

(2003) 04 AHC CK 0257

Allahabad High Court

Case No: Criminal Appeal No. 943 of 1981

Mangoo and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 9, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, 148, 149, 299, 300

Citation: (2003) 3 ACR 2229

Hon'ble Judges: M.C. Jain, J; K.N. Ojha, J

Bench: Division Bench

Advocate: D.N. Wali, for the Appellant; A.K. Verma, A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

M.C. Jain, J.

Five Appellants preferred this appeal. They were (1) Mangoo (2) Thakura (3) Ganesha (4) Motiyan son of Shamla and (5) Motiyan son of Durga. All of them have been convicted by the judgment dated 30.3.1981 passed by Sri H. C. Shukla, the then Vth Additional Sessions Judge, Hamirpur. All of them have been convicted u/s 302, I.P.C. read with Section 149, I.P.C. and sentenced to life imprisonment. Accused Mangoo, Thakura, Ganesha and Motiyan son of Shamla have further been convicted u/s 148, I.P.C. and sentenced to one year's rigorous imprisonment, whereas Motiyan son of Durga has been convicted u/s 147, I.P.C. with sentence of 6 months' rigorous imprisonment. The sentences have been ordered to run concurrently. Mangoo, Thakura and Motiyan son of Shamla were armed with axes and Ganesha with pharsa. Motiyan son of Durga was allegedly armed with lathi. Out of the five Appellants Motiyan son of Shamla and Thakura died during the pendency of the appeal and as such the appeal abates so far as they are concerned. Obviously, the Court is now concerned with the remaining three Appellants, Mangoo, Ganesha and Motiyan son of Durga.

2. Broad features of the case may be noted. The incident occurred on 7.2.1980 at about 10.30 a.m. in village Akauna, P.S. Anjar, district Hamirpur and the F.I.R. was lodged the same day at 1 p.m. by an eye-witness Bhan Singh P.W. 1, the distance of the police station being one mile. The deceased was Prabhu Dayal brother of the informant Bhan Singh P.W. 1. At the time of the incident, Prabhu Dayal deceased was watering his field from a well known as "Chandeloo Kuan". A pumping set had been fixed by him for watering the crops and as pipes for watering were being spread by the eye-witnesses Bhan Singh P.W. 1, Gulab Singh P.W. 2 and Mulayam Singh P.W. 4 (son of the deceased). All the five assailants allegedly reached there with the weapons detailed earlier and exhorted each other to kill Prabhu Dayal. All of them started inflicting injuries on Prabhu Dayal, whereafter they fled away towards western side. Prabhu Dayal died on the spot. There was some dispute about watering of fields from the well from before. Two days before the incident at about noon time Prabhu Dayal was fixing the machine over the above mentioned well when Thakura, Mangoo and Motiyan son of Shamlu appeared there and asked him not to fit the machine. Hot words and abuses were traded. Phool Singh P.W. 3 and Karan Singh were also present. It was ultimately agreed that the accused persons would water their fields first and thereafter Prabhu Dayal would take his turn. However, the accused persons did not water their fields and the well remained unutilised for two days. This incident leading to the murder of Prabhu Dayal occurred when he was watering the field on 7.2.1980 at about 10.30 a.m.

3. On the lodging of F.I.R. by Bhan Singh P.W. 1 by oral narration, a case was registered and the police swung into action. The investigation having been taken up by S.O. Chandra Pal Singh P.W. 7, he reached the spot, recorded the statements of the witnesses, prepared the inquest report and completed other formalities. The dead body was sent for post-mortem which was conducted by Dr. Ghanshyam Pandey P.W. 6 on 8.2.1980 at 1.30 p.m. The deceased was aged about 37 years and about one day had passed since he died. The following ante-mortem injuries were found on his person:

(1) Incised wound 13 cm. - 6 cm. - bone deep on right side starting from centre of right cheek, (buccinator muscle), going towards back 2 cm. below the right ear. Skin sub-cut, tissue sterno mastoid muscles, corroded vessels with fracture of 6th and 7th cervical vertebra into pieces and partial amputation thereof.

(2) Incised wound 5 cm. - 2 cm. - muscle deep in left side of neck in the direction over left sterno mastoid muscle at its middle.

(3) Incised wound 4 cm. - 1 cm. - muscle deep transverse over occipit.

(4) Incised wound 3 cm. - 1 cm. - muscle deep, 24 cm. above injury No. 3, oblique in direction.

(5) Incised wound 2 cm. - 1 cm. - muscle deep transverse direction in left parietal prominence.

(6) Incised wound 2 cm. - 1 cm. - muscle deep in top of skull direction front to back, oblique from left to right over parietal bones.

(7) Incised wound 10 cm. - 2 cm. - muscle deep at the junction of skull and neck at the level of lower part of ears on back.

(8) Incised wound 3 cm. - 1/2 cm. - skin deep in the centre of right scapula obliquely upside down.

(9) Multiple contusions in area of 8 cm. - 6 cm. in left scapula.

The death had occurred due to shock and haemorrhage as a result of injury No. 1.

4. The Appellants pleaded false implication due to enmity, but no evidence was adduced by them in defence.

5. We have heard Sri D.N. Wali, learned Counsel for the Appellants and Sri A. K. Verma learned A.G.A. from the side of the State.

6. It has first been argued by the learned Counsel for the Appellants that the F.I.R. was ante-timed and was lodged after the Investigating Officer returned from the spot. He wanted to support this argument by the fact that in the inquest report the Investigating Officer inserted the words "va pharsa" by putting slash between the words "kulhari ki" and "choton" and he also admitted this fact in his cross-examination. According to him, it was indicative of the fact that the F.I.R. was not in existence till the inquest report was prepared. However, the explanation of the Investigating Officer is that he added the said word then and there on reading the F.I.R. as it had inadvertently been left out. We are of the opinion that it can be a lapse or carelessness on the part of the Investigating Officer but it does not justify the inference that the F.I.R. was not in existence till the inquest report was prepared and that it was ante-timed. Other evidence and circumstances do not leave the slightest doubt that the F.I.R. is a genuine and spontaneous document which was lodged on 7.2.1980 at 1 p.m. as is the case of the prosecution. It is significant to state in this regard that the F.I.R. was lodged by oral narration by Bhan Singh P.W. 1 and there is the testimony of H. C. Ujagar Singh P.W. 5 that it had been lodged at the police station at that time. If it was ante-timed after deliberation, it would have usually been a written report. That is not the case here and unlettered village rustic Bhan Singh P.W. 1 lodged this F.I.R. by oral narration at the police station. Every fact of the incident was narrated by him to the concerned Head Constable at the police station who took it down and the informant thumb marked the same after being read over the narration of facts.

7. Learned Counsel for the Appellants then argued that no independent witness of the neighbourhood has been examined in support of the prosecution case. We would observe in this behalf that the evidence is not to be counted, but weighed. The prosecution is not supposed to multiply the evidence or to produce spurious witnesses. The incident occurred when Prabhu Dayal was engaged in the process of

watering his field from the well. A pumping set had been fixed at the well and the pipes were being spread by Bhan Singh P.W. 1 (brother of the deceased Prabhu Dayal), Mulayam Singh P.W. 4 (son of the deceased) and Gulab Singh P.W. 2. The presence of Bhan Singh P.W. 1 and Mulayam Singh P.W. 4 appears to be natural because irrigation and watering activities by their very nature require the involvement of more than one person. It was very natural that the deceased, Bhan Singh and Mulayam Singh being of one family were immediately concerned with the watering and irrigation of their fields and were there at the spot. It has come to be stated by Bhan Singh P.W. 1 that he had three brothers, namely, Prabhu Dayal deceased, Girja and Himachal. All the brothers were separate in mess but the cultivation was joint. They had no servant. The land continued to be in the name of father. All the facts taken together, the presence of Bhan Singh P.W. 1 and Mulayam Singh P.W. 4 at the spot is beyond the range of doubt. Of course, Gulab Singh P.W. 2 denied his involvement in spreading of pipe and stated that he did not see the assailants, but his statement also fixes the time and place of the incident. His version is that he had reached Chandelu Kuan after the murder of Prabhu Dayal at about 10.30 a.m. and had found him lying dead in a pool of blood. He belongs to the same village. May be that he thought it wise not to incur enmity against the accused persons by deposing against them. But the fact remains that time and place of the incident are supported by his evidence too. The testimony of Bhan Singh P.W. 1 and Mulayam Singh P.W. 4, though the family members of the deceased, is worthy of inspiring judicial confidence because their presence on the spot was natural and their testimonial assertions cannot be thrown overboard simply because of close relationship with the deceased.

8. Learned Counsel for the Appellants then invited our attention to the statement of Mulayam Singh P.W. 4 who happened to say that each of the two accused named Motiyan was armed with axe. He pointed out that as per the prosecution case, Motiyan son of Durga (who is alive) was armed with lathi whereas Motiyan son of Shamla (deceased) had an axe. We note that he is also an illiterate villager. He is completely unlettered who put his thumb mark on his statement before the lower court. It appears to us that while describing the weapons of the accused who were five in number, this witness happened to commit a bona fide mistake by describing axes as the weapons by both the accused named Motiyan. The consistent case of the prosecution is that Motiyan son of Durga had lathi. We also note from the post-mortem report of the deceased that injury No. 9 was multiple contusions in an area of 8 cm. - 6 cm. on left scapula. Obviously, it could be caused only by blunt object such as lathi. We should point out that out of the five assailants, Motiyan son of Durga alone was armed with lathi whereas three had axes and one had pharsa. Therefore, no benefit can accrue to the Appellants by over-emphasizing the bona fide mistake committed by Mulayam Singh P.W. 4 as regards the weapon of one of the Appellants.

9. Learned Counsel for the Appellants then alternatively argued that the offence would not travel beyond Part II of Section 304, I.P.C. having regard to the injuries sustained by the deceased. He urged that only injury No. 1 turned out to be fatal. There was no internal damage beneath any of ante-mortem injuries No. 2 and 9. They were simple either skin or muscle deep.

10. We are of the opinion that merely the nature of injuries Nos. 2 to 9 cannot bring down the offence to be that of culpable homicide not amounting to murder. The consideration of nature of injuries Nos. 2 to 9 alone in isolation divorced from other facts and circumstances would not be germane to pronounce the offence to be culpable homicide not amounting to murder. We should inform ourselves of the correct legal position for the sake of clarity. As per Section 299, I.P.C., whosoever causes death 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, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. To come under the category of culpable homicide not amounting to murder, the act by which the death is caused must fall in one or the other exception Nos. 1 to 5 of Section 300, I.P.C. To say in simple words, unless the case is covered by one of the exceptions enumerated in Section 300, I.P.C., it would be murder. The present case is not at all covered by any of the exceptions enumerated in Section 300, I.P.C. Prabhu Dayal-deceased, his brother Bhan Singh P.W. 1 and his son Mulayam Singh P.W. 4 were completely unarmed and were simply engaged in irrigation activities. As many as five assailants, out of whom four were armed with cut weapons and 5th one had a lathi, arrived there together and started assaulting Prabhu Dayal with the weapons that they had. The manner in which the incident occurred clearly indicates that they had pre-planned the murder of Prabhu Dayal and unlawful assembly had been formed for that purpose. It was in prosecution of common object of the unlawful assembly that the five assaulted him with dangerous weapons. One of the incised wounds was forcefully inflicted on vital part-head which alone was sufficient to cause death in ordinary course. Prabhu Dayal and the witnesses were taken by surprise. The assailants would have struck much more blows to the victim with their weapons, had the witnesses not rushed up raising shouts. The fatal damage had already been caused by incised wound inflicted on vital part- head. They retreated because of approaching witnesses and for this reason could not prolong the whole matter of striking more blows on the deceased. They had already achieved their object by transporting the victim to the other world. The previous happening of two days back relating to the exchange of hot words between the two sides (which had been reconciled also through the intervention of certain persons) over the irrigation turn to be observed could not at all afford any justification for the accused Appellants to behave in the fashion they did by forming the complained unlawful assembly with deadly weapons and inflicting a number of injuries on the deceased. The present three Appellants with the deceased two Appellants had formed unlawful assembly and it was in prosecution of the common

object of such unlawful assembly that death of Prabhu Dayal was caused. The case, in our opinion, is clearly covered by Section 302, I.P.C. read with Section 149, I.P.C.

11. In view of the above discussion, we finally order as under:

The appeal abates in relation to Motiyan son of Shamla and Thakura.

The appeal in respect of remaining three Appellants-Mangoo, Ganesha and Motiyan son of Durga is dismissed. Their conviction and sentences ordered by the learned trial Judge are affirmed. They are on bail and shall be arrested to be lodged in jail to serve out the sentences passed against them, reproduced in the opening part of this judgment.

Let a copy of this judgment along with the record of the trial court be sent to the court below for needful compliance under intimation to this Court within two months.