

Bhagwat Sarup Alias Bhagwat Vs. the State

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Court : Delhi

Decided On : Jul-22-1983

Reported in : 24(1983)DLT341

Judge : B.N. Aggarwal and; G.R. Luthra, JJ.

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

Appeal No. : Criminal Appeal No. 351 of 1980

Appellant : Bhagwat Sarup Alias Bhagwat

Respondent : The State

Advocate for Pet/Ap. : S.K. Sharma, Advs

Judgement :

R.N. Aggarwal, J.

(1) On 11/05/1979 at about 2.30 p.m. an occurrence took place near the Khirka (tabela) of Moonga in the area of Motia Khan in which, it is alleged, Kalu alias Kalua caught the deceased Yasin from behind and Bhagwat exhorted that Yasin be finished and upon which Jaswant took out a Chhuri from the dub and gave a blow on the right thigh of Yasin which proved fatal.

(2) All the said three accused were tried on the charge under Section 302 read with Section 34 of the Indian Penal Code. The learned Additional Sessions Judge who tried the case found all the accused guilty of the offence charged with and sentenced each one of them to imprisonment for life. Against their conviction and sentence the accused have preferred separate appeals to this Court. This judgment shall dispose of all the appeals.

(3) Briefly, the case for the prosecution is that the deceased Yasin had kept 22 goats at the Khirka of Moonga (P.W. 1). On 11/05/1979 at about 2.30 p.m. Yasin had gone to the Khirka for taking the goats. Yasin was feeding the goats in the tabela under the tin shed when Kalu, Jaswant and Bhagwat came there. Kalu lifted one goat. Yasin objected to the lifting of the goat by Kalu and said 'KIA Ye Tumre Bap Ka Malha, Jo Ese Utha Ke Le Ja Rahe HO'.

(4) All the accused retorted that they would teach him a lesson there and then and they started giving slaps and fist blows to Yasin. Thereafter, it is alleged, Kalu caught hold of Yasin from behind and Bhagwat exhorted that Yasin should be finished upon which Jaswant took out a chhuri from his dub and attacked Yasin aiming the blow on the abdomen. Yasin stepped back and the blow fell on the right thigh of Yasin. On receipt of the injury Yasin fell down. All the accused ran away. Jaswant threatened while brandishing the knife that whoever came near him would be killed.

(5) The occurrence was witnessed by Public Witness 9 Mohd. Iqbal, brother of the deceased, Public Witness 10 Sajaudin and Public Witness 11 Chiragudin. Public Witness 9 and P.W. 10 removed Yasin to a hospital where he was declared dead. The occurrence was reported to the police. The clothes of Public Witness 9 and Public Witness 10 had got stained with blood and the investigating officer took the clothes of P.Ws. 9 and 10 into possession. Public Witness 9 made the statement Ex. Public Witness 4/C before A.S.I. Kanwal Singh who with his endorsement Ex. Public Witness 4/D sent the ruka Ex. Public Witness 4/C to the police station for formal registration of the case.

(6) Dr. A. Maridha (P.W. 15) performed post-mortem on the dead body of Mohd. Yasin. The doctor on examination of the body found the following injuries:-

(1) Abrasion 1 x ' over the back of right elbow. (2) Incised stab wound 1 x ' with gaping in the middle inner front of right thigh and was placed obliquely. The upper end of this wound was 7' below the right anterior superior iliac spine and lower end of this wound was 7' above the mid point of right kneejoint. Both margins of the wound were clean cut and both angles of the wound were acutely cut. The lower outer margin showed beveling leak backward and the wound was directed upward, backward and inward. (3) Abrasion 3/10' x 2/10' over the middle front of right thigh 9' below the right anterior superior iliac spine and 2" outer to. injury No. 2. (4) Abrasion 3/10' X 2/10' over the upper front of the left knee cap region. (5) Superficial incised wound 3/4' X 1/10' X epidemics of the skin deep placed obliquely over the middle inner part of the left hand. No other external injury was seen over the chest and abdomen as noted in the death summary which was brought to me.'

(7) The doctor found that injury No. 2 on the right thigh had been caused by a sharp double edged weapon and injuries 1, 3 and 4 by blunt force. The doctor gave the opinion that injury No. 2 was sufficient to cause death in the ordinary course of nature.

(8) All the accused denied the prosecution case and pleaded that they are innocent.

(9) Public Witness 9 Mohd. Iqbal, Public Witness 10 Sajaudin and Public Witness 11 Chiragudin are the witnesses to the occurrence. We have carefully perused their statements and we are of the view that they are reliable and truthful witnesses. The learned counsel for the appellants Kalu and Bhagwat contended that on the evidence brought on the record it is not safe to sustain the conviction of the said appellants with the aid of Section 34 of the Indian Penal Code. The counsel contended that, it appears, during a sudden quarrel Jaswant had taken out the knife from the dub and given a single knife blow to the deceased Yasin.

(10) We are inclined to accept the contention of Mrs. Ahlawat on behalf of Kalu and Mr. Sharma on behalf of Bhagwat that on the evidence produced on the record it would not be safe to convict Kalu and Bhagwat with the aid of Section 34 of the Indian Penal Code.

(11) Public Witness 9 gave evidence that Kalu caught hold of Yasin from behind and Bhagwat exhorted that Yasin be finished and on that Jaswant took out a chhuri from his dub and attacked Yasin. In cross-examination P.W. 9 deposed that Jaswant after taking out the chhuri had given the blow instantaneously.

(12) Public Witness 10 gave evidence that Kalu had instantaneously stabbed after taking out the knife (we think that during the course of recording of evidence that name of Kalu has been wrongly typed for Jaswant). Public Witness 11 testified that while giving the first blows the knife was taken out and hit on the person of Yasin.

(13) We find from the evidence given by P.Ws. 9, 10 and 11 that first there was a quarrel between the deceased and the accused and thereafter the deceased and some of the accused had grappled and in all probability it was during the course of grappling that Jaswant had taken out the knife and given a blow with it to Yasin.

(14) In the above view of the evidence we feel that it would not be safe to hold that there existed a common intention between the three accused to murder or to cause any other grievous injury to Yasin.

(15) For the reasons stated we would allow the appeals filed by Kalu and Bhagwat Sarup and acquit them. The said appellants are on bail and they need not surrender to their bail bonds.

(16) On behalf of Jaswant accused Mr. Jaitley contended that there was no premeditation and the knife was used by Jaswant accused during the quarrel in the heat of the moment. The counsel contended that the offence committed by Jaswant would fall under part II of Section 304 Indian Penal Code. We are inclined to agree in this contention of the counsel.

(17) The prosecution evidence shows that the occurrence had originated suddenly over a petty matter and it was in the course of the quarrel that Jaswant had taken out the knife and given a single blow on the right thigh of the deceased. There could be no doubt that there was no premeditation and Jaswant had acted in the heat of the moment upon a sudden quarrel. In the circumstances of this case, we are of the view that it would not be safe to hold that Jaswant intended to cause the

death of Mohd. Yasin. The abrasions on the body of Yasin do suggest that there was grappling before the knife injury was given.

(18) For the reasons stated, we set aside the conviction of Jaswant appellant on the charge under Section 302 of the Indian Penal Code and instead convict him of the offence under Section 304 part II of the Indian Penal Code, and sentence him to rigorous imprisonment for 7 years. The appeal by Jaswant is allowed to the extent indicated above.

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