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Court : Delhi

Decided On : Mar-15-1979

Reported in : ILR1979Delhi302; 1980RLR126

Judge : V.D. Misra and; F.S. Gill, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 300

Appeal No. : Criminal Appeal No. S.345 of 1976

Appellant : Man Singh and ors.

Respondent : State

Advocate for Pet/Ap. : D. Mukherjee,; N.D. Garg,; D.C. Mathur and;

Judgement :

F.S. Gill, J.

(1) Shri S. C. Chaturvedi, Additional Sessions Judge, Delhi has convicted all the three appellants under section 302 read with section 34 of the Indian Penal Code . for the murder of Ram Mehar and has sentenced them to imprisonment for life.

(2) There are two factions in village Surera. One party is headed by Ganpat Singh and the other by Raj Singh. The rivalries had developed on account of election

disputes.

(3) On the day of the Holi festival falling on 18-3-1973, the residents of the village Surera had collected at the 'Holi Darwaza' to celebrate the occasion. 'There had been beating of drums practiced by both the parties. It is alleged that at about 8 P.M. Prabhu, Man Singh, Baid Ram and Ram Phal, who belonged to Raj Singh's party, came in the verandah of Ratti Ram, duly armed with lathis and jellies. At that time Smt. Bharto Public Witness , an elderly lady, had also gone to the appointed place to offer water to the Holi fire. When she was returning she saw Ram Mehar (deceased) present there. He belonged to Ganpat's party. It is alleged that Prabhu exhorted his companions to finish him. On this Baid Ram caught hold of Ram Mehar from behind, while Ram Phal and Man Singh started giving him blows with their respective weapons. The first blow was administered on his head. On receiving the same Ram Mehar fell on the ground. More blows were given thereafter. It is further alleged that Sri Chand Public Witness tried to save the injured but he was threatened by the assailants. So he retreated. Ganga Ram Public Witness then picked up the injured on his shoulders and tried to take him away. He was, however, not allowed to do so by the assailants. He had, therefore, to leave him there. The whole occurrence was witnessed by Smt. Bharto Public Witness . Prabhu had picked up a burning stick from the 'Holi' fire and had thrown the same towards Smt. Bharto. It bit her and she fell unconscious. This incident sparkled like wild fire, aroused the passions of both the factions and engulfed them all. Thereafter exchange of blows ensued. Injuries were received on both sides. Ultimately the incident ended. Cross cases were registered with the police at the instance of both parties.

(4) Ram Mehar was removed to the Safdarjang Hospital where he died the next day as a result of the injuries. Originally a case for attempt to murder was registered but after the death of Ram Mehar it was converted to one under section 302/34 of the Indian Penal Code .

(5) Dr. Bharat Singh performed the post-mortem examination on 20-3-1973 and found the following injuries.

1. Bluish ecchymesis around right eye.

2. One lacerated wound on the mid of skull placed transverse, size 1 x 1/4 x 1/4'.

3. One lacerated wound on the vertex of the skull placed antero-posteriorly, size 2' x 1/4' x bone deep with swelling and abrasion on the margins.

4. One lacerated wound on the right parietal area of skull placed antero posteriorly size 1 1/2' x 1/4' x bone deep with abrasion and swelling around it.

He opined that the death was due to head injuries and that the injuries were sufficient in the ordinary course of nature to cause death. After the completion of the investigation, the appellants and Prabhu were sent up for trial under section 302/34 of the Indian Penal Code .

(6) As many as 34 persons were sent up for trial for the various offences connected with the incident after the murderous assault, but in this appeal we are only concerned with the convictions and sentences passed against the present three appellants in the murder case Prabhu, the fourth accused, who was also charge-sheeted under section 302/34 of the Indian Penal Code . was, however, acquitted.

(7) Admittedly the village of the parties is stricken with strife. So naturally every witness would be directly or otherwise connected with either of the groups. In such a situation the evidence of a witness requires to be appraised and appreciated with greater caution and circumspection.

(8) With this background, we proceed to consider the entire evidence. Smt. Bharto is the principal eyewitness on whose testimony the fate of the case mostly hinges. She has deposed that she had seen the appellants and Prabhu armed with lathis and jellies and that after Prabhu had exhorted and Baid Ram had secured the deceased, both Man Singh and Ram Phal appellants had given blows to Ram Mehar with their respective weapons. As a result of those injuries Ram Mehar had died.

(9) It may be observed that Smt. Bharto is an ignorant and rustic woman hailing from the countryside. Her testimony therefore cannot be judged by the same

standard of exactitude and consistency as that of an urban sophisticated witness. Her evidence has necessarily to be tested on an anvil of objective circumstances of the case. She was subjected to a very lengthy cross-examination on four days, viz. 16th January, 24th January, 6th February and 7th February 1975, although her examination-in-chief recorded on 16-1-1975 covered less than one page. The scrutiny of her testimony shows that she had admirably stood the cross-examination. On material points her statement has remained absolutely unimpeached, although at some places she has faulted while describing the minor or insignificant details.

(10) Two contradictory suggestions were put to this witness about her presence at the spot. At one place the suggestion was that the injury she had sustained was due to an explosion at the spot; while at other place it was suggested to her that she was not present at the spot and that she had falsely appeared as an eyewitness. An effort was also made to show that she had a very weak eye sight and therefore she could not have identified the assailants. In an answer to a question in cross-examination she deposed that she had never used spectacles. Quite an uncalled for demonstration was caused to be held in the court to test her eye sight. She was asked to put thread in a needle, which she was not able to do. We can dare say that it will be an equally difficult job for any person of the age of the witness to put the thread in the small hole of a needle. In the present case the objects to be seen were the assailants and not microscopic articles. Moreover, the witness had known the appellants quite intimately as they hailed from her own village. It was, therefore, not difficult to identify them.

(11) Further attempt was made to show that the witness had not seen anything at the spot. In this connection our attention was drawn to a sentence in the cross-examination where she has stated that she had not told the members of her family or any one else in the village as to how Ram Mehar was killed. It is in her statement that after she had seen the murderous assault on Ram Mehar, a burning stick was flung on her and thenceafter she had become unconscious. She has further stated that she had regained consciousness in the hospital at about 1 A.M. and that after about 15 or 20 minutes she was discharged. From the hospital she went to her daughter at village Kapas Hera and from there to her village

Surera, where her statement was recorded by the police at 10.30 A.M. Once she had been examined by the police, her narration of the story to any one in the village was meaningless. Actually there was hardly any occasion to narrate the occurrence to the inmates of the house as practically whole of the village was engulfed in the fight which had ensued after the murderous assault on Ram Mehar. So failure on the part of the witness to state the occurrence to the members of her family or to other persons of the community does not in any way detract the value of her testimony.

(12) It is next argued that the witness has materially improved her statement before the court. It is pointed out that before the police she has stated that the assailants were standing outside Ratti Ram's Verandah when she had noticed them, but before the court she has deposed that they were standing in the Verandah itself when she had first seen them. Secondly, before the Police she had stated that all the assailants were armed with lathis but at the trial she has stated that they were armed with lathis and jellies. In our view such contradictions are of no consequence as they are bound to occur even in the case of most truthful witnesses. With the lapse of time minor details do obliterate from the memory of an individual.

(13) Another argument advanced to discredit this lady is that she has not given the details and more particularly the number of the lathi blows given to the deceased. She has clearly stated that on receiving the first lathi blow on the head Ram Mehar had fallen on the ground and thereafter further blows were administered. In such a tense situation she could not be expected to start counting the blows.

(14) The next argument relates to insufficiency of light at the spot for the purpose of identification of the assailants. It is in evidence that Holi fire was burning and the people were offering water there. It was near that place that the fatal injuries were caused by the appellants. Things were quite calm upto that stage, but pandemonium prevailed after Ram Mehar had fallen on receiving the lathi blows. Certainly it was not pitch dark. Fire was burning, which naturally emitted light. That would have been sufficient to identify the known persons. In our view there could be no mistake in identifying the assailants.

(15) On reading the whole statement of Smt. Bharto, an impression is created that she has not modulated her evidence to suit a particular prosecution version for the deliberate purpose of securing a conviction. To us her statement strikes to be quite natural and truthful. She has not attempted to inculcate innocent persons. We feel that the trial court has rightly believed Smt. Bharto's statement. In spite of the various attacks, her testimony has remained unshaken.

(16) It is next canvassed by Mr. Mukherjee that the solitary statement of an eye witness (Mst. Bharto) is not sufficient to prove the fatal injuries for substantiating the charge. In this connection it may be observed that there is no impediment in arriving at the conclusion of guilt upon the testimony of a single witness provided the evidence is found to be honest and trustworthy and does not suffer from infirmities. It is also well settled rule of law that quality and not quantity of evidence counts in determining or sustaining a conviction.

(17) In the present case the position is different as the statement of Smt. Bharto Public Witness finds copious corroboration from the evidence of Ganga Ram and the Medical Officer (Dr. Bharat Singh).

(18) Ganga Ram Public Witness 21 has stated that he had reached the spot after hearing cries of Mst. Bharto, who was proclaiming 'Ram Mehar ko maar gera, chhore ko maar gera'. This witness has further deposed that when he had reached the spot he had seen all the four assailants present there. Ram Phal was armed with a jelly, while the other three had lathis with them. He has further stated that he tried to remove Ram Mehar injured from the scene of the occurrence but he was not allowed to do so by the assailants. Mst. Bharto has fully corroborated him on this point. The learned counsel for the appellants has tried to stress that Ganga Ram is not a trustworthy witness as he himself was an accused in the cross case. In our view this fact gives an assurance to the presence of this witness at the spot and makes him more reliable and truthful. We find no valid ground to disbelieve Ganga Ram.

(19) The statements of Smt. Bharto and Ganga Ram, Public Witness s are fully corroborated by the medical evidence. The injuries found on the dead body of the deceased at the time of post-mortem examination have been described earlier.

They were the result of lathi blows, which had been given with formidable force on the vital parts. The seat of the injuries and also the weapons used to cause them, therefore, find ample corroboration in the medical evidence.

(20) Thus the causing of the fatal injuries to the deceased by Man Singh and Ram Phal appellants is fully proved from the statements of Smt. Bharto, Ganga Ram and Dr. Bharat Singh. Apart from this the motive to commit the crime is also established as there existed bad blood between the party of the appellants and that of the deceased.

(21) But so far as Baid Ram appellant is concerned, his participation in the crime seems to be highly doubtful. The part attributed to him is that he had caught hold of Ram Mehar deceased. It is rather difficult to believe that he would have caught hold of an unarmed person to facilitate the causing of the injuries by the other appellants. In such a situation some injury to Baid Ram should also have occurred, but he had none. Ram Mehar had been caught unawares. He had no opportunity to retreat or run away. In our view participation of Baid Ram in the crime by holding the deceased is highly improbable. The case against him is obviously shot with doubt. He, therefore, deserves acquittal.

(22) The next question is about the nature of the offence committed by Man Singh and Ram Phal. These appellants were armed with lathis. The injuries to the deceased had been caused with these weapons. Three of the injuries found on the dead body of Ram Mehar were on the skull, while the fourth one was bluish, ecchymosis around the right eye. The injuries on the head were declared to be sufficient in the ordinary course of nature to cause the death.

(23) The learned counsel for the appellants has submitted that taking the case of the prosecution at its highest the appellants were armed with lathis. It is contended that there was no intention on their part to murder Ram Mehar, nor they had the knowledge that those injuries would result in the death of the victim. It is, therefore, submitted that the case should fall either under section 304 or 325 of the Indian Penal Code . and not under section 302 of the Indian Penal Code .

(24) It has now to be gauged capiously whether injuries caused by the lathis satisfy the requirements of section 300 (3rdly). This provision reads as under :

'3RDLY.If it is done 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.'

The ambit of clause (3rdly) has been considered by the Supreme Court in a number of cases. In the multiple injuries resulting in the death of one Bherun were caused on his arms, legs and other parts of the body with lathis. None of them was on any vital part of the body. It was observed in this case that there was no intention to cause the death of Bherun within the meaning of first clause of section 300, although arms and legs had been smashed and many bruises and lacerated wounds had been given. The assailants, who had joined in beating the deceased, had aimed at breaking his arms and legs. Looking at the injuries caused to Bherun in furtherance to the common intention of all, it was held that it is clear that the injuries intended to be caused were sufficient to cause his death in the ordinary course of nature, even if it cannot be said that his death was intended. This was considered to be sufficient to bring the case within 'thirdly' of section 300 and the offence caused was that of murder.

(25) Later in, where only a single blow with a lathi was given on the head of the deceased, it was held that :

'CLAUSEThirdly consists of two parts. Under the first part, it has to be shown that there was an intention on the part of the accused to inflict the particular injury which was found on the body of the deceased. The second part requires that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. So far as the first part is concerned, the court has to see whether the injury which was found on the deceased was the one intended by the accused or whether it was accidental without his having intended to cause that bodily injury. Once it is found that the injury was not accidental and that the accused intended to cause the injury which was actually inflicted and found on the dead body of the deceased, the first part shall be satisfied. The court would then go into the second part of the clause and find in the light of medical evidence as to whether the bodily

injury inflicted was sufficient in the ordinary course of nature to cause death. If the court finds that the requirements of both the parts have been satisfied, the case shall be held to be covered by clause Thirdly unless it falls within one of the exceptions.'

was a case where merciless beatings were given by heavy sticks causing several injuries, some of which were (internally) found to be grievous. Some observations made in this case are very apt and significant. They are reproduced below : -

'INClause (3) of Section 300, 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.

THEdistinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Sec. 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 words '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 'most probable' result of the injury, having regard to the ordinary course of nature.

FORcases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature.'

(26) The ratio of the Supreme Court decisions is that even if there was no intention on the part of the assailant to cause the death of the victim or that he had no knowledge that the injuries so caused would result in the death of the recipient, still the case would, in either contingency or situation, fall under clause thirdly of

section 300, if the injuries were not accidental and were sufficient in the ordinary course of nature to cause death. The factum of causing the injuries and the Doctor's opinion that those injuries were sufficient to cause death accomplish the necessary requirements to establish the charge of murder.

(27) In the present case there were three injuries on the head of the deceased. They were not accidental and had been caused deliberately. These injuries were sufficient in the ordinary course of nature to cause death. The assailants were thereforee guilty of murder.

(28) Now we come to the question about the applicability of section 34 of the Indian Penal Code . Indubitably common intention has to be anterior in time to the commission of the crime showing a pre-arranged plan and a prior concert. It has always to be inferred from the acts, conduct or other attending circumstances. In the present case both Man Singh and Ram Phal had come together obviously after prior concert and had attacked Ram Mehar in furtherance of their common intention to cause him the injuries. It is not a case where the common intention had developed at the spur of the moment. On the other hand both these appellants were armed and had pounced upon their foe. As a result of the injuries, intentionally cause by them. Ram Mehar had died. Thus common intention as contemplated by section 34 of the Indian Penal Code . is sufficiently proved qua these appellants.

(29) For the foregoing reasons, we hold that the guilt of murder has been fully brought home against Man Singh and Ram Phal. But the charge against Baid Ram appellant is not established beyond all reasonable doubt. He is, thereforee, entitled to acquittal.

(30) In the result, we partly accept this appeal by upholding the convictions and sentences of Man Singh and Ram Phal appellants, but set-aside the conviction and sentence of Baid Ram and acquit him of the charge.