
(1992) 09 AHC CK 0059
In the Allahabad High Court
Case No : Criminal Appeal No. 3420 of 1978

Rajju and Others	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 21-09-1992

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 300, 302

Citation : (1994) CriLJ 105

Hon'ble Judges : Virendra Saran, J;G.D. Dube, J

Bench : Division Bench

Advocate : V.C. Katiyar and Amar Saran, for the Appellant; G.A., for the Respondent

Final Decision : Partly Allowed

Judgement

1. This appeal has been preferred against the judgment and order of First Additional District and Sessions Judge, Farrukhabad, convicting and sentencing Rajju to imprisonment for life u/s 302 of I.P.C. and two years R.I. u/s 148 of I.P.C. The appellants Suresh Singh, Sher Bahadur Singh and Punjabi have been convicted and sentenced to suffer R.I. for five years" u/s 307 of I.P.C. and two years" R.I. u/s 148 of I.P.C. The appellants Jagvir Singh, Chhote Singh, Jagdish Singh, Muneshwar Singh, Mansha Ram and Bhimsen have been convicted and each of them sentenced to undergo R.I. for one year u/s 147 of I.P.C. The sentences of each appellants were directed to run concurrently.

2. In the first information report lodged at 2 p.m. on 5-7-1977 in P.S. Rajepur district Farrukhabad by P.W.1 Vishwanath Singh it was alleged that there is a Sehan land in front of the house of Smt. Sheela Devi. Sheela Devi is wife of brother of reporter. Jagvir Singh appellant was trying to take possession of the said land. In this respect a panchayat was held on 1-7-77 which was summoned by Sheela Devi. Several persons had participated in the panchayat. In pursuance of agreement in this Panchayat Smt. Sheela Devi had got a Chabutara built in front of her house by throwing earth on it. At about 11 a.m. on 5-7-1977 Jagvir

Singh, Chhote Singh, Jagdish Singh, Muneshwar Singh, Mansharam and Bhimsen armed with Lathi, Suresh Singh, Sher Bahadur and Panjabi armed with country made pistols and Rajju armed with gun arrived at the spot. Jagvir Singh exhorted his companion saying that he does not abide by the agreement made at the Panchayat and the Chabutara built by Smt. Sheela Devi be demolished. Consequently Muneshwar Singh, Jagdish Singh and Chhote Singh started demolishing the Chabutara with their spades. Smt. Sheela Devi objected to it, Smt. Sheela Devi raised alarm, Munni (niece of Vishwanath Singh) Chhutkannoo, Vitola, Vishwanath Singh, Sunder Singh, Ganga Singh, Shiv Ratan Singh, Malikhan Singh, Vidya Ram and Kalloo Singh arrived at the spot. These witnesses intervened and asked the appellant not to demolish the Chabutara and abide by the decision of Panchayat. The accused did not stop demolishing Chabutara and continued demolition. The witnesses and the family members of Sheela Devi objected again and said that Chabutara could not be demolished in the aforesaid manner. Consequently Jagvir Singh exhorted his companions to kill the persons assembled at the spot. Rajju opened fire from his gun which struck Munni. The witnesses took shelter behind the nearby constructions. Meanwhile Suresh Singh, Sher Bahadur and Panjabi had also opened fire from their weapons causing injury to Bitola and Chhutkannoo. Munni fell down at the spot and died. After the occurrence assailants ran away.

3. After the occurrence Vishwanath Singh dictated first information report to Ramratan and went to the police station. After lodging of the report at 2 p.m. same day the investigation was taken up by Bharat Lal Sharma PW 5 who interrogated Vishwanath Singh at the police station. He went to the place of occurrence and conducted the inquest proceedings. The dead body of Smt. Munni was sent to the mortuary for postmortem. hereafter he made other investigations and submitted charge sheet against the appellants.

4. Dr. S.N. Sinha, Medical Officer district Hospital Fatehganj had conducted the post mortem at 11 a.m. on 6-7-1977. He had found six gun shot wounds on the person of deceased. The details of these injuries are noted in the judgment of the court below. The right lung and plura had lacerated at one place. 4 ounce of digested food was present in the stomach.

5. Injured Smt. Vitola Devi was examined by Dr. N.K. Yadav, PW 7 at 5.45 p.m. on 5th July, 1977, one gun shot wound 0.2 cm x 0.2 cm x 0.9 cm on left side of chest 6 cms. from the sternal end of clavicle was found. Edges were inverted and bruised. This injury of Smt. Vitola was X-rayed and one circular radio opaque shadow was found below the injury. The doctor had opined that this injury was caused by a gun fire and was fresh in duration.

6. The aforesaid doctor Yadav had examined Chhutkannoo Singh also at 5.30 p.m. on 5-7-1977. He had found 2 gun shot wound of 0.2 cm. each on the left and right side of the chest. One radio opaque shadow was also noticed below one of the injury. Doctor had opined that this injury also caused by gun shot and fresh in duration.

7. The prosecution had examined Vishwanath PW 1, Sheela Devi PW 2, Chutkanoo Singh PW 3 and Vitola PW 4 as eye witnesses. Bharat Lal Sharma was the investigating officer. Bharat Singh constable PW 6 had carried the dead body of Smt. Munni Devi from the place of occurrence to mortuary. Dr. N.K. Yadav had examined the injured. The genuineness of the post-mortem report was admitted by the defence.

8. The appellants had pleaded not guilty to the charges. They had alleged that they had been implicated on account to enmity. They had not examined any witness in defence.

9. The learned Sessions Judge had inspected the site after the conclusion of the evidence. His inspection note is on record. After appraising the evidence the learned Sessions Judge found the appellant guilty of the offences mentioned above. Out of ten appellants Mansharam and Bheemsen have died. Their appeals have abated.

10. It was argued by learned Counsel for the appellants that if the appellants wanted to take possession of the land, they would not have demolished the Chabutra. The Chabutra of the appellants was at higher level. Hence it would have been inconvenient for the appellants to demolish the Chabutra. They would have rather raised it and thus annexed it with their Chabutra. It was next contended that the medical report is inconsistent with ocular report. Improvement has been made to explain the injuries. The third contention is that the report was anti-timed and the reporter had an opportunity to consult his well wisher in lodging the report. It was also urged that the enmity was with Sheela Devi. The appellants could not have killed Munni Devi. The last contention is that the inquest report indicates that there was delay in the report because the inquest witnesses were not sure about the weapons. Hence they stated that deceased had died of shot injuries. They ought to have mentioned the weapon.

11. As regards the first contention, it will suffice to say that the appellants were asserting their possession over the land in dispute. A few days back, the Chabutra had been constructed by Smt. Sheela Devi. Consequently, this act of possession by Smt. Sheela Devi could be counteracted by demolishing the Chabutra. If the appellants had allowed the Chabutra to exist, then they would have acceded to the act of possession. The prosecution evidence goes to show that the appellants were demonstrating that they were not agreeable to abide by the decision of the Panchayat. In these circumstances, the natural reaction of the appellants would be to demolish the Chabutra. The question of any inconvenience could not have weighed in the minds of the appellants. Here the question was to assert the possession over the land in dispute. The first contention has, therefore, no force.

12. The next contention of the appellants is also not tenable. Elaborating his argument on the second point, the learned Counsel for the appellants stated that the injuries on Smt. Bitola and the deceased could have been caused at 3.00

a.m. or 4.00 a.m. Dr. N.K. Yadav (PW 7) had stated that the injuries on Smt. Bitola could be within twelve hours. The doctor had examined Smt. Bitola at 05.45 p.m. on 5-7-1977. Therefore, these injuries could be within 05.45 p.m. to 05.45 a.m. of 5-7-1977. On this basis, it was argued that the injuries could be at 4.00 a.m. of 5-7-1977. The doctor had, however, denied this suggestion in the last sentence of his cross-examination.

13. No conclusion can be drawn only on the basis of the injuries of Smt. Bitola and Chhotkunnu. Smt. Munni Devi is said to have received injuries in the occurrence. In this occurrence the two injured had also received injuries. Four ounces of digested food was present in the stomach of the deceased at the time of post-mortem. This food could not be found if the deceased had received injuries at 4.00 a.m. On the other hand, if the occurrence had taken place at 11.00 a.m. on 5-7-1977, the presence of food in the intestine was probable. It is possible that by 11.00 a.m. the deceased might have taken either breakfast or noon meal.

14. The learned Counsel for the appellants doubted that the injuries of Smt. Bitola and Chhotkunnu could be gun shot injuries. About injuries 5 and 6 of Smt. Munni Devi also a doubt was raised. The injuries 1 to 4 on the person of the deceased were reported to be gun-shot wounds. There can be no doubt about their nature. Injuries 5 and 6 are wounds which could have been caused by the pellet grazing against the body. Smt. Bitola and Chhotkunnu are also said to have received gun shot injuries. In the X-rays of their wounds indicated X-ray opaque shadows were noticed. Thus these findings confirmed the prosecution version that cartridges were fired towards the deceased and the other injured which caused injuries to them. We do not find any inconsistency in the ocular version and the medical evidence.

15. It was argued that the report was anti-timed. This argument of learned Counsel for the appellants is based on the statement of PW 6 Bharat Singh Constable who had carried the dead body to the mortuary for post-mortem. He had stated that on account of non-availability of transport he could start from the place of occurrence at about 5.00. a.m. next day and had presented the dead-body and the papers to the doctor who conducted the post-mortem. He denied the suggestion that a Constable had brought a copy of the report next day. Nothing was elicited from Dr. N.K. Yadav who had conducted the post mortem as to whether he had received any copy of the first information report or not PW 5 Bharat Lal Sharma, Investigating Officer, had stated that the Chik report was prepared in his presence at 2.00 p.m. on 5-7-1977. He had stated that he had despatched the dead-body for the mortuary at about 6.00 p.m. on 5-7-1977. By using the word "Pawana" (despatch), the Investigating Officer obviously means that he had handed over the dead body to the Constable for taking it to the mortuary. Bharat Singh Constable also says that he had received the dead-body at 6.00 p.m. He gives explanation as to why he could not start soon after. There is no inconsistency in the statements of the two police officials. He cannot hold

on the basis of the aforesaid evidence that the report was actually lodged after some-time and not at the alleged time as shown in the Chik report. We find that the report had been lodged at the alleged time and place.

16. The next contention that the appellants would not have killed Smt. Munni Devi, is without any basis. Smt. Sheela Devi is alleged to have gone inside the house when the appellants started firing. Smt. Munni Devi is said to have received the gun shot wound accidentally. The circumstances stated by the witnesses may mitigate the extent of liability of each of the appellants. They may not be saddled with intention of killing the deceased. However, they would be liable on the basis of the knowledge that by the act of their firing of gun shots they could cause death of some person.

17. The last contention about the inquest report has also no force. If there is a mention in the opinion of the panchas that the deceased had died as a result of gun shot, then they obviously mean that some fire-arm was used in causing the death. It was not at all necessary to mention clearly whether country-made pistol or sophisticated gun was used.

18. No other point has been pressed.

19. We have gone through the evidence on record. PW 1 Vishwananth Singh, PW 3 Chhotkunnu Singh and PW 4 Smt. Bitola Devi are residents of the adjacent house. Smt. Sheela Devi is the person in front of whose house the occurrence took place. Chhotkunnu and Bitola Devi are injured witnesses. Their presence at the spot cannot be doubted. These witnesses had stated that the appellants had actually committed the crime. All the witnesses are consistent on the point that by a gun fire of Rajju Smt. Munni Devi had received injuries. The fire of Suresh had caused injuries to Smt. Bitola. The fire from the gun of Sher Bahadur and Punjabi, Chhotkunnu had received injuries. A suggestion was made to Vishwanath Singh (PW 1) that probably a theft had taken place in the house of Gaya Singh in which gun fire was used causing injuries to Smt. Munni, Smt. Bitola and Chhotkunnu. We have already discussed by the above aspect and have come to the conclusion that the injuries could not have been caused in the night. The suggestion has, therefore, no force.

20. It has been urged that Punjabi, who is a Mohammadan and is a resident of Rajepur, would not have joined hands with other appellants in this crime. No other reason has been shown as to why this accused would not have joined in this crime. It is probable that on account of friendship the accused Punjabi might have joined the other appellants in the crime. The evidence of the four reliable eye witnesses indicates beyond doubt that the appellants had assembled at the spot with an intention to demolish the Chabutra of Smt. Sheela Devi and to cause injuries to any body who came in their way and obstructed their act of demolition.

21. Now the question arises as to what is the extent of liability of each of the appellants. We have come to the conclusion that the appellants had assembled at

the spot with a common object of demolishing the Chabutra and assaulting any body with their weapons who obstructed in their act of demolition o Chabutra. The act of demolition by show of force was unlawful. In view of these circumstances, the appellants Jagbir Singh, Chhotey Singh, Jagdish Singh and Bhuneshwar Singh, who were armed with lathis, would be guilty of the offence punishable u/s 147 IPC. The remaining appellants, namely, Rajju, Suresh Singh, Sher Bhadur Singh and Punjabi are guilty of the offence punishable u/s 148, IPC. It does not transpire that the unlawful assembly had any object of killing anybody. Hence only Rajju, who had caused the death of Munni Devi, would be liable for this offence. His act of causing death does not come under any one of the four clauses of Section 300, IPC. The death of Munni Devi was neither intended nor Rajju had any intention of causing such bodily injury sufficient in the ordinary course of nature of causing death. There is no evidence that there was any intention to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. It is also not established that by opening fire Rajju knew that his act was so dangerous that in all probability he may cause death. As we have already stated above that Rajju must be deemed to have knowledge that by opening fire from his gun, he may cause the death of some person. Hence the offence committed by Rajju comes under the second clause of Section 304 IPC. Hence under this Section, Rajju should be sentenced to an imprisonment for five years. From the gun fire of Sher Bahadur Singh, Suresh Singh and Punjabi Smt. Bitola and Chhotkunnu had received injuries. It is not clear from the evidence on record as to which fire from the aforesaid three persons, Smt. Bitola and Chhotkunnu received injuries. Appellant Suresh Singh, Sher Bahadur and Punjabi were armed with country made pistols and they resorted to firing resulting in injuries on the person of Smt. Bitola and Chhotkunnu in furtherance of the common object of the unlawful assembly, hence each of them would be vicariously liable for voluntarily causing hurt to them with a fire arm. They would be guilty u/s 324 read with Section 149, IPC. Rajju, Sher Bahadur Singh, Suresh Singh and Punjabi should be sentenced to Imprisonment for two years. Rajju, Sher Bahadur Singh, Suresh Singh and Punjabi are also guilty u/s 148, IPC and should be sentenced to Imprisonment for two years. Appellant Jagvir Singh, Chhotey Singh, Jagdish Singh and Muneshwar Singh have been rightly convicted u/s 147 IPC. So far as their sentence is concerned, the incident took place in the year 1977 and these appellants have been in jail for a short spell of time. They were convicted on 30-11-1979 and were taken into custody and sent to jail. This Court granted them bail on 4-12-1978 and bail bonds must have been filed after a day or two. Further they must have been in jail even as under-trial for some time before they were granted bail. It will not serve any useful purpose to send them back to jail after such a long time, specially when they are not author of any injury on the person of any of the victims.

Before parting with this appeal, we must point out that the trial court had erred in passing appropriate order of sentence. The appellants Sher Bahadur Singh,

Suresh Singh and Punjabi were held guilty u/s 307 IPC. These three appellants along with others were vicariously liable for the offence committed by any one of the members of unlawful assembly in furtherance of the common object of such assembly. Hence each of them should have been sentenced u/s 307 read with Section 149 IPC. However, we have held that Section 307, IPC was not made out in this case because the appellants had no common object of attempting murder of Smt. Bitola or Chhotkunnu.

In view of what has been said above, the appeal is partly allowed. The conviction and sentence of appellant Rajju, u/s 302 IPC are set aside. He is sentenced u/s 304 Part 2, IPC to undergo five years" RI. The conviction and sentence of Suresh Singh, Sher Bahadur Singh and Punjabi u/s 307, IPC are set aside. Each of these appellants are convicted and sentenced u/s 324 read with Section 149, I.P.C. to two years" RI. The conviction of Rajju Suresh Singh, Sher Bahadur Singh and Punjabi u/s 148 IPC and the sentence of 2 years" RI is maintained. All the sentences shall run concurrently. While maintaining the conviction of appellants Jagvir Singh, Chhotey Singh, Jagdish Singh Muneshwar Singh u/s 147 IPC their sentence of one year"s RI is reduced to the period of imprisonment already undergone by them. All the appellants are on bail. Appellants Jagvir Singh, Chhotey Singh, Jagdish Singh and Muneshwar Singh need not surrender and their bail bonds are discharged. Appellants Rajju, Suresh Singh, Sher Bahadur Singh and Punjabi shall surrender forthwith to serve out their sentences as modified by this Court.