

Radhey Vs. State

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Court : Allahabad

Decided On : Jul-29-1969

Reported in : 1970CriLJ1544

Judge : B.N. Lokur, J.

Appellant : Radhey

Respondent : State

Judgement :

B.N. Lokur, J.

1. Appellant Radhey and two others, Parsa and Ham Prasad, were tried together for offences under Section 302 read with Section 34 and Section 328 read with Section 34 of the Indian Penal Code. Parsa and Ram Prasad were acquitted but appellant Radhey was convicted of offences under Section 304. Part 2, read with Section 84 and Section 323 read with Section 84 of the Indian Penal Code and sentenced to undergo six years' rigorous imprisonment on the first count and three month's rigorous imprisonment on the second count, both the sentences to run concurrently.

2. The case against the three accused was that they attacked Nazir on the Chabutra of his house at about sunset time on the 4th July, 1966, when he was sitting there in the company of Rafiq, Budhu, Babu (P. W. 8), Aziz (P. W. 2),

Chhotey and Jumma (P. W. 1). Radhey's mother Kalawati was of loose character and was hence ex-communicated from the caste, whereupon Radhey drove her out of his house about eight days before the occurrence. Kalawati used to visit the house of Nazir and Jumma (P. W. 1) and Radhey suspected that Nazir was concealing Kalawati in his house. This provided the motive for the attack on Nazir. On the evening in question when Nazir was sitting with his aforesaid companions, Radhey, Parsa and Bam Prasad are said to have come to his house and Radhey is said to have questioned Nazir about the concealment of Kalawati and when Nazir denied the charge, he was attacked by the trio with lathis. Jumma (P. W. 1) also received some blows and when Nazir's daughter, Km. Nanhi (P. W. 3), came out on hearing the noise and tried to intervene, she too sustained injuries.

Jumma and Rafiq picked up lathis and plied them in defence of Nazir, while the other companions of Nazir also intervened. Nazir fell down on the chabutra as a result of the blows inflicted on him. Jumma and Rafiq were unable to apprehend Radhey on the spot while Parsa and Bam Prasad fled away. Police-constable Shafatullah Khan (P. W. 12) and Rukumpal, another constable, were on gasht duty and they heard the noise when they were about 150 paces away from the village. They rushed to the scene of occurrence but by then the marpit was over. Radhey was handed over to the constables and Nazir, who was lying unconscious, was taken to the Police Station at Thakurdwara, about two miles away. The Medical Officer of Thakurdwara Dispensary declined to give first aid to Nazir as his condition was serious and hence Nazir was sent to Kashipur Hospital with Police Constable Shafatullah Khan (P. W. 12). Nazir died on the way and Dr. Pandey (P. W. 4) of Kashipur Hospital declared him dead when Nazir was produced before him.

The dead body of Nazir was taken to Kashipur Police Station where Sub-Inspector Premlal Singh (P. W. 6) prepared an inquest report and sent the dead body to Kashipur Hospital for post-mortem examination. The report of the occurrence was lodged by Jumma at Police Station Thakurdwara earlier and both Jumma and Km. Nanhi were sent to Moradabad District Hospital for medical treatment on the morning of 5th July, 1966. Investigation was made by Sub-Inspector Yogendra, Sharma (P. W. 17). In the course of the investigation he discovered bloodstains

upon the chaupal of Nazir as well as on a cot; he did not, however, find any blood-marks on the chabutra itself.

3. While Parsa and Bam Prasad denied knowledge of participation in the occurrence, Radhey, in pleading innocence, contended that Nazir and one Imrat Pandit were carrying on illicit intimacy with Kalawati and considered Radhey as a hurdle in their immoral activities. Accordingly, on the evening in question Imrat, Nazir and Munna waylaid Radhey when he was returning from his field and belaboured him. Radhey used his lathi in self defence and caused injuries to Nazir. Some village people too arrived and stopped the marpit. He went to the Police Station with his brother to lodge a report but the police declined to take down the report and locked him up. Three witnesses have been examined on behalf of the defence.

4. On behalf of the prosecution Jumma (P. W 1), Aziz (P. W. a), Km. Nanhi (P. W. 3) and Babu (P. W. 8) have been examined in support of the prosecution case.

5. Jumma has stated that Kalawati was outcast by the community for her immoral Conduct and was driven out by Radhey from his house. According to him, about seven or eight days later, he was sitting with his uncle Nazir, Rafiq, Buddhu, Babu, Aziz and Ohhotiy on the chabutra of Nassir'a house when Radhey, Bam Prasad and Parsa arrived there armed with lathis. Radhey charged Nazir that he had concealed his mother Kalawati in his house and when Nazir denied the charge all the three started belabouring Nazir with lathis. Hearing the noise, Km. Nanhi came out of the house and tried to protect her father Nazir and she too was hit with a lathi. Jumma and Rafiq plied lathis to save Nazir and Jumma also received lathi blows. Nazir fell down unconscious. Radhey was caught on the spot, but his two companions ran away.

Two police constables then arrived, to whom the entire incident was reported. Rafiq, Ghhotey, Km. Nanhi, Radhey and the two constables and Nazir, who was then unconscious, then went to Police Station Thakurdwara and a report was lodged there by Jumma. Nazir was taken to the dispensary for treatment but nothing was done there and Nazir was hence sent to the hospital at Kashipur. The injuries of Jumma and Km. Nanhi were examined and treated at the Moradabad

hospital. He has been cross-examined at great length but his credibility has in no way been shaken. Aziz (P. W. 2) corroborates Jumma and nothing has been brought out in his cross-examination to cast doubt on his truthfulness. Km. Nanhi (P. W. 3), who is aged 14 years, has also narrated the incident in conformity with the statement of Jumma. Babu (P. W. 8) was also one of the persons sitting on Nazir's chabutra and he too has supported the prosecution story without any contradictions and inconsistencies.

Police-constable Shafatullah Khan (P. W. 12) has deposed that he and police-constable Bukumpal were on gasht duty on the evening of occurrence and when they were about 150 paces outside the village they heard the noise and ran to the scene of occurrence and found that Nazir was lying unconscious on the cot and Radhey also was there. About the subsequent happenings he supports the other prosecution witnesses.

6. Atar Singh, who was examined as a defence witness, has stated that he was going along the road on which Nazir's house is located and when he was about 10-20 paces away from Nazir's house, he saw marpit on the road. According to him, Radhey was being beaten by Jumma, Pandit Amrit Lal, Aziz and Buddhu with lathia, and Badhey there, upon plied his lathi in defence. He claims to have intervened and separated them. He has also deposed that Radhey's mother, Kalawati, had illicit relations with Pandit Amrit Lal and Nazir, and Radhey did not like their relations and hence he was beaten. He can be styled as a casual witness. Itwari (D. W. 2) is the Pradhan of the village. He has stated that Pandit Amrit Lal was his rival candidate and the two acquitted accused, Parsa and Bam Prasad, were canvassing for Itwari. His testimony does not help appellant Radhey. Chandra Prakash Gupta, compounder, Moradabad Jail, proved the injuries of Radhey.

7. The post-mortem examination of Nazir disclosed four injuries on his body- a lacerated wound on the head and three contusions, all of them on the head. The right and left parietal and frontal bones of Nazir were fractured. The brain was lacerated and the membrane ruptured. Jumma was found to have received one lacerated wound on the head and an abraded contusion on the back, both the

injuries being simple. Km. Nan hi had a diffused traumatic swelling on the left hand, Radhey had two contused wounds, four abrasions and three contusions, all being simple,

8. I have no hesitation in accepting the prosecution evidence and rejecting the defence evidence and I hold that it was Radhey and his two companions who were aggressors and not Nazir and his companions as contended by Radhey. Having regard to the injuries suffered by Nazir the offence was without doubt one under Section 304, Part II, of the Indian Penal Code. The blows given to Jumma and Em. Nanhi constitute an offence under Section 323 of the Indian Penal Code.

9. It is contended by the learned Counsel for Radhey that on the acquittal of Paraa and Ram Prasad, Radhey cannot be convicted of the said offences read with Section 34 of the Indian Penal Code. Reliance was placed by the learned Counsel on the decision of the Supreme Court in Krishna Govind Patil v. State of Maharashtra : [1964]1SCR678 . In that case the participation of three out of the four accused in the commission of the offence was held not proved and the Supreme Court observed that, on that finding, the fourth accused cannot be convicted of the offence read with Section 84 of the Indian Penal Code.

Reference was made therein to the earlier decision of the Supreme Court in Prabhu Babaji Navle v. State of Bombay : 1956 CriLJ147 , where the Supreme Court held that when four of the five accused were acquitted, the fifth accused cannot be convicted of the offence under Section 302 read with Section 34 of the Indian Penal Code since it was not possible to reach a conclusion that the fifth accused shared a common intention with other unknown person or persons. In Baul v. State of U. P. : 1968 CriLJ872 , the Supreme Court held that when two accused are convicted under Section 302 read with Section 34 and one of the accused is acquitted by the High Court in appeal, the other accused cannot be convicted under Section 302 simplicitor in the absence of proof of the exact nature of injuries caused by each accused; that other accused was however, convicted under Section 325 of the Indian Penal Code as the common intention was not proved.

The present case, however, is akin to the case of Jagir Singh v. State of Punjab AIR 1988 S C 43. In this case, the Supreme Court distinguished the cases of Prabhu Babaji Navle AIR 1956 S C 51 and Krishna Govind Patil AIR 1963 8 C 1413 and observed that if the Court recorded a clear finding that the two appellants participated in the offence with four other unknown culprits and if their common intention is proved, the two appellants could be rightly convicted of the offence under Section 302 read with Section 34 of the Indian Penal Code. It is significant to note that in that case is named persons were charged of the offence but there was a mistake in the identity of three of the accused and with regard to another accused the benefit of doubt was given. In the case before me, there is clear evidence that three persons had come to Nazir's house armed with lathis and the circumstances establish beyond all reasonable-doubt that they had the common intention of attacking Nazir and all the three of them attacked Nazir. The identity of the two co-accused, Ram Prasad and Parsa, was mistaken and hence they were given the benefit of doubt and acquitted. That being so, it must be held, although the charge was against the three named persons, that Radhey and two unknown persons came with the common intention to attack Nazir and the injuries caused to him ended in his death. There is thus no legal impediment to convict Radhey for the offences under Section 304 Part II read with Section 34 and Section 323 read with Section 34 of the Indian Penal Code.

10. Accordingly, I confirm the conviction of Radhey for the offences aforesaid. The sentences awarded to him are proper and need not be disturbed.

11. The result is that the appeal is dismissed. Radhey is on bail, his bail is cancelled and he shall be taken into custody forthwith to serve out his sentences.

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