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Bherusingh Vs. State

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Court : Madhya Pradesh

Decided On : Mar-30-1956

Reported in : 1956CriLJ1408

Judge : Nevaskar and ;Samvatsar, JJ.

Appellant : Bherusingh

Respondent : State

Judgement :

Samvatsar, J.

1. The facts of the prosecution case are that the appellants Bherusingh and Shareef were residents of Dhulet in Mahidpur Tehsil. On the morning of 5-10-1954, these two persons reached the village Rudrakheda and made inquiries at the house of Raisingh for the deceased Ramchandra. Ramchandra was not at home and they were informed that he had gone to the house of Bapusingh Patel. Bherusingh and Shareef went to Bapusingh's house where Ramchandra was engaged in some work. Bherusingh then carried a 'Lohangi' in his hand whereas Shareef was armed with a stick.

On seeing these persons Ramchandra stopped work and returned with them. They had scarcely walked some distance when Ramchandra is alleged to have been beaten by Bherusingh and Shareef with the weapons they had carried.

Ramchandra fell down near the house of one Kriparam and died as a result of the injuries on the spot.

2. On hearing the noise of the beating, people rushed to the scene of occurrence. Bherusingh and Shareef ran in the direction of Mahidpur. They were pursued by the witnesses but could not be caught. The pursuers noticed two persons, Ganpat and Bhagga coming from the opposite direction while the. accused were running away.

The pursuers asked Ganpat and Bhagga to catch the two persons who were running away, stating that they were running away after killing Ramchandra. Ganpat and Bhagga were unarmed and as Bhernsingh and Shareef waived their weapons and threatened to use them, Ganpat and Bhagga moved aside and allowed them to escape.

3. Ganpat, who is the Chowkidar of the village Rudrakheda, lodged a report of the incident at the Mahidpur police station at about 1-00 P.M. He was then accompanied by P.W. 2 Bhagga and P.W. 3 Bapusingh Patel and P.W. 4 Nanuram.

4. Bherusingh and Shareef were arrested on 9-10-1954 and after the investigation was completed, were put up for trial under Section 302, I.P.C. The Additional Sessions Judge, Ujjain found them guilty under Section 325, I.P.C. and sentenced each of them to undergo rigorous imprisonment for two years.

5. Aggrieved by his conviction and sentence, the accused Bherusingh has filed Criminal Appeal No. 33 of 1955. An appeal has also been filed by the other accused Shareef against his conviction and sentence and it is registered as Criminal Appeal No. 35 of 1955. As both the appeals arise out of the same case, they are being disposed of by this common judgment.

6. Dr. V.Y. Apte performed the post-mortem examination of the dead body of Ramchandra on 6-10-1954. He noticed that there were six external injuries on the body of the deceased. These were:

(1) Contusion with bluish mark in the middle of right arm.

(2) Bluish mark oval in size about a rupee, just above the contusion.

(3) Contusion with bluish mark on the back on the left shoulder-blade.

(4) Lacerated wound on the scalp on the left parietal bone about 2' x 1' x bone deep.

(5) Lacerated wound about 2' x 3' x bone deep on the left parleto-occipital region.

(6) Lacerated wound about 1' x 1' x bone deep on the left temporal region, one finger above left ear.

7. On internal examination he noticed that there was an extensive fracture of the left parietal bone, the occipital bone and the petrous part of the temporal bone. The fracture line ran vertically from front to back along the parietal and occipital region. The fracture line ran into the middle fossa and occipital fossa on the left side at base of the skull. The membranes were ruptured at the site of the fracture line and congestion and blood clots were found at the site of the fracture. The brain matter was injured by the ends of the fractured pieces of the bone.

8. According to the doctor the injuries were caused by some hard and blunt substance.

9. It is not disputed that the deceased Ramchandra had sustained injuries and had died on account of them. But it is seriously contended that the evidence on record was not sufficient to find the two appellants guilty of the crime.

10. Both the accused persons have denied the offence and have pleaded 'alibi'. The question to be considered therefore is whether the injuries-found on the person of the deceased Ramchandra are proved to have been caused by the accused persons.

11. The evidence against the accused is both direct and circumstantial. It may be classified as follows:

(1) The evidence showing that accused Bherusingh armed with a 'Lohangi' and accused Shareef armed with a 'Lathr had gone to the village Rudrakheda on the

morning of the date of occurrence and had made inquiries about Ramchandra from Raisingh and had gone to the house of Bapusingh Patel to meet him.

(2) The evidence of eye-witnesses who had seen the accused persons inflicting blows with the weapons in their hands.

(3) The subsequent conduct of the accused, namely, their running away from the scene of occurrence when the people collected and tried to catch them.

(4) Their ascendance from their village until they were arrested on 9-10-1954.

After considering the evidence, his Lordship concluded:

I am therefore of opinion that both Bherusingh and Shareef had gone to Rudrakheda. beaten Ramchandra, and inflicted injuries which ultimately proved fatal.

12 - 23. It was however argued on behalf of the appellant Shareef that none of the injuries caused by him was a grievous hurt and his conviction under Section 325, I.P.C. could not be supported even if it is assumed that he had participated in beating the deceased Ramchandra. In my opinion even apart from the evidence of the witnesses, this is a case to which Section 34 of the Penal Code can be safely applied. Both the accused persons had gone to the village Rudrakheda and after having achieved their object, had tried to escape together. They appear to have acted in close concert and harboured the common intention of beating Ramchandra.

24. It was contended that there was no evidence of a pre-arranged plan. But in my opinion it is not always necessary to have direct evidence on this point. It is held by the Supreme Court In 'Kripal v. State of Uttar Pradesh' : AIR 1954 SC706 , that:

For applicability of Section 34, Penal Code a preconcert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Whether in a proved situation all the individuate concerned therein have developed only

simultaneous and independent intention or whether a simultaneous consensus of their minds to bring about a particular result con be said to have been developed and thereby intended by all of them, is a question that has to be determined on the facts.

25. The circumstances in the present case unmistakably point to the conclusion that the accused had gone to the village Rudrakheda with the common intention of beating the deceased Ramchandra and had acted in furtherance of that common intention.

26. The accused persons have denied having gone to Rudrakheda but there is overwhelming evidence against them on this point. It is conclusively proved that on the morning of the date of occurrence they reached Rudrakheda together and made inquiries about Ramchandra at Raisingh's house. The prosecution have suggested that they had gone from Dhulet to Rudrakheda armed with sticks with the common intention of beating Ramchandra. The accused have on their side not shown that they had anything else to do there or had gone to Rudrakheda for any other purpose.

27. It is also significant that both the accused persons left Rudrakheda together and ran in the same direction, namely, towards Mahidpur. Both of them remained in hiding until they were arrested on 8-10-1954. All the conduct of the accused show that they had been acting in concert and had shared the common intention of beating Ramchandra. Section 34 of the Penal Code can therefore be safely applied to the facts of this case and both the accused persons can be convicted for an offence under Section 325, I.P.C.

28. It was urged on behalf of both the appellants that there was motive for the crime and the prosecution had failed to prove that there existed any enmity between the accused and the deceased. It is true the prosecution came to the Court with a case that the relations of the accused and the deceased were very much strained and that they have failed to make put this case. But the absence of motive cannot be sufficient to quash the conviction when there is the direct testimony of the witnesses who had seen the accused committing the crime.

Absence of motive is useful when the guilt of the accused is to be determined on circumstantial evidence, for, in such a case the evidence of motive is helpful in determining the probabilities of the case. Here there is overwhelming direct evidence corroborated by the subsequent conduct of the accused. I am therefore of opinion that it is satisfactorily established that the injuries found on the person of the deceased Ramchandra were caused by the two accused persons. The conviction of the accused appellants must therefore be upheld.

29. The appeal fails and is therefore dismissed.

30. Before concluding this judgment I fee) it necessary to observe that the learned lower Court has dealt with the accused very leniently in awarding them the sentence of two years' rigorous imprisonment only. The learned trial Judge should have borne in mind that the weapons with which Ramchandra was beaten were heavy sticks and the beating itself was merciless and had caused serious consequences.

The beating also was perhaps pre-arranged, Though I am not disposed in this case to enhance the sentence, I do wish to state that in awarding the sentence, the Court should take into account the weapon used, the manner in which the offence was committed and the consequences that had ensued. This unfortunately has not been dope in the present case. It is expected that this will not be repeated in future.

Nevaskar, J.

31. I agree.

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