

Badri And Ors. vs State on 5 September, 1952

Equivalent citations: AIR1953ALL189, AIR 1953 ALLAHABAD 189

JUDGMENT

Agarwala, J.

1. This is an appeal by 14 persons, namely, Badri, Moti, Munshi, Ram Lal, Gopi, Nathu, Ram Singh, Shaitan, Badshah Bhupal, Gajju, Sripal, Maharaj Singh and Chhadami, against their conviction under Section 147, Section 304 Para II, read with Section 149, I. P. C. and Section 323 read with Section 149, I. P. C. AH the appellants have been sentenced to 1 year's R. I. under Section 147, I. P. C.; each of the appellants 10 to 14 have been sentenced to 5 years' R. I. under Section 304 Para II read with Section 149, I. P. C.; each of the appellants 1 to 9 have been sentenced to 4 years' R. I. under Section 304 Para II read with Section 149, I. P. C.; and all the appellants have been sentenced to 1 year's R. I. under Section 323 read with Section 149, I.P.C. The sentences have been made to run concurrently.

2. The prosecution case in brief was that the appellants with two others, 'namely, Balwant and Babu, who have been acquitted by the court below, entered the Thaar of Kehri deceased and inflicted injuries with lathis on Kehri, his brother Ram Singh and his son Hira Lal, with the result that Kehri died in the evening and the other two who received simple injuries had to remain in hospital for a number of days. According to the prosecution the incident happened on 11th September 1950 at about 7 o'clock in the morning. The motive for the crime as alleged by the prosecution was that for a number of years litigation was going on between Kehri deceased on the one hand and Bhupal, appellant 10, on the other for the partition of a holding. Bhupal had won in the trial court and in the court of the Commissioner. Kehri had filed an appeal in the Board of Revenue which was pending at the time of the incident. The prosecution alleged that Bhupal had been threatening Kehri to withdraw his appeal or he would lose his life and that since Kehri did not mind the threat he was done to death in the manner already stated.

3. The first information report of the incident was sent by post both to the police station Eka and to the Superintendent of Police on 14th September 1950. The police station received it on 16th September and recorded it in the general diary on that date. Obviously the report was sent by post after a long time. An explanation for the delay was given by Roshan in whose name the report was sent. He stated that after his father, his uncle and his brother had been beaten, he took them to the dispensary at Jasrana which was 10 miles from the village, that Kehri died in the evening of the 11th and the other two injured persons had to remain in hospital, that he had to take the body of the deceased for post mortem examination to the district headquarters at Mainpuri which is 30 miles away, that he reached there with the dead body in the morning of the 12th and returned to his village after the post mortem examination on the 13th, on which date he heard that his brother Hira was lying unconscious in the hospital and was about to die, that on hearing this he rushed to the

hospital but found that his brother was alive and was not dying, and that he then sent the report on the 14th.

4. The post mortem report revealed that the deceased Kehri was brutally injured. He had 12 injuries on his person: three contused wounds on the head, three contusions in the area of the chest and the scapula and injuries in the region of the spleen. The 11th, 10th, 9th, 8th, 7th and 6th ribs were fractured and the kidney and the spleen were ruptured. In the opinion of the doctor death was due to shock and haemorrhage following the rupture of the spleen and kidney and multiple injuries and fractures of the ribs. From the nature of the injuries it is apparent that the injuries were sufficient in the ordinary course of nature to cause death.

5. The injuries to Ram Singh and Hira were also examined. Ram Singh had received six injuries, all simple. Hira had received one contused wound on the head and 21 other injuries on various parts of the body. All the injuries were, however, simple.

6. Badri appellant lodged a first information report of an incident which he alleged had taken place on 11th September in the morning at about 7, the date and time at which the prosecution alleged that the beating was given to Kehri, Ram Singh and Hira. According to Badri's report, Kehri, Ram Singh, Hira and Roshan attempted to take away their cattle which had strayed into the field of Bhupal and which Badri was taking to the cattle pound, and when Badri protested the four persons Kehri, Ram Singh, Roshan and Hira, beat him with lathis. He did not mention any injuries having been inflicted by him on any of these four persons. In the court of the magistrate he did not mention the injuries which Kehri, Ram Singh and Hira had received. In the Sessions Court, however, he stated that he had wielded his lathi in self-defence and thereby injured Kehri, Ram Singh and Hira in the incident which happened in connection with the cattle, as stated by him in his report to the police. He, however, did not admit the occurrence of the marpit in the Thaar of Kehri.

7. The defence of the other accused was a denial of their participation in the offence.

8. In support of the prosecution case live eye witnesses were produced, namely, Roshan, Ram Singh, Hira, Ganga Singh and Ram Charan Singh.

9. Roshan supported his first information report. His story was that when the beating took place he was sleeping on the roof of the Thaar, that on hearing the noise he got up and saw the occurrence from behind a wall and that he came down into the courtyard where Kehri, Ram Singh and Hira were being beaten after the assailants had gone away. He named all the 16 accused as the assailants. We are not impressed by the statement of Roshan. He has been changing his version from time to time. (After discussing the evidence given by Ram Singh, Hira, Ganga Singh and Ram Charan Singh, his Lordship concluded.) It appears, to us that the evidence against Maharaj Singh, Bhupal, Chhadami, Sripal and Gajju is sufficient for their conviction, but the same cannot be said about the remaining nine appellants. They may have been there, but there is a doubt in our minds about their participation in the crime. They are entitled to the benefit of the doubt.

10. It was strongly urged by the learned Deputy Government Advocate that Badri, who attempted to inflict injuries on Kehri, Ram Singh and Hira in self-defence, should also be held guilty. We have given careful thought to this matter and we have come to the conclusion that in a case of this kind it is not possible to take advantage of the so-called admission made by Badri. Badri's statement refers to another incident altogether which, according to him, happened in a field in connection with the rescuing by the deceased Kehri. Ram Singh and Hira, of certain cattle which had strayed in Bhupal's field. This incident, in our opinion, never happened at the time and place mentioned by Badri. In the circumstances, we cannot take advantage of his admission that he had inflicted injuries in self-defence on Kehri, Ram Singh and Hira. The truth of the matter seems to be that Badri was beaten the previous evening, i.e. on 10th September 1950, most probably by Kehri, Ram Singh and Hira in connection with some dispute, but not the dispute as stated by Badri. The assault on Kehri, Ram Singh and Hira was carried out in revenge for this beating which Badri had received, by Badri, Bhupal, his partner in cultivation, and the four other persons, namely, Gajju, Sripal, Maharaj Singh and Chhadami, with or without the help of certain other persons. The real motive for the crime in the present case appears to be revenge for the assault on Badri rather than a desire on the part of Bhupal for the withdrawal of the appeal by Kehri.

11. Notice was issued by a learned Judge of this Court for the enhancement of sentence as against all the appellants. The learned Sessions Judge convicted the appellants under Section 304, Para II read with Section 149, I. P. C. His opinion may be quoted in his own words :

"The actual assailants who made use of their lathis in order to inflict the injuries upon the person of Kehri, Ram Singh and Hira were the accused Bhupal, Gajju, Sripal, Maharaj Singh and Chhadami. The remaining nine accused entered the courtyard of that thaar of Kehri armed with lathis along with the aforementioned five accused in prosecution of their common object to kill Kehri and to beat others with him in that Thaar that morning The nature and the number of injuries inflicted warrant the conviction that even though the fourteen accused entered the courtyard of that Thaar with the common object of killing Kehri they did not while the lathi assault was made intend his death or intend causing such bodily injury as was likely to cause his death. At the most it would be possible to declare with confidence that the lathi assault was made by those five accused with the knowledge that it was likely to cause such bodily injury as could very likely result in the death of Kehri. The case would thus be covered by Para II of Section 304 read with Section 149, I. P. C."

12. The learned Sessions Judge's reasoning is curious indeed. After having held that the common object of the assembly was "of killing Kehri", the learned Judge did not hold the accused guilty under Section 302, when death ensued as a result for their action. Where injuries are inflicted with the intention of killing a person and death ensues as a result of the injuries, it is a clear case of murder falling under Clause (1) of Section 300. This proposition is so elementary that we are surprised that the learned Sessions Judge should have made a mistake about it. Even if the common object of the assembly was not to kill Kehri, the case would have fallen under Clause (3) of Section 300, because the injuries actually inflicted showed that they were sufficient in the ordinary course of nature to cause death. It will be noticed that six ribs were broken, the spleen and the kidney were

ruptured and there were injuries on other parts of the body as well. Such injuries are expected in the ordinary course of nature to cause death. A person who causes such severe injuries must be held to have inflicted them intentionally. If the injuries inflicted were intentional and they were of such a nature as would cause death in the ordinary course of nature, the case clearly falls under Clause (3) of Section 300. This was a case which clearly fell under Section 300 and not under Section 304 Para II. Indeed, if the learned Judge thought that the injuries were not such as were sufficient in the ordinary course of nature to cause death, but were merely injuries which were likely to cause death, he should have held the accused guilty at least under Section 304 Para I, which applies to the case of inflicting injuries which are likely to cause death. He did not convict the accused even under Section 304 Para I. As in exercise of the powers of revision we are unable to convert a finding of acquittal into one of conviction, we cannot ourselves convict the accused of an offence either under Section 302 or under Section 304 Para I. We do not think that this is a fit case in which we should order a retrial. We, therefore, propose to impose the maximum penalty provided by law for the offence of which they have been convicted by the learned Sessions Judge.

13. The result, therefore, is that we allow the appeals of Badri, Moti, Munshi, Ram Lal, Gopi, Nathu, Ram Singh, Shaitan and Badshah and acquit them of all offences. They are on.

bail and need not surrender. We dismiss the appeal of Bhupal, Gajju, Sripal, Maharaj Singh and Chhadami and while upholding their conviction under Section 304 Para II read with Section 149, I. P. C. we enhance the sentences of each of them from 5 years to 10 years' R. I. We confirm their convictions and sentences under the other sections.