

Sukhwa and ors. Vs. Emperor

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Court : Allahabad

Decided On : Jun-10-1929

Reported in : AIR1929All707a; 118Ind.Cas.190

Appellant : Sukhwa and ors.

Respondent : Emperor

Judgement :

1. This is a reference of the death sentence passed on Sukhwa Pasi and appeals by Sukhwa, Darshanwa, Mangalwa and Parbhua Passis. These four persons have been convicted under Section 302, I.P.C., of causing the death of a Kalwar called Ram Prasad on 12th November 1928 as a result of an assault committed on 7th November 1928. The parties are all residents of the village of Palia. The questions to be decided are firstly, whether the assault was committed by all four accused or by the accused Sukhwa alone, and secondly, what were the circumstances which led up to the assault. For the prosecution three eyewitnesses, Ram Bharose who admittedly accompanied the deceased and two persons Bore and Badri who were close to the scene of occurrence, stated that they witnessed the assault and that all the four accused beat the deceased with lathis. Four witnesses have given evidence for the defence, but we consider that their evidence is not worthy of credit. The first report which was made without any delay named all four accused as the assailants of Ram Prasad. Ram Prasad's dying declaration was taken on the following day by the Tahsildar and he made a very clear statement in which he named all the four accused as his assailants. We consider therefore that the

prosecution story as regards the assault by all four accused is the correct version of the occurrence.

2. As regards the motive for the assault, it is stated by Mahabir Prasad, nephew of the deceased, that the deceased some five years ago purchased a grove and two years later surrounded that grove with a ditch. This piece of land had formerly been used by the accused Sukhwa for grazing his cattle and his cattle shed is just outside the grove. The witness Bore states that on the day previous to the assault he saw Sukhwa appellant grazing his cattle inside the grove and Ram Prasad remonstrated with Sukhwa and reminded him that he had impounded Sukhwa's cattle for that very matter on the previous year and that he would do so again if there was any further trespass. Sukhwa replied with a threat against Ram Prasad. Ram Prasad in his dying declaration and Ram Bharose in his evidence stated that they were returning on the day of the assault early in the morning to their village of Palia and that when they came about a furlong and a half from the village, the four accused who were waiting on the road near a culvert assaulted Ram Prasad with lathis and continued to beat him after he fell down. Ram Bharose remonstrated with them saying that Ram Prasad was an old man and would be killed, but the accused Sukhwa told the other accused to kill Ram Prasad. This account of the origin of the quarrel has been clearly set out in the first report which was made a few hours after the assault on the same morning. Later than that report the accuseds Sukhwa made a rival report in which he set out a story to the effect that Mahabir, the son of the deceased sent for him and demanded half of Sukhwa's crop. Sukhwa stated that he had taken his field on rent. The report continues that on this account on the day of the assault Mahabir beat the mother and sister of Sukhwa and that the mother was injured on her mouth and would be taken to the hospital. The report then says that Sukhwa came up and committed marpit, but does not say whom he assaulted. There is nothing whatever in this report about any action by Ram Prasad. None of the accused put forward any explanation in the Court of the Magistrate, but when the case came to the Sessions Court Sukhwa put forward a story to the effect that Ram Prasad, Mahabir, Raghubir and Ram Bharose alias Sankata came to his threshing-floor and asked his mother to give them half of his rice crop; that abuse followed and Ram Prasad and Mahabir beat the mother and sister of Sukhwa and that hearing their cries Sukhwa came

up and remonstrated with Ram Prasad. He received a lathi blow on his ankle by Ram Prasad. Sukhwa then picked up a lathi and beat Ram Prasad.

3. Some attempt is made to support this story by the evidence of a single defence witness called Kunthi. No evidence was given of any injuries on these women. Kunthi was not one of the two witnesses named in the original report of Sukhwa. We do not consider that his evidence is worthy of credit. The story as put forward by the defence of the origin of the quarrel is a story that is extremely improbable. It has been changed considerably from the version put forward in Sukhwa's first report and it is not supported by any reliable evidence. Accordingly we reject this story of the defence altogether.

4. We believe the evidence of the prosecution witnesses and we find that the four appellants deliberately lay in wait for Ram Prasad intending to beat him with lathis on account of the enmity in regard to this grove. The medical evidence shows that death was due to injuries to the lung caused by the fracture of six ribs, and hemorrhage of the brain produced by a contused wound on the head, and that there were numerous other injuries. The intention of the accused must have been to cause death or such injuries as would in the ordinary course of nature cause death. There is evidence that Sukhwa told the other accused to kill Ram Prasad, and that Sukhwa took a leading part in the assault.

5. We affirm the conviction under Section 302, I.P.C., of all the accused and we confirm the sentence of death of Sukhwa and the sentences of transportation for life on Darshanwa, Mangalwa and Parbhuwa. We dismiss the appeal.