Jagan and ors. Vs. the State

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Court : Allahabad

Decided On : Oct-12-1961

Reported in : 1962CriLJ641

Judge : J.N. Takru and; S.D. Singh, JJ.

Appellant : Jagan and ors.

Respondent : The State

Judgement :

S.D. Singh, J.

1. This appeal has been preferred by four persons, Jagan Bhuwali, Ram Lal and Sheo Nath. All of them have been convicted Under Section 323 or Section 323 read with Section 34 Indian Penal Code and sentenced to six months' rigorous imprisonment thereunder for having caused simple hurt to one Lallu. Bhuwali was charged Under Section 302 and has been convicted under that provision and sentenced to imprisonment for life. The other three appellants Jagan, Ram Lal and Sheo Nath were charged Under Section 302 read with Section 34, but were convicted Under Section 325 read with Section 34 and sentenced to two years' rigorous imprisonment each for the injuries which were caused to Ram Prasad deceased. '

2. The incident giving rise to the case against the four appellants took place at about noon on 4th April, i960, in village Khidirpur within the jurisdiction of P. S. Nawabganj, Report about the incident was made at the police station at 2.45 P. M., the distance between the police station and the place of occurrence being six miles.

3. The facts giving rise to the case against the appellants were like this. The pigs of the accused Bhuwali were noticed damaging the khali-yan of Ram Prasad and his nephew Jabra at about mid-day on 4th April, i960.' Ram Prasad and his nephew Jabra and Lallu drove away the pigs and then went to the house of. Bhuwali to protest about it. It is alleged that when this protest was made, Bhuwali and the other accused started abusing Ram Prasad and his nephew and when Ram Prasad and his nephews told them that it was they who had been put to a loss and they were being even abused, all the four accused took up their lathis and Jagan Lai exhorted the others by saying 'Pakar lev Saron ka, ghaire se nikal ke jai na paven'. Ram Prasad, Jabra and Dallu (who is blind) ran for their lives from that place but they were chased by the four accused and when they were in Dudai's field, Ram Prasad Sass given a lathi blow on his head as a result of which, he dropped down and even Lallu was given a beating by Ram Lai and Sheo Nath. Jagan is said to have been exhorting the other three accused all the time saying 'Maro saren ka'. The lathi blow to Ram Prasad is said to have been given with such a great force that the lathi itseli gave way and broke on hitting Ram Prasad. AU the four accused are then said to have run away. Jabrs and Lallu then went to the police station and also took Ram Prasad with them on a cot. Report at the police station was lodged by Jabra, where after investigation followed in due course.

4. Ram. Prasad and Lallu were both sent for medical examination and treatment. Their injuries were examined by Dr. C. N. Saxena, Medical Officer at the Tej Bahadur Sapru Hospital at Allahabad. Lallu's injuries were examined at 8.20 P. M. the same day and he was found to have the following injuries: -

1. Contused wound 2' x 3/4' skin deep, on the left- side of the head. There was traumetic swelling, 2' x 2', 3' above the left ear.

2. A contusion 9' x 1' on the right side of the back going vertically.

3. A contusion 5' x 1' on the left side of the back.

4. A contusion 6' x 1' on the right scapular region.

5. Ram Prasad was examined at 8. 25 P. M. and he was found to have only one contused wound, 2' x i' x bone deep, on the left side of the head, 3' above the left ear.

6. Ram Prasad was admitted as an indoor patient in the hospital where he succumbed to the injuries on nth April, 1960. After the inquest report and other papers were prepared, his body was sent for post-mortem examination which was conducted by Dr. V. N. Srivastava at 4.15 P. M. on 12th April, i960. He found only one injury 'healing ulcer with scab and scar formation in front part, 1 1/2' x 1/4' x 1/6' on left side scalp 3' from left ear and 4' from left ear brow.'

7. An internal examination, however, disclosed the following four internal injuries.

1. Fracture of the whole left parietal bone with fracture of temporal bone.

2. Clot, 3' x 3' on the membrane on the left side below the fracture clot adhered to the membrane.

3. Depression in the left parietal lobe and congestion. Contusion and clot were present in the parietal area.

4. Fracture of left anterior fossa.

8. Dr. Srivastava was of opinion that death was caused by coma which was itself caused by injury to the brain and the skull.

9. Investing Officer, S. I. Brahma Nand Sharma completed the investigation and prosecuted the four accused in due course, and they were tried for the offences and convicted as mentioned earlier.

10. The accused Ram Lai and Sheo Nath denied the allegations against them, Ram Lai alleged that he was working in his field when the Incident took place and

Sheo Nath stated that he was residing at Bhikhampur which is four miles from Khidarpur. Both shese accused, therefore, pleaded alibi. Jagan and Bhuwali admitted that there was an incident, though according to the in it took place just the other way and the injuries were caused to Lallu by Ram Prasad and to Ram. Prasad by Jagan.

11-18. (After discussing the evidence, the judgment proceeds as under:) The facts as they have been put by the prosecution witnesses have been fully brought out in evidence. The finding recorded by the learned Sessions Judge-believing the prosecution case so far as the material facts are concerned is correct. The correctness of the finding was, as a matter of fact, not oven seriously challenged before us. What was urged by the learned Counsel appearing for the appellants was that even on the basis of the facts as found by the learned Sessions Judge Bhuwali could be convicted only Under Section 325 or Section 304 (Part II) Indian Penal Code and Jagan, Ram Lai and Sheo Nath only Under Section 323 read with Section 34 and not Under Section 325. Reliance for the purpose was placed upon Faqira v. State : AIR1955 All321 and two unreported decisions of this Court in Amira v. State Criminal Appeal No. 2213 of i960, D/- 14-2-1961 (All) decided by one of us and Beg, J., on 14th February, 1961, and the other in Sughar Singh v. State Criminal Appeal No. 827 of 1955, D/-11-11-1957 (All).

19. The first case relied upon namely A.I.R. 195 All 321 is not of much help to us now after the decision of the Supreme Court in Virsa Singh v. State of Punjab : 1958 CriLJ818 and need not consequently detain us. The decision in Criminal Appeal No, 2213 of i960, D/- 14-2-1961 (All) follows Virsa Singh's case : 1958 CriLJ818 aforesaid and we will come to this case later after Virsa Singh's case : 1958 CriLJ818 is taken into consideration by us. Criminal Appeal No. 827 of 1955, D/- 11-11-1957 (All) relates to the application of Section 149 Indian Penal Code for fixing the vicarious liability of the accused other than the one who may have committed murder or any other offence. We will come even to this decision later when that aspect of the case is considered by us.

20. The primary question to be considered in this case is whether the conviction of Bhuwali Under Section 303 can be maintained or if having regard to the

circumstances of this case he can be convicted only Under Section 325 or 304 (Part II) Indian Penal Code. The facts in the case are clear at least to this extent that Bhuwali had no intention to commit murder and in any case therefore, the case against him would not be covered by the first clause of Section 300 Indian Penal Code. It is, however, the third clause which would apply to the facts of this case. This clause reads:

Thirdly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused.

21. It is this clause which has been considered by their Lordships of the Supreme Court in Virsa Singh's case : 1958 CriLJ818 which is now an authority for the proposition that in order that the case of an accused may be covered by this third clause of Section 300 Indian Penal Code it is not necessary for the prosecution to establish that he had an intention of causing such bodily injury as was sufficient in the ordinary course of nature to cause death. All that is necessary for the prosecution is to establish that the accused had the intention of causing the injury which was actually caused to the deceased, and that that injury was sufficient in the ordinary course of nature to cause death.

22. Their Lordships have summed up their conclusions in the following words: -

To put it shortly, the prosecution must prove the following facts before it can bring a case Under Section 300 thirdly;

Firstly, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an. intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these elements are proved to be present, the inquiry proceeds further and

Fourthly, it must be proved that the injury of the type just described made up of the then elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder Under Section 300 thirdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death.

23. As has been further observed by their Lordships in the same case once the intention to cause the bodily injury actually found to be present, is proved, the rest of the enquiry is purely objective and the only question is the their, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.

24. What is to be seen is what offence the appellant Bhuwali can be said to have committed in the light of this legal position, which has been authoritatively laid down by the Hon'ble Supreme Court. It has been fully established in the case that the bodily injury was caused to Ram Pra-sad. The nature of the injury has also been fully established. The external examination of the injury at the hospital disclosed a contused wound 2' x 1/2', bone deep, on the left side of the head 3' above the left ear. The postmortem examination, however, disclosed that there is fracture of the whole of the left parietal bone together with the fracture of the temporal biota. There was depression of the left parietal lobe and there was also fracture of the left anterior forge. It has also been fully established that this injury was sufficient in the ordinary course of nature to cause death. The statement of Dr. V. N. Srivastava is quite clear on the point.

25. The only thing which remains to .be looked into in this case is whether there was an intention on the part of Bhuwalj to inflict this particular injury on the head or if this injury was only accidental or unintentional or that some other kind or injury

was, in fact, intended by Bhuwali. Ram Prasad leceived only one injury. That injury was on the front left side of the head and must have consequently been caused by an attack from the front side. An injury of this .kind is not ordinarily caused accidentally or unintentionally and there is nothing in evidence to indicate that Bhuwali intended to cause some other kind of injury. It was with reference to this aspect of the case that reliance was placed upon Criminal Appeal No. 2213 of 1960, D/- 14-2-1961 (All), In that case it was held that the appellants of that case could not be held guilty either Under Section 302 or Section 302 read with Section 34 and that the offence committed by them fell under the second part of Section 304 Indian Penal Code. Reliance was placed even in that case on : 1958 CriLJ818 . As many as 12 injuries were caused in that case but only one1 of them was on the head, the remaining n being the minor injuries inflicted on non-vital parts of the body. It was on account of this position of the injuries that it was held that the assailants did not intend .to cause even that injury on the head. The intention only to cause such injuries as may ordinarily be caused in the case of a simple beating was inferred on account of the position of the remaining 11 injuries.

26. In this particular case, however, there is only one injury on the head. The injury is on a vital part of the body. It was caused with such amount of force that the parietal and temporal bone as also the fossa underneath were fractured and even the lathi with which the injury was caused gave way and broke into two pieces.

27. The judgment of the Hon'ble Supreme Court in : 1958 CriLJ818 is not merely an authority for the proposition which has already been narrated by us earlier but is also a guide as to the circumstances under which an intention to cause the injury which was actually found to have been caused may be inferred. Their Lordships observed at one place:

In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have 'the bowels fall out, or whether he intended to penetrate

the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney, or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. II is broad-based and simple and based on commonsense: The kind of enquiry that 'twelve good men and true' could readily appreciate and understand,

Their Lordships also observed in the latter part of the same judgment:

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that his did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the Section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there.

28. Once the existence of an injury is proved, the intention to cause that injury will be presumed unless the evidence of the circumstances warrant an opposite conclusion. If the appellants could prove or if the totality of the circumstances justify an inference that Bhuwali intended to cause only some superficial injury and that it wa9 purely accidentally or unintentionally that this injury on the head was caused, then of course the offence would not be of murder. Taking the observations of their Lordships of the Supreme Court as a guide in determining whether Bhuwab could be presumed to have intended to cause the injury that was actually found to have been caused to Ram Prasad, we can come to one and one conclusion alone that he did. The circumstances under which this injury was caused have already been narrated above. In that view of the law and the facts and circumstances of this ease we have not the least doubt that the offence which has been made out against Bhuwali is that of murder punishable Under Section 301 Indian Penal Code.

29. The only other question that was pressed before us was that Jagan, Bam Lai sand Sheo Nath should not have been convicted Under Section 325 read with Section 34 but only Under Section 323 read with Section 34 even on account of

the it vicarious liability in respect of the injury caused to Ram Prasad. The learned Sessions Judge has found that it was an individual act of Bhuwali which resulted in the death of Ram Prasad and it was on that account that Jagan, Ram Lai and Sheo Nath were acquitted of the charge Under Section 302 read with Section 34 Indian Penal Code and convicted only Under Section 325 read with Section 34, In that view of the position even the conviction of these three appellants, Under Section 335 read with Section 34 was not justified. It is in respect of that aspect of the case that reliance was placed by the appellants on Criminal Appeal No. 827 of 1955, D/- 11-11-1957 (All) and we agree that these three appellants should have been convicted for this particular offence only Under Section 323 read with Section 34 Indian Penal Code. Each one of them was sentenced to two years' rigorous imprisonment under the aforesaid provision. We think a sentence of six months' rigorous imprisonment Under Section 323 read with Section 34 would meet the ends of justice in this Case.

30. The appeal is therefore allowed to this extent only that the conviction of Jagan, Ram Lal and Sheo Nath Under Section 325 read with Section 34 Indian Penal Code and sentence of two years' rigorous imprisonment thereunder are set aside. They-are convicted Under Section 323 read with Section 34 Indian Penal Code and each one of them is sentenced to six months' rigorous imprisonment thereunder in respect of the injuries caused to Ram Prasad by Bhuwali, The conviction of Bhuwali Under Section 302 for committing the murder of Ram Prasad, the conviction and sentence of Ram Lai and Shiva Nath Under Section 323 and that of Jagan and Bhuwali undei Section 323 read with Section 34 for having caused simple hurt to Lallu are maintained and the appeal is dismissed to that extent. All the sentences are, however, diretced to be concurrent. The appellants are on bail. They will surrender to their bail bonds immediately to serve out the it respective sentences.