Parshottam vs State on 16 October, 1952

Equivalent citations: AIR1953ALL356, AIR 1953 ALLAHABAD 356

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Agarwala, J.

1. This is an appeal by Parsotam Ahir, aged 40 years resident of Sakaldiha, police station Balua, district Banaras, against his conviction under Section 302, Penal Code, for the murder of Sri Raj Kishore Singh on 8-10-1950, and the sentence of death. There is also before us the usual reference for the confirmation of the sentence of death.

2. Sri Raj Kishore Singh was a retired Additional Commissioner of this State. After retirement he settled down in village Sakaldiha and took to gardening. He used to go from his house every morning to his groves with his son, Sri Sanat Kumar Singh. Both of them used to return at about 9 A. M. for tea and again go to the groves and return at midday for their lunch. The appellant had his fields near the groves of Sri Raj Kishore Singh, There were certain ponds from which he used to water them, but it appears that in the year 1960 these ponds had not enough water for irrigation purposes. Sri Raj Kishore Singh used to water his groves from another pond nearby. The prosecution case was that as the appellant could not obtain sufficient water from the other ponds, he tried to divert to his own plots the water of the pond from which Sri Raj Kishore used to water his groves. He could have done this only by diverting the channels which had been dug by Sri Raj Kishore Singh from the pond to his own groves. Sri Raj Kishore Singh was not agreeable to this and prevented the appellant from carrying out his intention. The appellant appears to have resented this very much and took it to heart. He complained about it to several persons, but no one would help him. This incident happened on 7-10-1950. The next day, that is, 8-10-1950, when Sri Raj Kishore Singh was returning from his groves at about midday after-having sent his son to the labourers working in the groves, the appellant armed with a lathi followed Sri Raj Kishore Singh to some distance and when Sri Raj Kishore Singh was half way on the mend of the field of one Mahadeo Lohar, gave him a lathi blow on the right leg. On receiving the blow, Sri Raj Kishore Singh fell down on the ground and then the appellant gave him a smashing blow on the head, resulting in profuse bleeding and in the fracture of the skull bone. Raj Kishore Singh expired the next morning, at about 4 A. M.

3. The incident is alleged to have been seen by Sri Raj Kishore Singh's son, Sanat Kumar Singh, and some other persons who were watering the fields in the neighbourhood at the time.

4. The first information report of the incident was lodged by Sanat Kumar Singh on 8th October within about an hour of the incident. Dr. J. P. Gupta, medical officer in charge of the Sakaldiha Dispensary, was immediately called. He found that the injury on the head was grievous and thought that Sri Raj Kishore Singh who was unconscious might die and opined that the Civil Surgeon be called. The Civil Surgeon was also called from Banaras, but he could render no help and Sri Raj Kishore Singh expired, as already stated. Dr. J. P. Gupta examined the injuries when Sri Raj Kishore Singh was unconscious on 8th October at 5 P. M. He found that there was a bruise on the outer aspect of the right leg 2" X 1/2" and also a contused wound 3" X 1/2" upto the bone on the left side of the head, 5" above the ear with fracture of the skull bone, with symptoms of compression of the brain. The postmortem examination was held on 9-10-1950 at Banaras at about 1-30 p. m. According to the report of the Civil Surgeon, there was a contused wound on the top of the head, on the left side, 2 1/2" long X 1/2" wide, bone deep, with contusion in an area 12" X 10", and there was bleeding from the wound. He also found a contusion 16" X 6", on the right leg. Internal examination of the body showed a fissured fracture of the vault, running from ear to ear, 10" long. At the back it enclosed an area, with one limb 3 1/2", another 4" and the third 3" all depressed. The membranes of the brain were deeply congested. The brain was covered with a blood clot on the right side, which was mostly 1/4" thick. The cause of death, according to the doctor, was fracture of the skull as a sequel of the contused wound on the head caused by a blunt weapon such as lathi.

5. The appellant denied the commission of the offence.

6. The prosecution produced Sanat Kumar Singh, Dingor, Mossey, Dasa and Sarabjit as eyewitnesses of the occurrence in support of its case. We have examined their statements and have no reason to disbelieve them. In concurrence with the findings of the learned Sessions Judge, wo are of opinion that the appellant caused the injuries to Sri Raj Kishore Singh which brought about his death, as alleged by the prosecution.

7. The question then is what offence the appellant has committed. It was strenuously urged that the offence committed by the appellant should be considered to bo one of causing grievous hurt under Section 325, Penal Code. In support of this contention, a recent unreported decision of the Supreme Court, Hemant Prasad v. State, decided by Faz1 Ali and Vivian Bose JJ. on 1-5-1952, was cited. In our opinion, that decision has no application whatever to the facts of the present case. In that case the fticts wore that three persons suddenly came from behind and attacked the deceased with lathis while he was walking. The deceased would have normally taken another route, but since he had some particular business on the day of the marpit, he had taken that particular route. There was no evidence to show that the appellant knew that the deceased was to pass that way. The injuries caused to the deceased were four in number, including one contused wound on the back part of the crown of the head which caused a fracture of the skull and resulted in the death of the deceased. The other injuries were minor and simple in nature. There was no evidence as to which of the assailants had caused the minor injuries. In these circumstances, the Supreme Court held that it could not be presumed that the appellants had the common intention of murdering the deceased, but that the presumption could be made that the assailants had at least "the common intention of causing grievous hurt" to the deceased. Their Lordships, however, went on to observe :

> "The question as to what was the common intention of the assailants will depend on the facts of each case, and where there is direct or circumstantial evidence to show that the intention of the assailants was to kill the victim, a conviction under Section 302, Penal Code, would be justified even in a case like the present."

Having regard to the facts of that particular case, their Lordships, however, held that the appellants in that case were guilty of causing grievous hurt only under Section 825, Penal Code.

8. The present case differs from the case before the Supreme Court in several respects. In the first place, in the present case it is known who caused the fatal injury on the head which resulted in death. It was the appellant himself who caused it. In the second place, the circumstances attending the attack on the deceased suggest that the appellant had the intention to kill the deceased. The assailant took to heart the refusal of the deceased to allow him to carry water through the channels which had been constructed by the deceased to bring water from the pond to his own groves. A day later, the appellant complained about this to other persons and on receiving no help from them, ho was seen the next day following the deceased armed with a lathi and, after the deceased had proceeded to some distance he struck the deceased on the leg and then when the deceased had fallen down on the ground, he gave him a smashing blow on the head. We have also seen that the blow struck was very severe, as ill caused a big fracture and compression of the brain, and rapture of the membranes and profuse bleeding. The attack was deliberate and planned. It was cold-blooded as no quarrel had taken place immediately before the attack was made--the quarrel had taken place a day earlier. The smashing blow on the head was given when the deceased, had fallen down. It was given on the most vital part of the body with great severity. All these circumstances, to our mind, point to only one conclusion, and to no other, namely, that the intention was not merely to cause injuries to the deceased but to kill him. The present case, in our opinion, falls within the general observations of the Supremo Court which had been quoted above by us.

9. The Supreme Court relied inter alia on Bhola Singh v. Emperor, 29 ALL. 282. In that case (Bhola Singh v. Emperor) which was decided by this Court, reliance had been placed upon a Madras decision, Queen-Empress v. Duma Baidya, 19 Mad. 483. In similar circumstances, in the Madras case, one man had given a lathi blow on tho head, fracturing the skull, and two other persons had inflicted other simple injuries on the deceased. It was held that the person who had inflicted the blow on the head which had resulted in the death of the deceased was guilty of murder. We think that the ratio decidendi of the Madras case applies to the facts of this case.

10. It was further contended that if Section 325, Penal Code, did not apply to the facts of tho present case, the case would at the most fall within the purview of Section 304, Penal Code, and in this connection a decision of this Court in Perana v. Emperor, 1936 ALL. l. j. 333, was cited. In that case the prosecution version that the attack on the deceased was cold-blooded and that it was not due to any immediate quarrel between the assailants and the deceased, does not appear to have been accepted by the Court as would appear from the following observations :

> "Wo think that it is almost certain that there must have been some quarrel about this matter and that that was the immediate cause of the trouble between the parties."

In the circumstances, the Bench did not draw the inference that there was an intention to kill but held that the accused intended to cause injuries which were likely to cause the death of the deceased. We have discussed this matter at length in a recent, decision in Behari v. State, 1952 ALL. L. J. 546. We have pointed out that the nature of tho offence committed will depend upon (a) the intention of the accused, (b) his knowledge and (c) the nature of the injury caused. We stated :

> "Where actual injury caused was sufficient, in the ordinary course of nature, to cause death and it could not be said that the injury was accidentally or negligently caused, a strong presumption arises that the intention was to cause the injury which has been caused and as such the case would fall under Clause (3) of Rule 300. It would be particularly so if the attack was premeditated, just as it was in the present case. This presumption may be rebutted. It is not the law that where death is caused by one lathi blow alone the offence will invariably full under Section 304, Penal Code. In determining the intention other circumstances as have been already mentioned in the earlier part of the judgment will also have to be taken into consideration."

11. In Parana's case, (1936 ALL. L. J. 333) the assault appeal's to have been made, as found by the Bench, in tho heat of tho quarrel. It could be assumed, in the circumstances, that it was not intended that death should be caused or that an injury sufficient, in the ordinary course of nature, to cause death should be caused. Death in such circumstances may be taken to be negligently or accidentally caused. Where, however, as in the present case, the attack is preplanned, the assailant follows the" deceased for some distance and deliberately gives him a smashing blow on the head, it may legitimately be inferred that the intention was to kill the deceased. The inference as to intention will differ with tho facts of each case. We are of opinion that in the present case the inference drawn by the learned Sessions Judge was correct and that the conviction of tho appellant under Section 302, Penal Code, was justified.

12. Lastly, it was strongly urged that tho appropriate sentence in a case of this kind is one of transportation for life and not of death. Some instances in which the State Government had commuted tho sentences of death passed by this Court to sentences of transportation for life were mentioned before us. The Government is empowered under the Code of Criminal Procedure to commute sentences of death into sentences of transportation for life. We have no reason to think that the State Government does not exercise its powers reasonably. There must have been circumstances sufficient in the eyes of the State Government to justify commutation of the sentence of death in the cases mentioned to us. However, that may be, we are not concerned with the action which the State Government may take after this Court passes its judgment. We are concerned with administering the law as we find it. If we find that according to the well-established principles of law we should award the sentence of death, we shall not fail to do so even though the State Government may commute it to a sentence of transportation for life. In the present case, we find no justification for awarding the lessor penalty by law. The attack on the deceased was cold-blooded, preplanned and well calculated. We think that, in the circumstances of the case, even though death was caused by one single injury, the appro-priate sentence is one of death. We, therefore, dismiss this appeal, accept the reference and con-firm the sentence of death, which shall be carried out according to law.

13. Learned counsel has applied for leave to appeal to the Supreme Court. We do not consider that any case has been made out for granting leave to appeal to the Supreme Court. The prayer is accordingly rejected.