

SUPREME COURT OF INDIA
RECORD OF PROCEEDING

CRIMINAL APPEAL NO.907 OF 1995@@
BBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBB

Raj Kishore Singh Appellant(s)

VERSUS

State of Bihar & Anr. Respondent(s)

(With appln.(s) for exemption from filing O.T. and with office report)

WITH
Crl.A.Nos.908-909/1995 (With office report)
Crl.A.Nos.910-911/1995 (With office report)

DATE : 04-03-2003: These matters were called on for hearing today.@@
BB

CORAM:
HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE AR. LAKSHMANAN

For Appellant(s): Mr. K.B. Sinha, Sr. Adv.
Mr. Ashok Kumar Sharma, Adv.
Mr. Sudhir Kulshreshtra, Adv.
Mrs. Kawaljit Kochar, Adv.
Mr. J.D. Jain, Adv.

For Respondent(s): Mr. P.N. Mishra, Sr. Adv.
Mr. Anil Kumar Jha, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
.SP2

Mr. K.B. Sinha, learned senior counsel appearing for the appellants started his arguments at 10.35 a.m. and concluded at 2.45 p.m. Thereafter Mr. P.N. Mishra, learned senior counsel for the respondents started his argument and concluded at 3.35 p.m.

The appeals are dismissed. The bail bonds stand cancelled. The appellants who are on bail shall be taken into custody forthwith for serving out the remaining portion of the sentence.

.SP1
(R.K. Dhawan) (Jasbir Singh)
Court Master Court Master
(Signed order is placed on the file)

.PA
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R

Raj Kishore Singh

Appellant(s)

versus

State of Bihar & Anr.

Respondent(s)

WITH@@
CCCC

CRIMINAL APPEAL NOS.908-909/1995@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

AND

CRIMINAL APPEAL NOS.910-911/1995@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

O R D E R@@
CCCCCCCC

.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

All these appeals are against the judgment dated 3rd of February, 1995 passed by the Patna High Court. They are all being disposed off by this judgment.

Briefly stated facts are as follows:

On 18th of March, 1984, the informant one, Sham Chander Sharma (PW-9), along with other persons including PWs.1,2,3,4,5,6,7,8 and deceased, one Naval Singh, were singing songs during the Holi festival. They were also proceeding towards an idol of a local deity which was close to the house of the deceased Naval Singh. When they were going through a Gair Mazarua land, they were accosted by nine persons. It is the case of the prosecution that one Baleshwar Singh told the prosecution

....2/-

.PA

-2-

party not to proceed further and threatened that if they insisted on passing through they would be made to understand. Prosecution party still proceeded further on which Baleshwar Singh used words to the effect 'Maro'. On this exhortation, Raj Kishore Singh, who is appellant in C.A. No.907/95, hit Naval Singh on the head with a Gandasa. The other accused persons started hitting other members of the prosecution party with lathi, spear, gandasa and bricks. The result of the assault was that Naval Singh was killed. PWs.1,2,4 and 7 received injuries of which the injuries to PWs 4 and 7 were grievous.

Nine accused persons were charged. One of the accused persons was 14 years of age. He was thus not put up for trial. Eight accused persons were tried. The prosecution led the evidence of 14 witnesses of which PWs. 1,2,3,4,6,7 and 9 were eye-witnesses. PWs.5 and 8 were tendered by the prosecution, PWs.10,11 and 13 were the doctors who carried out the post mortem on the dead body and examined the injured witnesses. PW.12 was the investigation officer and PW.14 was a formal witness.

The trial court on the basis of the evidence convicted all the accused persons of offence under Section 302 read with Section 149 IPC and imposed life

imprisonment on all the accused. The trial court also convicted A-2 of an offence under Section 302 and ...3/-

.PA

-3-

sentenced him to life imprisonment. The trial court convicted A-1 of an offence under Section 302 read with Section 109 IPC and sentenced him to life imprisonment. A-3, A-5, A-6, A-7 and A-8 were convicted of offence under Section 307 IPC and sentenced to undergo rigorous imprisonment for 10 years.

All filed appeals before the High Court. The High Court acquitted all the accused persons of the offence under Section 302 read with Section 149 IPC. The High Court maintained the conviction of accused A-1 under Section 302/109 IPC. It also maintained the conviction of A-2 under Section 302 IPC and sentenced both these persons to life imprisonment. The High Court converted the conviction of A-3 to that under Section 324 IPC and imposed a sentence of one year. The High Court acquitted A-4 of all offences. The High Court convicted A-5 and A-6 of offences under Section 326 IPC and sentenced them to two and half years imprisonment plus fine of Rs.3000/-. The High Court convicted A-7 for offence under Section 323 IPC and sentenced him to 2 months' imprisonment. The High Court convicted A-8 for offence under Section 324 IPC and sentenced him to one years' imprisonment.

We are told that A-7 and A-8 have already undergone the sentence. Therefore they have not filed any appeal before this Court. A-3 has also undergone his4/-

.PA

-4-

sentence but he has appealed against his conviction.

Appeal No.907 of 1995 is by A-2 Raj Kishore, Appeal Nos. 908-909/1995 are by A-1 Baleshwar Singh and A-3 Ajay Sharma. Appeal Nos.910-911/1995 are by A-6 Mahender Singh and A-5 Inder Dev.

PWs.1,2,3,4,6,7 and 9 have given consistent evidence. Their evidence has not been shaken in cross-examination. Their evidence has been believed by two courts below. We see no reason to take a different view.

It has been argued on behalf of A-2 Raj Kishore that there was no intention to kill. It has been submitted that there is no evidence to show that there was an intention to hit on the head or to cause such injury as is likely to result in death. It is submitted that at the highest the offence, if any, can only be under Section 304 Part II IPC. It is prayed that the conviction be altered and the sentence be accordingly reduced. As against this, it has been pointed out that the evidence on record clearly shows that Raj Kishore was present with a deadly weapon. On the exhortation of A-1, he dealt a blow on the head of Naval Singh which resulted in the following injuries:

.....L.....T.....T.....T.....T.....T...J

.SP1

- "i. Incised wound 7 1/2" x 2" x brain cavity deep at the left side of head extending to one inch away from eye upto back;
- ii. Temporal muscle cut;

.....5/-

.PA

-5-

- iii. Bone cut of dura mater.....
 - iv. Bleeding from left ear.
2. Weapon used sharp cutting may be Saransa.
 3. Time of death about twelve hour from examination.
 4. Injury Nos.ii to iv were due to the effect of injury No.1.
 5. In my opinion death was due to shock hemorrhage procured by above injury.
 6. In ordinary course,... Injury No.1 was sufficient to cause death."

.....L.....I.....T.....T.....T.....T.....T.....T.....J
 .SP2

It is pointed out from the evidence of doctor PW.10 that this injury was sufficient in the ordinary course to cause death. It is submitted therefore that this is a case which clearly falls under Section 300 IPC, namely, it has been done with an intention of causing bodily injury, the bodily injury being sufficient in the ordinary course of nature to cause death and in any case it is an act which the person would know is so dangerous that it must in all probabilities cause death and that the act was committed without any excuse for incurring the risk of causing death.

Both the trial court and the High Court have held that this is an act which falls under Section 300 IPC on a consideration of the evidence and the material on record, we find no infirmity in the reasoning of the trial court or the High Court. Therefore, we do not propose to interfere with the conviction of A-2 under Section 302 IPC. In our view, the sentence imposed is the correct sentence.

....6/-

.PA

-6-

As regards accused No.1, both the trial court and the High Court have found that the whole incident took place on his exhortation. Both the trial court and the High Court have concluded that the exhortation given by A-1 was to kill. However, from the evidence on record, we find that the words used are to the effect "Maro Sale Ko". Evidence shows that he used words to the effect "we will see about the consequences later on." One of the witnesses has deposed that the words used were "Mar Dalo". It is on this basis that the courts below have concluded that the exhortation was to kill.

In the case of Matadin vs. State of Maharashtra@@
 CCCCCC CCCCCCCCCCCCCCCCCC
 reported in JT 1998 (5) SC 264, also the exhortation was "Maro Sale Ko". This Court found that the evidence was that these words were used in abusive manner. This Court held that it still could not be said with certainty that the exhortation was to kill. This Court, therefore, set aside the conviction under Section 302 read with Section 34 IPC. It is, however, to be noted that in this case charge was under Section 34 IPC i.e. having a common intention. There was no charge of abetment. There was no conviction of any other person under Section 302 IPC.

In the case of Mohan Singh & Anr. vs. State of@@
 CCCCCCCCCCCCCCCCCC CCCCCC
 M.P. reported in JT 1999 (1) SC 149 again the words used@@
 CCCC
 were to the effect "Maro Sale Ko". This Court held that mere use of such words does not bring home, beyond doubt,

....7/-

.PA

a common intention to kill the deceased. On this basis, the sentence under Section 302 read with Section 34 IPC was set aside. Here also there was no charge of abetment. Undoubtedly, it cannot be said with certainty that the words used by A-1 amounted to an exhortation to kill. However, the evidence is that on the basis of his exhortation A-2 gave a blow on the head and murdered Naval Singh.

Under Section 107 IPC any person who, amongst others things, instigates any person to do a thing is said to abet the doing of that thing. Even if it is presumed that all that the exhortation meant "beat" the result thereof is murder. Section 111 IPC provides that if an act is abetted and a different act is done the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it, provided, however, that the act done was a probable consequence of the abetment. In this case evidence discloses that all the accused persons were standing on the land with deadly weapons in their hands. In such a situation if a person instigates with the use of words like 'Maro' which could either mean "beat" or "kill" and a murder is committed, it is a probable consequence of the abetment. It cannot, therefore, be said that there is any infirmity in the judgment of the High Court. We, therefore, see no reason to interfere with the conviction or the sentence of A-1.

....8/-

.PA

Even though A-3 has filed an appeal, no arguments have been advanced on his behalf as he has already undergone the sentence. In any event, we see no infirmity in the judgment of the High Court in respect of the conviction and sentence of A-3.

In respect of A-5 and A-6, it was submitted that injuries to be grievous they must be such which endanger life. It was submitted that the term "endanger life" must necessarily mean that the injury must be one which is not only dangerous but it just dangerous to life. It was submitted that any injury which does not endanger life cannot be considered to be a grievous injury. The evidence on record, particularly the evidence of the doctor, indicates that the injuries which has been inflicted by A-5 and A-6 were dangerous to life. There is categorical evidence that they were dangerous to life. There is hardly any cross examination on this aspect. In our view, it cannot be said that the injuries were not grievous. The grievous injuries were inflicted with sharp weapons. Therefore, the conviction under Section 326 IPC is correct and must be maintained.

As noted above, the sentence is for 2 1/2 two years. It was submitted that they have already undergone two years. It was submitted that this Court may, therefore, release them by reducing the sentence to that already undergone. It was submitted that the Court may

.....9/-

.PA

increase the fine. We have considered this submission. We find that under Section 326 IPC the sentence could have been up to 10 years. The High Court in awarding only 2 1/2 years imprisonment has already been lenient. The State has not filed any appeal against such a lenient sentence. We do not think this to be a fit case where we should interfere with the sentence.

Under the circumstances all the appeals, of all the appellants stand dismissed. Their bail bonds stand

cancelled. The appellants who are on bail shall be taken into custody forthwith for serving out the remaining portion of the sentence.

.SP1

.....J.
(S.N. VARIAVA)

.....J.
(AR. LAKSHMANAN)

New Delhi,
March 4, 2003

~