Nardeo Singh And Ors. vs The State on 19 May, 1953

Equivalent citations: AIR1953ALL726, AIR 1953 ALLAHABAD 726

JUDGMENT

Asthana, J.

1. The appellants have been convicted by the 1st Additional Sessions Judge of Budaun under Sections 323, 326 read with Section 149, I. P. C. and have each been sentenced to six months' rigorous imprisonment under Section 323 read with Section 149, I. P. C. and to six years' rigorous imprisonment under each of the two Sections 326 and 307 read with Section 149, I. P. C. The appellants Tessu, Angan, Mulaim Singh and Gajju Singh have been further convicted under Section 147, I. P. C. and sentenced each to six months' rigorous imprisonment and the appellants Nardeo and Bhikhari under Section 148, I. P. C. and sentenced to one year's rigorous imprisonment each. All these sentences have been made concurrent.

2. Two appeals were filed, one on behalf of Nardeo, Mulaim Singh and Bhikari and the other on behalf of Tessu, Angan and Gajju Singh. They have both been connected and as they arise out of the same judgment they will be disposed of together.

3. The prosecution story is that Dan Singh, brother of Chaturi Singh Complainant, had filed a complaint under Section 107, Cr. P. C. against the appellants and other about a month or two before the occurrence and this case was pending at the time, of the occurrence that Net Singh and Ram Singh who are prosecution witnesses in this case and who were also injured in the occurrence were prosecuted along with others for the murder of one Bharat Singh and the accused Jiwan Singh and Sughar Singh father of Tondi Singh and Bhola Singh accused had appeared as prosecution witnesses in that case about one and a half year before the occurrence, that on account of these facts there was enmity between the accused and Dan Singh, Chaturi Singh, Net Singh and Ram Singh and it was on account of this enmity that on 8-6-1949, about an hour before sunset when Dan Singh and Chaturi Singh were returning from their field and reached a place near Jiwan Murao's Mandaiya which stood on the way and which adjoined the village talab, they were waylaid by the accused some of whom were sitting in the Mandaiya of Jiwan Singh and the others in a grove at a short distance from there, that they were armed with lathis and pistols and attacked Dan Singh and Chaturi and inflicted a number of injuries on their persons, that on the cries of these two persons Net Singh and Ram Singh who were present at the talab with their cattle where they had gone to give water to them ran to their help and they too were beaten and injured. The accused ran away when other persons reached the spot on hearing the shouts of the injured persons. All the four injured persons were removed in a cart to P.S. Bilsi which is at a distance of about seven miles from there. They reached the thana sometime about midnight and a report was made there by Chaturi Singh at 1.10 a. m. and in that report the names of all the accused are mentioned. After the report had been recorded the

injured persons were sent to the dispensary where their injuries were examined by the Medical officer the next morning.

4. The appellants in their statements denied that they had committed the offence. Their case was that they had been falsely implicated on account of enmity. The accused Nardeo Singh stated that he did not know whether Dan Singh had filed any complaint under Section 107, Cr. P. C. against him and the other accused and that they were bound over in that case. The accused Tessu, Angan and Mulaim Singh admitted that a case under Section 107, Cr. P. C. had been filed against them and the other accused by Dan Singh and that they were bound over in it. The accused Gajju denied this fact whereas the accused Bhikhari stated that he did not know if Dan Singh had filed any such complaint against him though he admitted that he was bound over.

5. It appears from the medical evidence that Dan Singh, Net Singh, Ram Singh and Chaturi were examined by Dr. V.P. Singh, Medical officer, Bilsi, on the morning of 9-6-1949. (After describing the several wounds his Lordship says :) There is no doubt that from these injuries it is quite obvious that these four persons were assaulted with lathis and fire-arms sometime in the evening of 8-6-1949, and it was on account of that assault that they had received these injuries. 1 am not prepared to accept the suggestion on behalf of the appellants that these injuries were self-inflicted or that they had not been caused by a pistol as alleged by the prosecution witnesses.

6. It was argued for the appellants that the pellet said to have been recovered by Dr. Singh from injury No. 4 on the person of Kara Singh had not been produced as a material exhibit and in the absence of such evidence it was doubtful if any pellet had really been extracted from his body. There is no doubt that the pellet was not produced by the doctor or by the prosecution in this case as a material exhibit. Dr. Singh was not asked about it or he might have given some explanation as to what happened to it and whether he forwarded it to the police or not. In view of the fact that the doctor or the prosecution witnesses were not cross-examined on this point and had no opportunity of explaining as to why it was not produced in the lower Court, I am of opinion that its mere, non-production does not affect the case.

7. It was also argued that it was very unlikely that the pistol injury would have produced a four-sided or four cornered wound and that if really a pistol were used then it would be expected that a round wound be made because a pellet would be round. There is nothing on the record to show whether the pellet was round or square and whether it had four corners or not. If the doctor were cross-examined and were asked on this point he might have been able to give some explanation as to how the four-sided or four-cornered wound was made by the pistol shot.

8. Another argument which was advanced on behalf of the appellants was that from the prosecution evidence it appeared that only lathi and pistols were used in the assault but the medical evidence disclosed that incised wounds were found on the person of Net Singh and Chaturi and there was no explanation as to how these two injuries were caused when no sharp-edged weapon according to the prosecution evidence was used. As regards the incised wound on Chaturi the doctor in his statement has clearly stated that it had been caused with a fire-arm and he was not cross-examined on, this point As regards the incised wound on Net Singh the evidence of the doctor was that it had been

inflicted with some sharp-edged, weapon. In my opinion there is no doubt that lathis and pistol were used by the assailants and the above four persons were beaten with these two weapons. There is no doubt that there is no satisfactory explanation as to how the incised wound on Net Singh was caused in, the absence of any sharp-edged weapon.

9. The question which next arises for consideration is whether Dan Singh, Chaturi Singh, Net Singh and Ram Singh were assaulted by the accused or by some other persons. The evidence of these four witnesses clearly shows that the occurrence took place an hour before sunset and they were beaten by the accused on account of the enmity which they had against them on account of the case under Section 107, Cr. P. C. already mentioned above. The accused are also named in the first information report. It was argued on behalf of the appellants that the first information, report Ex. P1 was not admissible in evidence and the reason given for it was that from the evidence of Dan Singh (P. W. 2) it appeared that on the day of the occurrence the complaint to Tahsildar was really the first information report and the statement in the report Ex. P1 was made during investigation and was a second report and was, therefore, inadmissible. In my opinion this contention is not correct. There is no doubt that Chaturi Singh made an oral complaint to the Tahsildar who happened to reach the village on the day of the occurrence. But it appears from the statement of the Tehsildar, Sri Radhey Shyam Pande, that when he was told about the occurrence he asked the complainant to go to the thana and make a report about it there and it was on this direction that Chaturi Singh went to the thana and made the report. It cannot be said that the verbal report which was made to the Tehsildar was the first information report because under Section 154, Cr. P. C. a first information report is a report which is made to an officer in charge of a police station. In view of this provision the report Ex. P1 which was the first report and which was made at P.S. Bilsi was the first information report and not the oral complaint which was made to the Tehsildar who casually happened to be in the village. Moreover, Section 162, Cr. P. C. which makes a statement before a police officer during the course of investigation inadmissible is not applicable to the present case because there is nothing on the record to show that the police had already started the investigation when the report Ex. P1 was made. On the contrary, the evidence is that the Tahsildar directed Chaturi Singh to report the matter to the police and then he made the report and it was after this report that the police started the investigation. In the circumstances I am of opinion that the contention on behalf of the appellants that the report Ex. P1 is not admissible is not correct.

10. It was next contended that the report was not reliable as according to it it appeared to have been made at 1.10 A. M. but according to the prosecution witnesses Chaturi Singh and Dan Singh it was made in the morning. There is no doubt that Chaturi Singh in his statement said that it was recorded in the morning and Dan Singh said that it was recorded at 10 A. M. in the morning, but both these witnesses clearly stated that they reached the thana sometime about midnight and when they asked the constable clerk present there to write the report he told them that it would be written in the morning and it was for this reason that the report was written in the morning. The explanation given by these two witnesses appears to be quite reasonable. It appears that the constable clerk or that other police men on duty at the police station did not want to be disturbed at night and it was for this reason report was actually not recorded at night as stated by these two witnesses. It may be that the writer of the report in order to avoid any explanation mentioned in the report that it was written at 1.10 A. M. There is, however, no doubt that the report was written in the early morning because

the medical examination of the injured persons was started at 7.30 a. m. as appears from the evidence of Dr. Singh. I am not satisfied that there has been any delay on the part of the complainant in making the report, who reached the thana on the night of the occurrence.

11. If the occurrence took place an hour before sunset as has been stated by Chaturi Singh, Dan Singh, Net Singh, Ram Singh, Babu Ram, Mahendra Singh and Paul Singh, there is no doubt that the injured persons must have seen the assailants and if they knew them from before they must have recognised them. It appears to me somewhat improbable that if the accused did not assault the injured persons and they really had been assaulted by some other persons they would have left out the real assailants and implicated the accused simply because there had bean a case under Section 107, Cr. P. C. against them. There is no doubt that there was enmity between the accused and the injured persons and on account of this enmity it is possible for the injured persons to falsely implicate the accused, but it is also possible that on account of this enmity the accused assaulted them and caused them so many injuries.

12. The question for consideration is how far the evidence of the above seven witnesses is to be believed. There can be no doubt that Chaturi Singh, Dan Singh, Net Singh and Ram Singh were assaulted because they had injuries on their persons. (After discussing the evidence his Lordship concluded :) After a consideration of the entire evidence on the record I am of opinion that the accused formed an unlawful assembly with the common object of beating Chaturi Singh and others and it was in prosecution of that common object that they beat them with lathis and pistol, etc. and caused them a number of injuries. The mere fact that some of them were waiting at one place and some at another place at a short distance from it does not mean that they had nothing in common.

13. The next question for consideration is what onence has been made out. It was contended on behalf of the appellants that a conviction both under Sections 147 and 323 or 326, I. P. C. was illegal and could not be maintained. It has, however, been the consistent view of this Court that there is no illegality in such conviction. In --'Chidda v. Emperor', AIR 1926 All 225 (A), it was held by Sulaiman, J. that separate convictions under Sections 147 and 323 read with Section 149, Penal Code were not illegal. A similar view was expressed by Bajpal J. in --'Emperor v. Sahab Rai Singh', AIR 1933 All 819 (B). In --'Tiny v. State', AIR 1952 All 92 (C), Brij Mohan Lal J. relying on a Full Bench decision of this Court reported in --'Queen-Empress v. Ram Sarup', 7 All 757 (D), held that a person who actually causes hurt and is also a member of an unlawful assembly can be convicted of committing riot under Section 147 and of causing hurt under Section 323, I. P. C. and there was no illegality in it. In the case of --'Prakash Chandra v. Emperor', AIR 1914 Cal 675 (E), a Division Bench of the Calcutta High Court consisting of Holmwood and Sharfuddin JJ. held that on a charge of rioting with the common object of assaulting public servants, the accused could be convicted both under Section 147 and Section 353, I. P. C. and there was no illegality in such, conviction.

14. In view of the consistent decisions of this Court I am of opinion that the contention on behalf of the appellants that convictions, under both the Sections 147 and 323 or 326, I. P. C. are illegal cannot be maintained.

15. It was next argued that the appellants-have been convicted both under Sections 307 and 326, I. P. C. in respect of the same grievous, hurt. To my mind the conviction under both the sections for the same injury does not appear to be quite correct. Section 307 clearly provides that whoever does any act with such intention or knowledge and under such circumstances, that, if he by that act causes death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned. There is no doubt that from the evidence on the record it is proved that some of the injured persons were fired at with a pistol and received hurt as a result of it. It is in respect of this hurt which is grievous that they have been convicted both under Sections 307 and 326, I. P. C. In my opinion where an accused person shoots one with a pistol and thereby causes hurt to him he is liable to conviction under the latter part of Section 307, I. P. C. and his conviction under Section 326 for the same offence is not warranted. It is not the prosecution case that the grievous hurt was caused in any other manner except from a pistol shot. I am, therefore, of opinion that the conviction of the appellants under both the Sections 307 and 326, I. P. C. cannot be maintained.

16. The result is that these appeals are allowed to this extent only that the conviction and sentence of the appellants under Section 326, I. P C is set aside. Their convictions and sentences under the other sections are maintained.

Leave to appeal to Supreme Court is refused.