

Ude Singh and anr. Vs. the State

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Court : Orissa

Decided On : Dec-23-1965

Reported in : AIR1966Ori210; 1966CriLJ1297

Judge : K. Ahmad, C.J. and ;S. Barman, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

Appeal No. : Criminal Appeal No. 95 of 1964

Appellant : Ude Singh and anr.

Respondent : The State

Advocate for Def. : S.C. Mohapatra for Govt. Adv.

Advocate for Pet/Ap. : J.K. Mahanty, Adv.

Judgement :

BARMAN, J.

1. Ude Singh and Thakur Singh both aged about 25-26 years were convicted on a charge of having murdered Swaran Singh aged about 22 years and sentenced to imprisonment for life.

2. The two accused persons, the deceased and some others were all labourers working in the D B K Railway Project, hailing from East Punjab and camping at

village Cherupali, district Bolangir for construction of a bridge on river Ang. On the night of February 5, 1963 at about 8 p.m. the two accused persons were quarrelling between themselves. It is said that their leader Jamadar Lambar Singh P.W. 'went to the two accused persons and asked them not to quarrel and stop making hulla. The accused persons however did not listen. It was then that the deceased Swaran Singh who is said to be nephew of Jamadar Lambar Singh went to the accused persons and asked them to stop making hulla. The prosecution case is that it was at this stage when Swaran Singh had come to intervene in the quarrel between the two accused persons the accused Ude Singh caught hold of the left hand of the deceased Swaran Singh and shouted at the other accused Thakur Singh to avail of the opportunity and attack the deceased without wasting time; immediately the accused Thakur Singh who was at the right side of the deceased Swaran Singh brought out a knife from his pyjama pocket and stabbed Swaran Singh by piercing the left side of his chest.

It was on these facts that the two accused persons were charged for murder of the deceased Swaran Singh by stabbing him with a knife as aforesaid in furtherance of the common intention of them both to kill him and they were charged for having committed an offence punishable under Section 302/34 I. P. C. Both the accused persons denied the charge altogether. In due course the two accused persons were committed to trial before the Sessions Judge who convicted and sentenced them both as aforesaid

3. The prosecution case is mainly based on the direct testimony of two eye-witnesses P. W. 3 Baggaram and P. W. 16 Bhola Singh both labourers in the said D. B. K. Railway camping at Cherupali. The version of these two eye-witnesses as to the manner in which the two accused persons had murdered the deceased Swaran Singh as given in their deposition is in substance the same. The material portion of the evidence of P. W. 3 Baggaram is this :

'.... the deceased (Swaram Singh) who is the nephew of P. W. 2 (Lambar Singh) came from his tent to the accused persons, and asked the accused persons to stop quarrel, He also further said that as they belong to the same village they should not quarrel like that. Then applying a little bit of force he separated both the

accused persons. At this accused Ude Singh caught hold of the left hand of the deceased and shouted ' ABHI KIYA MOUKA DEKHO ' Accused Thakur Singh who was at the right side of the deceased pierced the chest of the deceased with his knife at the left side of the chest of the deceased. Thakur Singh brought the knife with which he stabbed the deceased from his pyjama pocket I and Bhola saw the stabbing of the deceased by accused Thakur I shouted that Thakur stabbed the deceased with knife and Bhola (P. W. 16) immediately ran to get some water. So the Jamadar also turned back and shouted that Swaran Singh had died. On getting the stab the deceased fell down on the ground '.

This evidence directly implicates both the accused persons Ude Singh and Thakur Singh at having participated in the commission of the murder of the deceased. It is clear that accused Ude Singh helped the other accused Thakur Singh in the act of killing the deceased by catching hold of the left hand of the deceased and inciting Thakur Singh to attack the deceased by shouting in the manner he did as quoted above. The evidence of P. W. 3 Baggaram is substantially corroborated by the other eye-witnesses P. W. 16 Bhola Singh.

4. As regards motive of the murder, P. W. 3 Baggaram said that about four or five months prior to the occurrence he had seen the accused persons quarrelling with the deceased.

5. The evidence of the 2 eye-witnesses is also supported by the other witnesses, namely P. W. 2 Sardar Lambar Singh and P. W. 4 Sardar Sohan Singh who were near the place of occurrence and deposed as to what they actually saw and heard Their evidence is consistent with the evidence of eye-witnesses. Thus although P. W. 2 Lambar Singh did not see the actual act of stabbing, the witness however said that he was looking at P. W. 16 Bhola Singh and P. W. 3 Baggram with his back towards the accused persons : at that time the deceased Swaran Singh came to the accused persons and the witness heard Swaran Singh telling the accused persons not to quarrel; Immediately Bhola and Baggaram shouted that accused Thakur had stabbed Swaran Singh with a knife. P. W. 4 Sohan also said substantially to the same effect.

6. The medical evidence of the doctor P. W. 10 who held the post-mortem examination and the post-mortem supports the prosecution case. The doctor found the following in-Jury on the person of the deceased :

'One stabbing wound in the pericardial region one inch medial and below the left nipple 1/2' x 1/6' X thoracic cavity. '

The doctor in his evidence said that the injury might have been caused by a dangerous weapon having sharp cutting edges. Thus the nature of the injury was dangerous and fatal to life

7. As regards Ude Singh the learned defence counsel Mr. J.K. Mahanty submitted that there is no direct evidence of the accused Ude Singh having participated in the murder of the deceased. His point is that it was only the accused Thakur who had stabbed the deceased to death and that the accused Ude Singh had not participated in the crime. The evidence of the 2 eye-witnesses does not however support the contention of the defence The eye-witnesses were examined by the investigating officer within a day or two after the murder In fact P. W. 16 was examined by the investigating officer the following day on February 5, 1963 and P. W. 3 Baggaram was examined by him on February 7, 1963 In cross-examination of these witnesses there is no suggestion on behalf of the defence that these witnesses did not tell the investigating officer in the very first instance about how and in what manner Ude Singh participated in the crime by catching hold of the left hand of the deceased and shouting at Thakur Singh ' ABHI KIYA DEKTARO ' thereby inciting the accused Thakur Singh to avail the opportunity and stab the deceased without wasting any time. We are satisfied that the eye-witnesses had throughout been consistent with regard to their version of the case, namely that both the accused persons Ude Singh and Thakur Singh had participated in the murder in the manner they did as hereinbefore discussed.

8. It was also urged on behalf of the, accused Ude Singh that although the charge was under Section 302/34 but the conviction was under Section 302 and it was submitted that such conviction cannot stand In our opinion this argument is not tenable There is no question of any prejudice to the defence because initially the charge was under Section 302/34 I. P. C. The defence had thus enough

opportunity to meet the charge and they had clear notice that they were being charged with the offence of committing murder in pursuance of their common intention to put an end to the life of Swaran Singh. Therefore the omission by the learned Sessions Judge to mention Section 34 in the order of conviction has nothing more than an academic significance. This our view is supported by a decision of the Supreme Court in *Rawalpenta Venkalu v. State of Hyderabad*, AIR 1956 SC 171.

9. In this view of the case we convert the order of conviction of the two accused appellants into one under Section 302 read with Section 34 I. P. C. and sentence them both to imprisonment for life. The order of conviction is modified accordingly. With this modification, this appeal stands dismissed.

10. AHMAD C. J.: I agree.

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