

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.1204 of 1997.

NATHURAM TIWARI & ANR.Appellant (s)

VERSUS

STATE OF MADHYA PRADESH Respondent (s)

[With office report]

Date : 18/03/2004 This petition was called on for hearing today.

CORAM :

HON'BLE MR.JUSTICE K.G. BALAKRISHNAN
HON'BLE MR.JUSTICE B.N. SRIKRISHNA

For Appellant (s)M/s Nitin Bhardwaj,SP Alahaval,
Prakash Srivastava,Advs.

For Respondent (s)M/s. Vishwajit Singh,
Kamakshi S.Mehlwai,Advs.

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

Mr.Nitin Bhardwaj, learned counsel for the appellants commenced his arguments in the morning and concluded at 11.30 AM. followed by a short reply of Mr.Vishwajit Singh, learned counsel for the respondent.

The appeal is disposed of in terms of the signed order.

[Naresh Kumar]
AR-cum-PS

[Veera Verma]
Court Master

[Signed order is placed on the file.]
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1204 OF 1997

NATHURAM TIWARI & ANR.

...
APPELLANT (S)

VERSUS

STATE OF MADHYA PRADESH

...
RESPONDENT (S)

O R D E R

The present two appellants were tried along with three other accused by the Sessions Court, Teekamgarh (M.P.) for the offences punishable under Sections 147, 148 and 302 read with Section 149, I.P.C. for having caused the death of one Phundi Tiwari. All the accused were found guilty for offence punishable under Section 302 read with Section 149, IPC and each of them was sentenced to undergo imprisonment for life. They were also found guilty of offence punishable under Section 148, IPC. The convicted persons filed appeal before the High Court and the High Court found the present appellants Nathuram Tiwari and Kalkaprasad guilty of offence punishable under Sections 302 read with 34, IPC. The other three accused were acquitted by the High Court of all the charges framed against them. As against the acquittal of these three accused persons by the High Court State had filed special leave to appeal but the same was declined.

We have heard the learned counsel for the appellants as well as for the respondent. The prosecution case was that on 30.4.1987 the appellants along with other accused persons formed themselves into an unlawful assembly and went to the house of deceased Phundi Tiwari. It seems that there were some disputes between the appellants on the one hand and the deceased on the other regarding the collection of mangoes and cutting of wood. The appellants were alleged to have been armed with "Luhangi" -- a lathi fitted with an iron ring. The other accused Rajendra was armed with Barachhi and Vinod Kumar with Kulhadi. Ram Prasad was not having any weapon. According to the prosecution accused Ram Prasad caught hold of Phundi Tiwari and Rajendra, Vinod Kumar and these appellants caused various injuries to the deceased as a result of which Phundi Tiwari died on the spot.

PW9 Satya Prakash gave a statement before the police and the case was registered against the appellants and the other accused persons. PW 10 the Investigating Officer visited the place and prepared a Panchnama of the dead body and sent the dead body for post mortem. PW7 Dr. KM Satyendra conducted the post mortem examination and in the post mortem certificate he has shown only three injuries which according to him were sufficient in the ordinary course of nature to cause death of the deceased. He mentioned in the post-mortem report that there were series of other injuries but these injuries were of serious nature.

On the side of the prosecution five eye-witnesses were examined. The High Court in the impugned judgment held that the present appellants were armed with "Luhangi" and the deceased had three fatal injuries on the head and according to PW7 the first two injuries must have been caused by "Luhangi" and on these premises the appellants were held to be guilty under Section 302 read with Section 34, IPC.

The counsel for the appellants drew our attention to the evidence adduced by the prosecution. PW1 Sudama Prasad deposed that the appellants Nathuram and Kalkaprasad inflicted two injuries with the lathi. PWs 3, 8 and 9 also gave similar version. However, PW2 Halke deposed that he had not seen Nathuram causing any injury to the deceased. The three grievous injuries caused to deceased were -- (i) contusion 6x2 cm. Bluish-black anteroposteriorly on vertex, (ii) lacerated wound 2x1x1 cm; just posterior to injury No.(i) and this wound was in direct continuation with injury no.(i), and the third injury was lacerated wound 2x1x1 cm on left parietal region of skull. The doctor was also of the opinion that injuries 1 and 2 were both caused by "Luhangi". It is important to note that all the eye witnesses deposed that the acquitted accused Vinod Kumar was armed with an axe and he hit the deceased on his head with the blunt end of the axe. From the evidence of these eye witnesses it could reasonably be assumed that out of the three injuries which were mentioned as serious injuries, at least one must have been caused by Vinod Kumar. Therefore, there is serious doubt as to whether the appellants alone were responsible for causing the injuries which ultimately proved to be fatal to the deceased. The evidence would only show that these appellants were also responsible for causing certain grievous injuries. Therefore, the conviction of the appellants under Section 302 read with Section 34, IPC cannot be sustained. The evidence on record would also show they had caused grievous injuries to the deceased with the "Luhangi" held by them.

After having considered the evidence on record we are of the view that the appellants are liable to be convicted only for causing grievous injuries to the deceased which is punishable under Section 326 read with Section 34, IPC. In the result we set aside the conviction of the appellants for the offence under Section 302 read with Section 34, IPC and instead convict them under Section 326 read with Section 34, IPC and each of them is directed to undergo imprisonment for a period of five years.

The appellants who are on bail are directed to surrender within three weeks and on failure the Sessions Judge shall take appropriate steps to have them taken into custody to undergo remaining period of sentence. The appeal is disposed of accordingly.

.....J.
(K.G. BALAKRISHNAN)

.....J.
(B.N. SRIKRISHNA)
New Delhi,
March 18, 2004.