted under Section 302/34, I. P. C. for the murder of one Ram Jiwan on the 20th June 1954 at about 7 a.m. and each of them has been sentenced to life imprisonment together with a fine of rupees one hundred or in default to further six months R. I. They have preferred this appeal against their conviction and sentences.

2. The prosecution alleged that three or four days before the present occurrence there was a quarrel between Ram Jiwan and Chunnabad in connection with a Charpai belonging to Ram Jiwan which had been removed by Chhunbad and had been concealed by him somewhere. Ram Jiwan had abused Chunbad on that account and had also given him a beating. On that score Chhunbad and his party were on the look out to beat Ram Jiwan. It is said that on the 20th June 1954 at about 7 a.m. Ram Jiwan had gone along with his son Ram Sahai and nephew Ram Khelawan to ease himself in the waste land of the village.

After easing themselves Ram Khelawan and Ram Sahai went towards the road for a walk and to pluck Datoon. Gilla Chaukidar and Binda Singh Thakur met them there and had a talk with them. When Ram Khelawan and Ram Sahai were returning home, they saw the appellants making an assault on Ram Jiwan in the thrashing floor of the village which was at a distance of about a furlong to the north of the village. Ram Jiwan, Ram Khelawan and Ram Sahai raised an alarm which attracted Ram Autar, Jauharia, Inda, Mohammad Kadir and many others. Chunbad made an assault with a ballam, Billa with a pharasa and Jagpat and Ram Saran with lathis. When the eye-witnesses intervened the miscreants made good their escape. Ram Jiwan was rendered unconscious on the spot on account of the injuries received by him. He was removed home and after a Doli was procured he was being taken to the police station. The party had hardly gone a distance of about 1 1/2 miles when Ram Jiawan expired on the way. The dead body was sent back to the village. Badri Prasad, the brother of Ram Jiawan, proceeded to the police station where a report written by him at the Thana was submitted by him on the same day at 9-30 a.m. The police station was at a distance of about four miles from the place of occurrence.

3. Investigation was taken up by Sub-Inspector Abdul Rashid Khan who was the second officer at that police station. After making the inquest report and after taking blood-stained earth-from the spot, which later on was confirmed by the Chemical Examiner and the Serologist to have been stained with human blood, he sent the dead body to the mortuary for post mortem and he examined the necessary witness. The post mortem examination, which was conducted on the 21st June 1954 at 5 p.m., i.e., about thirty-six hours after the death of Ram Jiawan, disclosed that the deceased had received no less than twentyseven injuries all over his body inclusive of contused wounds, punctured wounds and bruises.

The Civil Surgeon who had conducted the post mortem examination stated that the dead body was in an advanced stage of decomposition when the post mortem examination was conducted and it was on that score that the margins of certain wounds were not clearly visible and it was difficult to make out whether any of the injuries were in the nature of incised wounds. He further stated that there was a linear fracture of the skull between the frontal and the parietal bones, that the brain had liquified that the left 6th, 7th and 8th ribs were fractured, that the lungs were decomposed and that the cause of death was shock and haemorrhage as a result of external injuries. The estimate of time given by the Civil Surgeon coincided with the time of the occurrence held out by the prosecution. (Then after discussing evidence his Lordship concluded.)

4. From the facts and circumstances of the case and the manner in which the attack was made common intention can safely be inferred and this conclusion had, in our opinion, not at all been over-reached by the learned Sessions Judge. The conviction of the appellants under Section 302/34 I. P. C. must, therefore, be upheld.

5. On the question of sentence we are of opinion that after having passed a sentence of life imprisonment upon the appellants no justifiable reasons have been set out by the learned Sessions Judge as to why a further sentence of fine had been imposed. The Indian Penal Code sanctions either a term of imprisonment or a fine or both and it is left to the discretion of the Court whether to

inflict a sentence of imprisonment or fine or both.

It is only in very exceptional cases that it is suitable and appropriate to inflict a fine as well as a substantive term of imprisonment. It is only suitable in cases where the Court thinks that the justice of the case will be met by inflicting a substantial fine, but at the same time thinks that a short term of imprisonment in addition will serve as a salutary lesson to the accused, or in cases where it is desired to compensate the complainant, or in cases where the accused had profited financially by his misdeeds. The Court should exercise a careful discretion in the matter of superimposing fines upon long substantive terms of imprisonment.

It would not be proper to add to a very long term of substantive imprisonment, a fine which there is no reasonable prospect of the accused persons being able to pay, and for default in payment of which he will have to undergo a still further term of imprisonment. Consequently, having regard to the facts of the present case we feel no justification for maintaining the fine that has been imposed by the learned Sessions Judge.

6. In the result, we allow this appeal to this extent that while maintaining the conviction of the appellants under Section 302/34, I. P. C. and which also maintains the sentence of life imprisonment passed against each of them under that section, we set aside the sentence of fine imposed upon them and direct that the fine, if paid, shall be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com