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Devisingh and ors. Vs. the State

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Court : Madhya Pradesh

Decided On : Jul-01-1959

Reported in : AIR1963MP29; 1963CriLJ55

Judge : A.H. Khan and ;Shiv Dayal, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 34 and 302

Appeal No. : Criminal Appeal No. 72 of 1959 and Criminal Ref. No. 2 of 1959

Appellant : Devisingh and ors.

Respondent : The State

Advocate for Def. : S.T. Mungre Govt., Adv.

Advocate for Pet/Ap. : J.M. Anand, Adv.

Judgement :

Shiv Dayal, J.

1. Five persons, namely, Chandansingh, Devi-singh, Udaisingh, Dulesingh and Bhagirathsingh alias Bhagoo Singh were accused of having caused the death of Mansingh and Kalusingh of village Biklakheri, district Shajapur. The learned Additional Sessions Judge, Shajapur, who tried them, has found Udaisingh, Devi Singh and Bhagirath guilty of the offence under Section 302 read with Section 34

of the Penal Code in respect of the murder of Mansingh as also of the same offence for the murder of Kalusingh and, further, under Section 148 of the Code. He has awarded death penalty to each of these three accused for each of the first two offences and a sentence of three years' rigorous imprisonment under Section 148. The other two accused, Chandansingh and Dulesingh, have been similarly convicted under Section 302/34, Indian Penal Code for the murder of Mansingh as for the murder of Kalusingh and each of them has been sentenced to suffer imprisonment for life on each of these counts. He has also convicted these two accused under Section 147 Indian Penal Code and sentenced them to 2 years' rigorous imprisonment. He has further directed that the sentences awarded to Chandansingh and Dulesingh should run concurrently.

2. The trial Judge has referred the matter to this Court under Section 374 of the Code of Criminal Procedure for confirmation of the death sentences, and all the five accused, aggrieved by their conviction and sentences, have preferred an appeal to this court.

3. The prosecution case was that on May 7, 1958, in the noon, Narainsingh P. W. 14, a boy of 10, knocked against a bucket of water which Dulesingh accused had kept near a streamlet outside the village. On this Narainsingh was slapped by Dulesingh, whereupon Narainsingh abused Dulesingh. The latter then hit Narainsingh with a shoe. Narainsingh went away to his house. Let this be called the 'first incident'.

4. In the evening of the same day Narainsingh complained of this matter to his father Bhagirath P. W. 18, when the latter returned to his village from Berchha. Bhagirath went to the 'A-thai' (a common meeting place) where Dulesingh also came at about 8 P.M. Bhagirath P. W. 18 protested to Dulesingh against the beating of his son. This was followed by an exchange of abuses between Dulesingh and Bhagirath (P. W. 18). In the meantime Bhagirath accused also reached the Athai and he. joined his brother Dulesingh in abusing the opponent. When this was going on Kalusingh, unfortunately for him, also reached the. Athai and remonstrated Dulesingh and Bhagirathsingh (accused) why they were abusing the old man, meaning Bhagirath (P. W. 18). On this Dulesingh and Bhagirath

accused started abusing Kalusingh. Devisingh, Chandansingh and Udaisingh also came there. Dulesingh and Kalusingh grappled with each other. Vijaysingh P. W. 3, and Kailash Narain P. W. 5, who happened to be there, interceded and Kalusingh went away to his house. This will hereafter be called the 'second incident'.

5. Devisingh, Udaisingh, Dulesingh arid Bhagirath are brothers. Their mother, Mst. Bhuri, had eloped with Mansingh about three months before the occurrence and had returned to the village about a month before it. Naturally, therefore, the four brothers and their uncle Chandansingh accused had become inimical with Mansingh. Kalusingh was the younger brother of Mansingh.

6. To proceed further with the prosecution story, the second incident only became an immediate cause to flare up the pre-existing fire between the two sides. All the five accused, in the heat of that moment, decided to put a complete end to their dispute and they rushed to fetch whatever weapons they could in that desperate hurry. Then all the five immediately raided the house of Kalusingh when he was about to take his meal. Devi Singh was armsd with a pickaxe (Kudali), Bhagirath with a pole-axe (Pharsha), Udaisingh with, as axe (Kulhari), and Dulesinghwith a stick (lathi). Chandansingh was unarmed. Accused Bhagirathsingh dragged Kalusingh out of the house and, at the instigation of Chandansingh, all the four brothers belaboured Kalusingh, with the result that he fell down unconscious. Meanwhile Mansingh arrived there. Chandansingh asked the other four accused to do away with Mansingh also. All of them then jumped upon Mansingh and gave him blows so much so that he died instantaneously. Kamla Bai P. W. 4 was seeing all this from her door. She was crying and shouting. Kalusingh never regained consciousness and later succumbed to his injuries.

7. All these facts have been found proved by the learned trial Judge. We have ourselves reviewed the evidence on the record. Dr. Akhlesh Kumar P. W. 23 examined the bodies of Mansingh and Kalusingh post mortem. According to his statement Mansingh had 12 injuries, some of which were contused wounds and some incised. Kalusingh had 5 injuries, some incised and some contused. Each injury was described in detail by the witness. It is undisputed that Mansingh and

Kalusingh died as a result of those injuries.

(After discussing the evidence in Paras 8-16 their Lordships proceeded :)

17. For all these reasons it must be held that the findings of fact reached by the learned trial Judge are sound and no error could be found in them. Likewise, there is also no error in the finding that all the five accused committed the offence of murder under Section 304 read with Section 34 of Penal Code as regards Kalusingh and also in respect of Mansingh. And, further, that Udaisingh, Devi Singh, Bhagirathsingh are also liable under Section 148 while Dulesingh and Chandansingh under Section 147 of the Code.

18. Now the question is that of sentence. It has been urged by Shri Anand that there should not have been a discrimination in sentences and the learned trial Judge has been in error in sentencing the three accused to death. The learned Government Advocate has replied back by suggesting that if the punishments to all the accused are to be uniform, Dulesingh and Chandansingh should be also awarded the death penalty.

19. It appears from his judgment that the learned Additional Sessions Judge has awarded the sentence of death to Devisingh, Udaisingh and Bhagirath just because they were armed with deadly weapons, namely, an axe, a pick-axe and a pole-axe. In my opinion no distinction in sentences could be made on that ground. All the five accused have been held to be liable under Section 34 of the Code. They were therefore, equally liable. According to the medical evidence the death of Kalusingh and Mansingh resulted from the cumulative effect of the injuries which each of them sustained. It would perhaps have been a different matter if the medical evidence were that the victims died because of incised wounds on their bodies. It is evident from the autopsy reports that Kalusingh had only one incised injury on the left parietal region which was a suspected fracture; and Mansingh had three incised wounds, two of them being fractures of parietal and occipital bones. Kalusingh received four other inju-ries and Mansingh had eight other injuries. Dulesingh had a stick in his hand which must have been responsible for several contused wounds caused to Mansingh including a fracture of occipital bone and a fracture of parietal bone and, similarly, to Kalusingh who had a

contused wound in the frontal region and another in the occipital region of his head.

Chandansingh, though unarmed was the leading villain. It was at his direction and instigation that the four brothers got provoked to bring the arms and to cause the deaths. I am clear in my mind that the sentences in a matter of this nature cannot be dis-similar. In the case of Wazirsingh v. State of Punjab, (S) AIR 1956 SC 754 their Lordships had an occasion to observe about disparity in sentences in such cases. There it was found that both the convicts were equally culpable for taking part in the dastardly crime. Their Lordships said that if one was awarded the lesser punishment of transportation for life, there was equally good reason that the other should have been awarded the same penalty. In my opinion, , the accused Devisingh, Udaisingh and Bhagirathsingh are entitled to get the benefit of the principle laid down in that pronouncement.

20. For these reasons I see no justification forconfirming the extreme penalty of the law to these three convicts.

21. The learned Government Advocate's suggestion for enhancement of sentences of Dulesingh and Chandan Singh so that they may come in line with those proposed for Devisingh, Udaisingh and Bhagirathsingh, cannot be accepted. There is no doubt that the murders committed by the accused must be condemned in the strongest language. However, it cannot be lost sight of that Mansingh, instead of entering into some legalised form of marriage with Mst. Bhuri, took her away. And, what was still worse he left her after two months. Naturally the four brothers must have constantly been under an impulse of indignation. Then again, the altercation at the 'Athai', which eventually assumed a disastrous magnitude, was sudden and unpremeditated. It was in that heat of passion that Chandansingh ignited the latent fire. Although for these facts the benefit of exception 1 to Section 300 of Penal Code cannot be given to the accused, yet they can be considered for determining the adequacy of the punishment. It is all the more so, when the question ' before this court today is whether to enhance the sentences of two convicts or to reduce those of the other three. It may be mentioned here that the State has not made an application in revision for enhancement of the sentences.

The conclusion is that, in my opinion, the ends of justice will be served if the three convicts who have been condemned to death are awarded the same punishment as the other co-accused.

In result:-

1. Criminal Appeal No. 72 of 1959, as regards Dulesingh, Chandansingh is dismissed.

2. Criminal Appeal No. 72 of 1959, so far as Devisingh, Udaisingh and Bhagirathsingh are concerned, is partly allowed. Their conviction under each of the offences is maintained, and their sentences under Section 148 Indian Penal Code are also maintained, but their sentences with regard to the offences under Section 302 read with Section 34 Indian Penal Code are reduced and, instead of sentence of death, each of them is sentenced to rigorous imprisonment for life. Each of them shall undergo all the sentences concurrently.

3. Criminal Reference No. 3 of 1959 is rejected.

Khan, J.

22. I agree.

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