

Jalam and Etc. Etc. Vs. the State

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Court : Allahabad

Decided On : Apr-22-1997

Reported in : 1998CriLJ2103

Judge : G. Malviya and ;Kundan Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 100, 147, 148, 149, 299, 300, 302, 304, 307, 323 and 325; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Criminal Appeal Nos. 1437, 1832 and 1856 of 1980

Appellant : Jalam and Etc. Etc.

Respondent : The State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : V.S. Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Kundan Singh, J.

1. Karan, Thalua, Har Bhchan, Gorey Lal, Lakshman, Jalam, Phund, Hira Lal, Tulsi and Halka have preferred the aforesaid criminal appeals against the

judgment and order dated 30-6-1980 by Sri S.N. Singh, the then Addl. Session Judge, Lalitpur in Sessions Trial No. 78 of 1979 whereby all the appellants have been convicted under Sections 302/149, I.P.C. and sentenced to imprisonment for life. They have also been convicted under Sections 307/149, I.P.C. and sentence to seven years R.I. They have further been convicted under Sections 323/149, I.P.C. and sentenced to one year R.I. each. Halka has also been convicted under Section 148, I.P.C. and sentenced to one and a half years R.I. while other appellants have been convicted under Section 147, I.P.C. and sentenced to one year R.I. each. As all the appeals of the appellants stated above are connected and arise out of one and the same incidence, they are being disposed of by this common judgment.

2. The informant Vinod Kumar P.W. 1 and injured witnesses, namely Dhirendra Kumar PW 2 and Ravindra Kumar PW 3, are residents of village Gudrapur P.S. Mahroni. district Lalitpur. Phoolchand deceased was father of PWs 1, 2 and 3. The prosecution case, as set up in the F.I.R. briefly slated is that Vinod Kumar gave his field (known as Labuda) to Karan accused in the previous year on batal system but Karan dishonestly did not give the crop of his share to him. Even then Karan was demanding the field, of Vinod Kumar on batal for the current year but Phoolchand refused to do so; hence Karan and his companions enraged enmity against Phoolchand. On the day of occurrence 11-7-1979 Phoolchand sent Mukunda and Hallan for ploughing that field. Thereafter Phoolchand and his sons informant Vinod Kumar, Ravindra Kumar and Devendra Kumar went to the field where Karan holding a lathis reached and told them that they would riot be able to sow the field and bad consequence would follow. Phool Chand told that he had committed dishonesty; hence he. would not give the field to him for cultivation. Karan thereupon became angry and returned to the village. After sometime in the afternoon Phoolchand and his sons were going to their house, for taking lunch. When they reached Tagra. field of Patwari, accused Karat, Thulua, Gorey Lal, Har Bhajan, Lakshman, .Jalam Phundi holding lathis, Halka holding axe. Hiralal and Tulsi armed with Parena surrounded them. Karam asked Phoolchand as to why he had not given his field to him and the complainant party could not. plough and sow the field. Phoolchand asserted that the field was of his own, he will cultivate the same, and what concern they have with it. Thereupon Karan exhorted his

companions to give him a lesson of not giving the field saying that. 'Baniya Sala had become idiot and unsound mind.' Thereupon all of them started assaulting Phoolchand. When his sons tried to rescue their father, the accused persons started assaulting them also. The sons of Phoolchand also wielded their lathis and Parena in self-defence. When Halian, Mukunda, Shiarn Lal reprimanded the accused persons, they ran away. The complainant, his father and brothers sustained a large number of serious injuries. Phoolchand died on the spot. The accused persons had inimical terms with the complainant partly due to money transaction and litigation regarding Marpit was also going on against Tulsi and Har Bhajan, Hiralal had committed theft of the complainant's crop in (he, month of Chait of the same year. He reported the matter to the police. Due to this enmity all the accused assaulted the complainant, and his brothers and committed the murder of his father.

3. Vinod Kumar PW 1 reported the, mailer to the police of Rs. Mahroni, district Lalilpur at 11.10 a.m. on 11-7-1979. The distance of the police station from the place of occurrence is eight miles. P.W. Karrita Singh was posted at that time as Station Officer at the police station. He started investigation. He went to village Gudrapur where he found the dead body of Phoolchand lying in his house. He field the inquest of the dead body, prepared the relevant documents and sent the dead body to the mortuary for post mortem examination through constable Mohd. Isbaq PW 8. He took blood stained bed sheet in custody and prepared a recovery memo. He also took Banian and underwear of the deceased in custody. He went in search of the accused persons at their houses but none of them could be made available. He recorded the statements of Hallan under Section 161, Cr.P.C. on 11-7-1979 and that of Mukunda on 12 7- 1979. He arrested. Hira Lal, Lakshnuin, Halka and Jalam on 12-7-1979. He interrogated Shyam Lal on 12- 7-1979. He inspected the venue and prepared a site plan. The I.O. went to the District Hospital Lalitpur on 14-7-1979 where he reported the statements of Vinod Kumar Devendra Kumar injured persons. The I.O. also collected all the papers including pronotes in respect of the accused persons from Vinod Kumar on 28- 7-1979. He also collected the. copy of N.C.R. and copy of the complaint.

4. The post mortem of the body of Phoolchand was conducted at 1.30 p.m. on 12-7-1979 by Dr. H.N. Srivastava PW 6. Five lacerated wounds, four incised wounds, three punctured wounds and 12 contusions were found on the body of Phoolchand. Dr. S.K. Jain PW 4 medically examined Devendra Kumar, Vinod Kumar and Ravindra Kumar between 6 p.m. to 7.50 p.m. on 11-7-1979. He found five contusions and one lacerated wound on the person of Vinod Kumar, seven, lacerated wounds, eight contusions, one traumatic swelling and one abrasion on the person of Devendra Kumar and four contusions and one lacerated wound on the person of Ravindra Kumar. The I.O. after completing other formalities submitted a charge-sheet against all the accused persons in Court.

5. The prosecution examined eleven witnesses in all to prove its case. Out of them Vinod Kumar, Devendra Kumar and Ravindra Kumar were the witnesses of factum of the incident while the other witnesses were of formal nature.

6. The accused persons denied the prosecution version and stated that they have been falsely implicated in the present case due to enmity. Karan stated in his statement recorded under Section 313, Cr.P.C. that he had no money transaction with the complainant. When in the morning of the day of incident he was sitting in front of his house, several persons were present there and he saw various persons bringing the dead body of Phoolchand. His house was near the house of Seth Phoolchand. At that time Vinod Kumar, Devendra Kumar and Ravindra Kumar with 2-3 servants came from their house and they started abusing and assaulting him. They had beaten him and he also assaulted them. Phundi also stated in his statement recorded under Section 313, Cr.P.C. that after the murder of Phoolchand, Vinod Kumar, Ravindra Kumar and Devendra Kumar with 2-3 servants assaulted Karan at his house. He intervened and rescued him. In that process Vinod Kumar, Devendra Kumar and Ravindra Kumar sustained injuries and few lathi injuries were also sustained on his side. Lakshman stated that Seth Phool Chand wanted him to give evidence in Court in a case against Tulsi accused but he refused to do so, hence he has been involved falsely in the present case. Gorey Lal stated that he heard in the morning that Seth Phool Chand had been killed. Various people had brought his body to his house. The house of Karan lies in the way. Karan was sitting in front of his house. Devendra

Kumar, Ravindra Kumar and Vinod Kumar with 2-3 servants started beating him. Several persons including the accused were present there. The accused persons rescued him and subsided the matter, hence they have been falsely implicated in the present case. The defence also examined DW 1 Pragi, who stated that at about 6 or 7 a.m. on the date of the incident he heard that Phoolchand, father of Vinod Kumar had been murdered. 25-30 village people had gone in search of the dead body. At that time all the three sons of Phoolchand had accompanied them and the dead body was found in the Nala. A cot was brought by Dhamma and the dead body was brought to the house of the deceased. At that time, several persons were present there. Then he went to his house. He was called by the I.O. at 4 p.m. The dead body was sealed and his signatures were taken on the memo and other papers. DW 2 Janki stated that he saw that a quarrel had taken place in front of the house of Karan in which Devendra Kumar, Ravindra Kumar and Vinod Kumar with 2-3 servants assaulted Karan with lathis. The other accused persons Lakshman, Phundi, Gorey Lal, and Tulsi intervened and rescued Karan. Phundi and Karan also sustained injuries. The accused persons also assaulted Devendra Kumar, Ravindra Kumar and Vinod Kumar because they were assaulting Karan and other accused persons and were not stopping the Marpit. All the three brothers along with their servants ran away. In that Marpit Devendra Kumar, Ravindra Kumar and Vinod Kumar sustained injuries. On the side of accused Karan and Phundi also sustained injuries. The house of Karan was at a distance of about 20-25 steps away from that of Phoolchand. At the time of the incident 100-150 persons were present there. It was 8 or 9 a.m.

7. The learned Addl. Sessions Judge after considering the evidence on record held the appellants guilty of the offences charged with and convicted and sentenced them as stated above. The appellants have come up before this Court in these appeals against their conviction and sentence.

8. Heard Sri Krishna, Kapoor, counsel for the appellants and Sri Deepak, learned A.G. A. for the State.

9. The learned Counsel for the appellants placed the evidence of all the three eye witnesses, who consistently deposed that at the time when the sons of the

deceased along with his father were coming to their house, near the Tagra field of Patwari all the accused armed with lathis, Parena and axes reached there and Karan asked the deceased as to why the field had not been given to him. Phoolchand deceased said that it was his field, he would cultivate it and what concern, they had with it. Karan exhorted his companies saying that 'Baniya Sala has become idiot and unsound mind', and all of them started assaulting Phoolchand with their respective weapons. When the complainant and his other brothers Ravindra Kumar and Devendra Kumar tried to rescue their father, they were also assaulted by the accused. The complainant party, however also wielded their lathi and Parena in self-defence. Hallan and Mukunda, when asked the accused not to beat them, then the accused ran away. Phoolchand succumbed to his injuries at the spot. Vinod Kumar, Devendra Kumar and Ravindra Kumar sustained numerous injuries on their person. The deceased sustained 25 injuries. The following injuries were found on the person of Phoolchand by the doctor, who conducted the post mortem examination:

1. Lacerated wound 11 cm x 4 cm x bone deep on the left side of head. 4 cm above from left eye brow, longitude Margin lacerated.
2. Lacerated wound 7 cm. x 3 cm. x bone deep on the left side of head just outer and paralalled to injury No. 1 Margin lacerated clotted blood present.
3. Incised wound 6 cm. x 2 cm. x bone deep in mid of skull 6 cm above from bridge of nose. Margin sharp clean out no tailing vertical.
4. Incised wound 3 cm. x 2 cm. x hone deep on right side head 6 cm above from right eye brow and 4 cm above from tip of the right ear. Margin sharp.
5. Lacerated wound 3 cm. x 2 cm. x bone deep on right side head at back. Margin lacerated and torn.
6. Incised wound 4 cm. x 2 cm. x deep out bone right side of lower jaw oblique Margin sharp and clean cut. Fracture right side mandible at middle.
7. Incised wound 2.5 cm. x 2 cm. x 1.4 cm. just at chain Margin chopped, clean out no tailing.

8. Contusion 12 cm. x 6 cm. on right side chest frontal lateral aspect, oblique, 4 cm. below from on right nipple.
9. Contusion 8 cm. x 4 cm. on epigastriun, oblique.
10. Abraided contusion 11 cm. x 4 cm. on right shoulder.
11. Contusion 4 cm. x 4 cm. on upper part outer aspect of right arm.
12. Contusion 4 cm. x 3 cm. just below injury No. 11.
13. Lacerated wound on back of hand fright side 3 cm. x 3 cm. x 2 cm. just below middle finger. Margin lacerated.
14. Lacerated wound 2 cm . x 2 cm. x 2 cm. just outer to injury No. 13. Margin lacerated.
15. Contusion multiple average size 3 cm. x 2 cm. to 2 cm. x 2 cm. on outer aspect of left arm arranged in one upon another in area about 10 cm. x 6 cm.
16. Contusion 4 cm. x 2 cm. lower outer aspect of left arm.
17. Punctured wound 2 cm x 2 cm. 6 cm. in front of left arm middle. Margin lacerated.
18. Punctured wound 2 cm x 2 cm. 4 cm. on left elbow back upper part. Left fore arm clotted blood present. Margin lacerated Fracture of ulna upper part seen.
19. Punctured wound 2 cm. x 2 cm. 4 cm. on left wrist, outer aspect margin lacerated clotted blood present.
20. Contusion 6 cm. x 4 cm. on back of left hand in middle.
21. Abraided contusion 4 cm. x 2 cm. in upper front of left thigh.
22. Abraided contusion 3 cm. x 2 cm. just above and outer to injury No. 21.
23. Abraided contusion 2 cm. x 1 cm. x 1 cm. on front of right skin of right leg.

24. Contusion 4 cm x 2 cm on left side back of chest 7 cm. below inferior angle of left scapula.

25. Contusion 4 cm. x 2 cm. on left shoulder blade.

10. On exploration under injury No. 1 and 2 temporal parietal bone was found fractured and membrane longitudely torn and contused in an area of 6 cm. x 4 cm. x 2 cm oz of clotted and semi clotted blood under injuries No. 6 and 7 was found. Mandible was fractured. Cause of death was, in the opinion of the doctor, due to multiple injuries on vital organs and due to shock and haemorrhage.

11. The injuries of Vinod Kumark, Devendra Kumar and Ravindra Kumar were also examined by Dr. S.K. Jain, who found various injuries on the person of the aforesaid injured, as stated above. The witnesses have also stated about the motive that the accused Thalu, Halka, Jalam, Lakshman, Hiralal, Gorey Lal, Phundi and Karan had money transactions with the deceased. The deceased had also filed a case against Har Bhajan and Tulsi about a year prior to the incident. The papers regarding money transaction are on record, questions No. 7 and 8 regarding money transaction and the quarrel and litigation having taken place prior to the incident were specifically put to the accused but they denied the same. PW 2 Devendra Kumar stated in his cross examination that when all the ten accused persons surrounded Phoolchand and started assaulting him with their respectively weapons, the three injured sons of the deceased tried to rescue their father, they were also assaulted with the weapons. The learned Counsel for the appellants could not elicit anything from the lengthy cross examination of the witnesses esaping the interestcdness of the witnesses.

12. The learned Counsel for the appellants has not disputed the factum of the incident. However, he contended that it is a case in which the accused had no intention to commit the murder of any person. The common intention of the accused persons was only to give a lesson by assaulting or inflicting grievous injuries. Under injuries No. 1 and 2 the parietal and temporal bones of the deceased were found fracture and mandible was also found fractured. The prosecution has not come with a case attributing the specific role to any of the accused persons for causing those inuries. As such at the most the offence would

fall under Section 325/149, I.P.C. for causing the grievous hurt to the injuries. He relied on two cases of this Court, namely, Moti Singh v. State reported in AIR 1967 All 437, and Sukhdev v. State reported in AIR 1968 All 151.

13. We have given our anxious thought to the submission made on behalf of the appellants. We may point out a case, State of Andhra Pradesh v. R. Punneya reported in AIR 1977 SC 45 : 1977 Cri LJ 1, wherein the accused inflicted the injuries on the limbs of the body of the deceased and no injury was cause on the vital part of the body. The Apex Court made a clear distinction between the murder the culpable homicide not amount to murder. The relevant portion contained in paras 14, 15, 16 and 39 is being reproduced hereunder.

14. Clause (b) Section 299 corresponding with clauses (2) and (3) of Section 300. The distinguishing feature of the means *rea* requisite under Clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the intentional harm cause to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of his clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

15. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarging liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that, particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given :

Section 300A person commits culpable homicide Subject to certain exceptions culpable if the act by which the death is homicide is murder if the act by which the death caused is done-- caused is done INTENTION(a) with the intention of causing (1) with the intention of causing death; or (2) death; or (b) with the intention of causing with the intention of causing such bodily injury such bodily injury as is likely as the offender knows to be likely to cause the to cause death; or death of the person to whom the harm is caused; or (3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or KNOWLEDGE (c) with the knowledge the act is (4) With the knowledge that the act is so likely to cause death. imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and without any excuse for incurring the risk of causing death or injury as is mentioned above. 16. In clause (3) of Section 100, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the words 'sufficient in the ordinary course of nature' have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words 'bodily injury...sufficient in the ordinary course of nature to cause death' mean that death will be 'the most probable' result of the injury, having regard to the ordinary course of nature,

39. The ratio of *Anda v. State of Rajasthan* AIR 1966 SC 148 (Supra) applies in full force to the facts of the present case. Here, a direct casual connection between the act of the accused and the death was established. The injuries were the direct cause of the death. No secondary factor such as gangrene, tetanus etc. supervened. There was no doubt whatever that the heating was premeditated and calculated. Just as in *Anda's* case, here also, the aim of the assailants was to

smash the arms and legs of the deceased and they succeeded in that design, causing no less than 19 injuries, including, fractures of most of the bones of the legs and the arms. While in Anda's case, the sticks used by the assailants were not specially dangerous, in the instant case (hey were unusually heavy, lethal weapons. All these acts of the accused were pre-planned and intentional which considered objectively in the light of the medical evidence were sufficient in the ordinary. course of nature to cause death. The mere fact that the beating was designedly confined by the assailants to the legs and arms, or that none of the multiple injuries inflicted was individually sufficient in the ordinary course of nature to cause death, will not exclude the application of clause 3rdly of Section 300. The expression 'bodily injury' in clause 3rdly includes also its plural, so that the clause would cover a case where all the injuries intentionally caused by the accused are cumulatively sufficient to cause the death in the ordinary course of nature, even if none of those injuries individually measures upto such sufficiency. The 'sufficiency' spoken of in this clause, as already noticed is the high probability of death in the ordinary course of nature, and if such sufficiency exists and death is caused and the injury causing it is intentional the case would fall under clause 3rdly of Section 300. All the conditions which are a pre-requisite for the applicability of this clause have been established and the offence committed by the accused in the instant case was 'murder'.

14. In the instant case the doctor, who conducted the post mortem examination of the deceased opined that the cause of death was due to shock and haemorrhage as result of multiple injuries on vital parts. Thus the doctor has confined the death due to the injuries caused on the vital parts of the body meaning thereby 13 injuries caused on limbs were not the cause of death. We are unable to hold that the injuries caused on legs and hands had no concern with the death of the deceased for the reasons the injuries were inflicted till the deceased took his last breath, as such it can only be said that those injuries were simple injuries or the injuries on non-vital parts were caused with the intention or knowledge that those injuries, in most probability, would cause death. Each of 13 injuries on non-vital parts had also the cumulative effect subscribing in high probability to death, though each of them may not be individually sufficient in the ordinary course of nature to cause death. Causing of such injuries intentionally with pre-meditation

and pre-plan would come within the ambit of bodily injuries in clause Thirdly of Section 300 IPC.

15. So far as the applicability of Section 149 IPC is concerned we may take note of the rule of law laid down by the Supreme Court in the case of Bhajan Singh v. State of U. P. reported in AIR 1974 SC 1564 wherein an unlawful assembly was formed originally only to beat. If the members of the assembly knew that by using those weapons upon a person whose death is caused, they are guilty of the offence under Section 302/ 149 IPC and the Apex Court rejected the plea of the learned Counsel for the appellants in that case that the common object of the assembly was not to kill the deceased. The relevant portion is contained in para 10, which is reproduced below :

10. The learned Counsel strenuously contends that the accused cannot be convicted under Section 302/149 IPC as the common object of the assembly was not to kill the deceased. The learned counsel however, fails to take note of the fact that Section 149 has got two limbs :

'If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. Even if, therefore, the accused were originally members of an unlawful assembly with the common object of only beating Baksheesh Singh having come armed with deadly weapons, some with spear and gadasa and some with lathis, in the desperate manner they have done, and if the members of the assembly knew that by using these weapons upon Baksheesh Singh death would be caused, they are guilty of Section 302 read with Section 149 IPC. There is no circumstance in the case which can bring down this case to one under Section 304 IPC. The intention was clear to kill Baksheesh Singh and all the accused are guilty of the offence charged, namely Section 302/149 IPC.

16. In the present case all the ten accused persons assembled armed with lethal weapons i.e Parnas, axes and lathis with the common object to cause death of Phoolchand and they went to Tagra field of Patwari where they found the

complainant party returning to their house for lunch. The accused surrounded Phoolchand and started belabouring him with their respective weapons. When his three sons intervened and rescued their father, they were also assaulted. The deceased sustained as many as 25 injuries on his body. The injured persons also sustained 2.8 injuries in rescuing their father, who was assaulted till his last breath. Every accused is responsible vicariously for causing the death even any of the accused might not have caused a single injury to the deceased because he was the member of the assembly and in prosecution of the common object of the unlawful assembly he knew that the greather probability was that death would be caused. Thus we are constrained to hold that the application of Section 149 IPC is clearly attracted in the present ease for holding each of the accused persons vicariously for causing death of the deceased.

17. In this background the evidence of three witnesses is consistent regarding the incident in which the deceased as well as his three sons sustained injuries. There is no room or any other scope for arriving at other conclusion except that the accused person inflicted on all over the body of the deceased as many as 25 injuries, including fractures of frontal parietal bone and mendible none with the intention of causing injuries which were sufficient in the ordinary course of nature to cause death and with the knowledge that those injuries, in all probability, would cause death. As such each of the accused persons is guilty of murder under Section 302 read with Section 149 IPC. Thus we share the view taken by the court below.

18. No other point has been pressed.

19. In view of what has been said above, the above appeals fail and are hereby dismissed. The conviction and sentence of the appellants awarded by the, court below are affirmed. The appellants are on bail. They shall be taken into custody forthwith to serve out their sentence.