

**The State Vs. Khet Singh and ors.**

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**Court :** Rajasthan

**Decided On :** Mar-06-1975

**Reported in :** 1975WLN(UC)69

**Judge :** V.P. Tyagi and; S.N. Modi, JJ.

**Appeal No. :** D.B. Criminal Appeal Nos. 162 and 209 of 1973

**Appellant :** The State

**Respondent :** Khet Singh and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**M.L. Joshi, J.**

1. Accused Khetsingh, Seshkaran, Umedsingh and Mohan singh were tried by the Sessions Judge, Merta, under Section 302 I.P.C. or, in the alternative, under Section 302 read with Section 34 I.P.C. for the murder of Gordhan. Khetsingh was convicted of culpable homicide not amounting to murder under Section 304 Part I I.P.C. and the remaining three accused under Section 304 Part I read with Section 34 I.P.C. and each one of them was sentenced to undergo rigorous imprisonment for seven years, and to pay a fine of Rs. 300/-. Dissatisfied with the order of the learned Sessions Judge, Merta, the accused have preferred an appeal challenging

their conviction and sentence and the State have filed an appeal against the acquittal of the accused for the offence under Section 302 or Section 302 read with Section 34 I.P.C. As both these appeals arise out of the same judgment, they are being disposed of together.

2. The prosecution story in this case is to the effect that one Gordhan who was a victim and who died as a result of the injuries in the incident in question on the day of the Holi festival, that is, 28-2-72, at about 8 p.m. in the company of PW 6 Bhagirath alias Bhagaram, PW 7 Jalamsingh, PW 10 Andaram and PW 11 Kansingh, all residents of village Bhawara, went to neighbouring village Kalvi on a chhakra, that is, a cart driven by camel. They went to a village Kalvi that night to pay respects to the Thakur of Kalvi and also to request him to mediate and make the Thakur settle for compromise in respect of a criminal complaint which had been lodged by Gordhan against the accused. The Thakur of Kalvi was not found there as he had gone out. Gordhan and his companions met Thakur's uncle Shyamsingh and about 11 p.m. left village Kalvi. On way back to village Bhawara, when Gordhan and his companions were passing near Miyaninadi situated at the distance of 200 pawandas from village Bhawara, the four accused armed with lathes and who were lying in wait, came near the chhakra. Umaidsingh stopped the chhakra by holding the string of the camel. Khetsingh dealt a blow with lathi on the head of Gordhan as a result of which Gordhan fell down from the chhakra. The four accused thereafter showered lathi blows causing several injuries to Gordhan. PW 6 Bhagirath intervened to rescue Gordhan, but he too received an injury on his little finger. When the accused stopped beating Gordhan and fled away from the scene of the occurrence, PW 6, 7, 10 and 11 brought Gordhan to his house in the state of unconsciousness and disclosed the names of the assailants to his wife Mst. Radha P.W. 13 and his cousin or other PW 12 Madanlal. On the next morning, Gordhan was taken to Kuchera Dispensary but no doctor was available there. He was therefore taken to the Government Hospital Nagaur. Gordhan, however, breathed his last on the way between Kuchera and Nagaur. PW 13 Mst. Radha, who was accompanying Gordhan went to the Police Station at Nagaur and verbally lodged the First Information Report which was recorded by PW 15 Ratansingh, SHO, Police Station, Nagaur. The post-mortem examination on the dead body of Gordhan was conducted by PW 5 Dr. Parasram at Nagaur Hospital.

on 29-9-72. The doctor found the following external injuries on the corpse of Gordhan:

1. Punctured wound 1/3' x 1/3' x 1' on the left leg medially middle.
2. Bruise 3' x on medial side of left leg horizontally.
3. Bruise 3' x 2' on posterior side of left leg middle.
4. Bruise 3' x 2' on left thigh posteriorly middle 1/3.'
5. Bruise 3' x 1' on posterior side of left thigh lower 1/3',
6. Bruise 2' x 1/4' horizontal on medial aids of right ankle
7. Brutes 3' x ' oblique and vertical on posterior-medial side or tight leg lower 1/3'.
8. Bruise 3/4' x 1/4' x 3' x ' horizontal on right call area.
9. Bruise three parallel with a gap of 1/3' on posterior side of right leg upper one-third near knee 2' x 1' each
10. Bruise 5' x 1' on medial side of right knee oblique.
11. Three bruises oblique on postero-medial side of right thigh lower 1/3' x 3'x 1' each with a gap of '
12. Bruise 2' x 1' of right leg upper 1/3' laterally.
13. Punctured wound 1 x 1' x 2' deep on right tibial tuberosity.
14. Bruise 3' x 2' on the left fore-arm posteriorly lower one third just above wrist, and also lacerated wound ' x ' x bone deep on postero-medial end.
15. Bruise 2' x 2' on front side of left fore-arm lower one-third.
16. Bruise 3' x 1' below left ear and blood from ear.
17. Bruise 1' x ' on postero-lateral side of neck left side.

18. Bruise.'2' x ' below occipital protuberance on left side.

19. Lacerated wound 2' x ' x bone deep on right parietal region anterior middle and side by side.

On opening the dead body, the doctor found the following fractures:

1. Fracture of lower end of right tibia medial side under injury No. 8.
2. Fracture of right tibia upper end under injury No. 13.
3. Fracture of left radius end left ulna under injury No. 14.
4. Fracture of both parietal bones from right to left parieto-temporal joints at the anterior 1/3 and posterior 2/3 of parietal bones under injury No. 19.

According to the doctor, the cause of death of Gordhan was coma and shock due to multiple fractures and injuries on the body, He further opined that injury No. 19 with corresponding fractures was individually sufficient in the ordinary course of nature to cause death. The doctor further deposed that except external injuries Nos. 1 and 13. all the injuries were caused by lathis. He further stated that injuries Nos. 1 and 13 could be caused by pointed nail of any pointed object fitted to a cart.

2. On 23.7.72 PW 6 Bhagirath was examined by PW 4 Dr. Pratapsingh at Kuchera Dispensary. The following injuries were noticed on his person by the doctor:

1. Haematoma with bruise ' x ' back of left second interphalangeal joint of left little finger.
2. Abrasion 1/4' x 1/4' on dorsum of first phalangeal of fourth fingers of left hand.

Both the injuries were simple and were caused by a blunt weapon.

3. Since the incident took place within the jurisdiction of the Police Station, Khatu, , all the relevant papers along, with the articles recovered by the SHO, Nagaur, were forwarded to the SHO, Khatu. The latter arrested accused Mohansingh on 3.3.72, Khetsingh and Seshkaran on 9.3.72 and Umedsingh on 10.3.72. All the

four accused on being interrogated by SHO gave information leading to the discovery of the lathis. In pursuance of the information, a lathi was recovered at the intake of each accused. The prosecution, however, failed to connect those lathis with the crime. None of them was found stained with blood and none of the witnesses identified them as having been used by the accused at the time of the incident. The evidence relating to the discovery of the lathis, in the circumstances, was of no avail to the prosecution and the same was rightly ignored by the learned Sessions Judge.

4. The accused denied that they participated in the incident and committed the offence. Khetsingh and Seshkaran pleaded alibi. Several witnesses were examined in defence. Of them, DW 4 Premsingh, DW5 Kalu Rim and DW. 6 Chhangansingh were produced to prove that deceased Gordhan was present in village Bhawala up to 11pm. on the night of the incident. The remaining witnesses were examined to prove that accused Seshkaran and Khetsingh had gone to some other village on the night of the incident. The learned Sessions Judge disbelieved the evidence of the defence witnesses. That finding has not been challenged before us. We accordingly do not propose to discuss the evidence of the defence witnesses.

5. The learned Sessions Judge believed the evidence of PWs. 6, 7, 10 and 11 and placing reliance on their testimony found that the four accused jointly and severally delivered the fatal blow with the lathi on the head of Gordhan as a result of which Gordhan fell down from the chhakra and thereafter all the four accused simultaneously delivered blows with lathis on the person of Gordhan causing several injuries to him. He further found that the accused in furtherance of their common intention inflicted injuries with the intention of causing death of Gordhan or of causing such grievous injuries as were likely to cause death. The learned Sessions Judge on the above premises acquitted the accused of the charge under Section 304 or Section 302 read with Section 34 I.P.C, but convicted Khetsingh of the offence under Section 304 Part I and other accused under Section 304 Part I read with Section 34 IPC.

6. Arguing the appeal, Mr. Bhansali, the learned Counsel for the accused, has strenuously contended that none of the eye witnesses was present at the time Gordhan was belaboured and the entire story relating to their visit to village Kalvi ON the night of the HOLI Festival highly improbable and has been deliberately concerted show the presence of PWs. 6, 7, 10 and 11 at the scene of the occurrence. The learned Counsel in support of his above contention emphasised the following:

1. That if the deceased Gordhan and the alleged eye-witnesses had really gone to village Kalvi on the night of the incident. this fact would not have been omitted to be mentioned in the FIR which was lodged by the widow of Gordhan It was also pointed out that had Gordhan gone to village Kalvi, his cousin brother PW 12 Madanlal would not have omitted to mention this fact in his earlier statement Ex. D/18 recorded by the investigating officer.

2. That if Gordhan nan gone to village Kalvi, no discrepancies would have been found in the statements of PWs. 6, 7, 10 and 11 as to the presence of Khet Singh's brother Premsingh at the house of Gordhan at the time Gordhan is said to have left for village Kalvi.

3. That the alleged eye-witnesses have given different versions as to the manner in which beating was given to Gordhan It, was pointed out that PWs 5 and 11 have stated that the first lathi blow was dealt to Gordban by Khetsingh when Gordban was getting down from chhakra. PW 7, on the other hand, in his examination inichief deposed that Gordhan as a result of blows fell down from the chhakra. On cross-examination he deposed that no blows were dealt by the accused till Gordhan was sitting on the chhakra. PW 10 has deposed that Gordhan was belaboured by the accused while he was sitting on his chhakra as also when he fell down from the chhakra.

4. That the post-mortem report shows that on the body of Gordhan there were two punctured wounds. According to the eye-witnesses, Gordnan was attacked with lathis. If it is so, none of the two punctured wounds could be found en the body of Gordhan and that falsifies the evidence of the eye-witnesses.

7. The learned Counsel for the accused on the basis of the above facts urged that none of the alleged eye-witnesses was present at the scene of the occurrence.

8. We have carefully gone through the statements of PWs. 6, 7, 10 and H and we find no good reason to disbelieve their evidence. It appears from their statements that they along with Gordhan went to village Kalvi on the night of the incident and the accused belaboured Gordhan on their return journey in their presence. In our opinion, the above version made by the eye-witnesses is substantially true & was rightly acted upon by the Sessions Judge.

9. It is true that the FIR does not mention that Gordhan along with PWs 6, 7, 10 and 11 went to village Kalvi and the incident occurred on the return journey on the same night. But the FIR clearly says that PWs. 6, 7, 10 and 11 brought the deceased to his house and they informed Mst. Radha, Madanlal and Mohandas that the four accused had beaten Gordhan. These facts reasonably lead to the inference that PWs. 6, 7, 10 and 11 disclosed the (names of the assailants) on the basis that they had actually witnessed the incident. It must be borne in mind that it is not necessary that the FIR should specify every detail and describe how the eye-witnesses happened to be present at the time of the incident. According to Section 154 Cr.P.C. under which the FIR is made, what is required is that 'information relating to the commission of a cognizable offence' should be given. The words 'relating to the commission of a cognizable offence' do not mean and cannot mean that the information must give all the details relating to the presence of the eye-witnesses. Similarly, the mere omission of a witness to mention all the details in his statement before the police cannot be a ground for brushing aside his testimony before the court. In this view of the matter, the first point raised by the learned Counsel is, in our opinion, devoid of any force.

10. The second point is equally without any merit. The contradictions pointed out in the statements of the eye-witnesses relate to the presence of Khatsing's brother Premsingh at the house of Gordhan when he left for village Kalvi. These witnesses to their earlier statements before the police admitted the presence of Premsingh but they denied his presence before the trial Court. The presence of Premsingh at the house of Gordhan when he left for village Kalvi is an immaterial

fact and has no bearing on the actual incident. It was observed by their lordships of the Supreme Court in Shivaji Sahebrao Bobade and Anr. v. State of Maharashtra : 1973 CriLJ1783 at p. 2628 para 8 that "when scanning the evidence of the various witnesses, we have to inform ourselves that variances on the frontages, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the Impress of truth and conformity to probability in the substantial fabric of testimony delivered.' It appears that the eye-witnesses some how in the trial court did not think proper to point out the presence of Premsingh and they therefore went back on their earlier statements. Though this sort of prevarication on the part of the eye-witnesses is not excusable, but, at the same time, suppression of truth on this minor point does not discredit their otherwise true evidence.

11. The next point raised by Mr Bhansali relates to the discrepancies in the statements of the eye-witnesses as to the actual place when Gordhan was assaulted., The discrepancies are no doubt there but whether Gordhan was assaulted while he was sitting on the chhakra or after he fell down on the ground or at a time when he was getting down from the chhakra, is not of great significance because nothing hinges on the discrepancies on such trivial matters.

12. The last point raised by the learned Counsel for the accused relates to the presence of two punctured wounds found on the body of Gordhan. The learned Sessions Judge explained these injuries by attributing them to some unknown person. This explanation is purely based on Conjecture and not on any evidence. There is nothing to suggest, even remotely, that there was a fifth person who assaulted Gordhan It is true that these two injuries have not been explained by the eye witness But simply on that account, we cannot discard the testimony of the eye-witnesses which appears to us to be straight forward and trustworthy. The number and nature of the injuries found on the body of Gordhan reasonably lead to the inference that the four accused must have participated in this assault The names of the four accused find place in the First Information Report All these witnesses and the accused are residents of village Bhawala and we see no particular reason as to why they should make a false statement if they had not

witnessed the incident. It may be mentioned here that except PW 7 Jalamsingh who admitted his, inimical relations with the father of Khetsingh, no infirmity has been pointed out in the statements of the other eye-witnesses. Now simply because the witnesses were not able to explain how the deceased sustained two out of 19 injuries, their testimony, which is neither open to doubt nor suspicion and is of irreproachable, character, cannot be disbelieved or discarded. The incident took place during night time in the jungle where the only source of light was the full moon. In these circumstances, omission to explain infliction of two punctured wounds might be due to lack of sufficient visibility to enable the witnesses to distinguish between a lathi and a weapon like spear or barcha the appearance of which is ordinarily similar to a lathi.

13. The learned Counsel for the accused Mr. Bhansali has next submitted that on the evidence on record, it is difficult to say with certainty that the fatal blow on the head of the deceased was inflicted by accused Khetsingh. He has further urged that Khetsingh, in the circumstances, is entitled to benefit of doubt and his conviction under Section 304 Part I I.P.C. simpliciter deserves to be set aside. The contention is not without substance. The FIR is silent as to who inflicted the fatal blow on the head of the deceased PW 6 Bhagirath has deposed that Khetsingh dealt lathi blow on the head of Gordhan as a result of which Gordhan fell down on the back side of the chakra PW 7 Jalamsingh, on the other hand, showed his ignorance on which, parts of the body of Gordhan the injuries were inflicted by each accused. PW 10 Andaram, in his statement before the trial court, has deposed that Khetsingh dealt lathi blow on the head of Gordhan but in his statement Ex. D/4 before the committing Magistrate as also in the earlier statement EX. P. 10 and EX. D5 under Section 164 Cr.PC and under Section 161 Cr.PC respectively, did not attribute the head injury to Khetsingh. When confronted with these earlier statements, PW 10 could not assign any reason for this important omission. Similarly, PW 11 in the earlier statements Ex. D7 and Ex. PC under Sections 161 and 164 Cr.PC respectively, did not mention that the head injury was caused by Khetsingh He too when confronted with his earlier statements was not able to assign any reason for this important omission. So far as PWs. 10 and 11 are concerned they have certainly made improvements on their earlier statements PW. 7, as already pointed out above, did not attribute the

fatal injury on the head of Gordhan to Khetsingh. We are thus left with the lone Statement of PW 6 Bhagirath who has attributed the head injury to Khetsingh. In our opinion looking with circumstances of the cases it would not be safe to hold Khetsingh responsible for the fatal injury on the solitary testimony of PW 6. We accordingly hold that the conviction of Khetsingh under Section 304, Part I, I.P.C. simpliciter cannot be sustained.

14. The question that now arises for consideration is whether the accused are liable to be convicted under Section 302 read with Section 34 I.P.C. as contended by the learned Public Prosecutor or they are liable to be convicted under Section 325 read with Section 34 I.P.C. as contended by the learned Counsel for the accused.

15. We have already noticed the injuries found on the body of the deceased. His death was undoubtedly due to a single lathi blow on the head which caused fracture of both parietal bones. The doctor has deposed that the head injury was individually sufficient in the ordinary course of nature to cause death. None of the remaining injuries found on the body of the deceased was on any vital part of the body. Except injury No. 19, the other injuries do not indicate a determination to lead the deceased to death. Had the intention been to cause death of Gordhan, we would have found some more injuries on the head or on the vital parts of the body. It is therefore not possible to hold that death was caused by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death, but it may be held that the death was caused by the doing of an act with the knowledge that by such act the person who did it was likely to cause death (vide Section 299 I.P.C.). In such a case, the act of the striker of the fatal blow be brought within the provisions of Clause (4) of Section 300 I.P.C. which is based not upon the intention but upon the knowledge. In the present case, it is not known who out of the four accused caused the fatal blow on the head. The four accused can therefore only be convicted by the application of Section 34 I.P.C. which provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone. In interpreting Section 34 I.P.C., it has been held that the essential question for determination in

such cases is what was the common intention of that several persons who participate in the commission of the offence. Looking to the nature and location of the on juries en the body of the deceased, it would be safer to inter that the common intention was to cause hurt which went to the extent of causing grievous hurt. All the four accused who took part in the beating of Gordhan are therefore, liable to conviction under Section 325 read with Section 34 I.P.C.

16. We accordingly allow the appeal filed by the accused to this extent that their conviction is altered from one under Section 304 Part I or Section 304 Part I read with Section 34 I.P.C. to one under Section 325 read with Section 34 I.P.C. Bearing in mind the fact that the accused who knocked down & beat & caused the death of Gordhan clearly lay-in wait for him, we think that a sentence of five years rigorous imprisonment will be proper and all the four accused are sentenced accordingly.

17. In this view of the matter, the appeal filed by the State automatically fails and it is dismissed.

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