

Hari Om And Ors. vs State Of U.P. on 8 January, 1993

Equivalent citations: 1993CRILJ1383, 1993(1)CRIMES294(SC), JT1993(2)SC657, 1993(1)SCALE32, 1993SUPP(2)SCC1

Bench: P.B. Sawant, S. Mohan

JUDGMENT

1. Both the appeals and special leave petitions can be dealt with under a common judgment since the appellants/petitioners took trial before the learned VIth Additional District and Sessions Judge, Moradabad with reference to the occurrence that took place on 12.5.1976.

2. They were tried for offences under Sections 302/34, 324/34 and 323/34 I.P.C. The case of the prosecution is shortly as follows.

3. Kumari Bina, daughter of Chunni Lal (P.W. 5) was residing in Mohalla Faizabad, Moradabad. She was a student of Prabha Devi Kanya Inter College, Bans Mandi, Moradabad. Rajiv Kumar Mehrotra, the petitioner No. 1 in SLP (Crl.) Nos. 3081-82 of 1984 used to pass indecent remarks against her and teased her. Bina complained to her father Chuni Lal (P.W. 5) who contacted his cousin Ram Lobhaya alias Khairati (P.W. 2). Both these persons met Ram Narain Lal, Advocate, father of Rajiv Kumar and complained to him about the misconduct of his son. Ram Narain Lal expressed inability to help them and control his son. While Chuni Lal (P.W. 5) was returning home Rajiv Kumar and five or six of his companions met him and threatened him with dire consequences. Chuni Lal (P.W. 5) narrated this incident to his cousin Ram Lobhaya (P.W. 2) who also met Ram Narain Lal but without success. Chuni Lal (P.W. 5) preferred a written complaint to the Circle Officer, City, Moradabad on 10.5.75 about the conduct of Rajiv Kumar. Rajiv Kumar and his companions got infuriated by the conduct of Ram Lobhaya (P.W. 2).

4. On 12.5.76 at about 11 P.M. Rajiv Kumar, Vijay Kana (since deceased) Banke Bijjari and Hari Om alias Matru came to the house of Ram Lobhaya (P.W. 2) and started abusing him in a loud voice. The house of Brij Kishore (deceased) was at a short distance who was aged about 70 years, was resting and his grandson Pramod Kumar, complainant (P.W.1) was studying in Baithak. There was electric light in side as well as outside the Baithak. Addressing the accused Brij Kishore (deceased) said from the Baithak when it was 11 P.M. why the accused were behaving in this manner. On hearing this, 4 appellants came in front of Baithak and began to abuse. Vijay Kana (since deceased), Bankey Bihari and Rajiv Kumar were carrying knives in their hands and Hari Om was carrying a lathi. On hearing the noise Brij Kishore (deceased) and his grandson Pramod Kumar (P.W. 1) came out of Baithak. Vimal Kumar (P.W. 12), Kamal Kumar (P.W. 14), Mahavir Saran and Shanti Devi who were present in the upper storey also came down. Brij Kishore (deceased) was attacked by Vijay Kana (since deceased), Bankey Bihari and Rajiv Kumar with knives. As a result Brij Kishore fell down. Vimal Kumar (P.W. 12), Kamal Kumar (P.W. 14), Shanti Devi and Pramod Kumar (P.W.1) tried to intervene in order to save Brij Kishore. After the assailants wielded their knives and lathi

causing injuries to these interveners they ran away on hearing noise. Some Mohalla people had come. Vimal Kumar (P.W. 12) and Ors. took Brij Kishore (deceased) to the District Hospital, Moradabad but he succumbed to his injuries on the way. Pramod Kumar (P.W. 1) prepared a report and lodged in the Police Station, Mughalpura at 11:35 P.M. By that time he was not aware that his grandfather had died. The injuries on Kamal Kumar (P.W. 14), Shanti Devi, Vimal Kumar (P.W. 12) and Mahavir Saran were examined in the District Hospital, Moradabad at 11.40 P.M. by Dr. D.P. Bahuguna (P.W. 6).

5. The post-mortem was performed by Dr. S.P. Uppal (P.W. 4) of District Hospital, Moradabad.

6. After investigation the charge-sheet was submitted against all the four accused.

7. The defence is one of denial. The case of Rajiv Kumar was that he wanted to marry Kumari Bina. This displeased Chuni Lal (P.W. 5) and his cousin Khairati (P.W. 2). Therefore, they have been falsely implicated in this case. Bankey Bihari took up the stand that his brother-in-law, Vijay Kumar, against whom police had enmity, therefore, he was falsely implicated. The stand of Hari Om was that the police wanted him to be a prosecution witness. Since he declined to oblige the police he had been falsely implicated.

8. Bankey Bihari, Hari Om and Rajiv Kumar stood trial on committal by the Chief Judicial Magistrate, Moradabad while Vijay Kumar was also committed to stand trial. But since he was detained under MISA his case was separated.

9. The learned Chief Judicial Magistrate accepted the case of the prosecution and convicted under Sections 302, 324 and 323 read with Section 34 I.P.C. and sentenced each of the accused to life imprisonment under first count, rigorous imprisonment for two years under the second count and rigorous imprisonment for one year under the third count. These sentences were directed to run concurrently.

10. Aggrieved by the same, appeals were preferred to the High Court. The High Court on going through the evidence confirmed the conviction and sentence and dismissed all the four appeals.

11. Criminal Appeal No. 606 of 1984 has come to be preferred by Hari Om while Rajiv Kumar and Vijay Kumar have preferred SLP (Crl) No. 3081-82 of 1984 and Bankey Bihari has preferred Criminal Appeal No. 452 of 1986.

12. Mr. R.K. Jain, learned Counsel for Hari Om and Rajiv Kumar would urge the following two points for our consideration.

1. Hari Om admittedly was wielding only a lathi. It is clear from the injuries sustained by the deceased that it was only the injuries by the knives which led to his death. There was no occasion at all on his part to use lathi against the deceased.

2. Having regard to the story of the prosecution this is not a case in which there has been a premeditated murder. Section 34 I.P.C. could not be invoked at all because there was common intention on the part of the accused to kill Brij Kishore. He was only a neighbour against whom the accused had no grouse whatever. It was because of the sudden provocation the accused being young lost their balance and inflicted injuries on the deceased to which Hari Om was not a party. Certainly, in such a case, Section 302 I.P.C. will not apply if at all it would be a case falling under either of the parts of Section 304 I.P.C. As regards Rajiv Kumar, at the time of commission of offence he was only 15-1/2 years old. As a matter of fact, in this Court, a certificate has been produced evidencing the actual date of birth. This Court could take note of the same and he being a child within the meaning of U.P. Children Act must be dealt with accordingly.

13. The argument advanced on behalf of Bankey Bihari is that he has come to be falsely implicated because the police had a grouse against Vijay Kumar, he being the brother-in-law of Vijay Kumar. Having regard to the language employed in the F.I.R. Pramod Kumar (P.W. 1) could not have written the same. The name of this appellant had come to be included because the police had prepared the F.I.R. It is impossible to have remembered the name of the appellant when Pramod Kumar (P.W. 1) had heard about him two or three years ago.

14. Reliance is also placed on *Hawa Singh and Ors. v. State of Haryana* (1992 (3) Scale 474) in this regard.

15. We are unable to accept this argument.

16. We have carefully considered the above submissions. We are of the firm view that these contentions are untenable. In this case the deceased had sustained two incised wounds and 4 punctured wounds. All the four punctured wounds were fatal in nature. No doubt, these injuries were caused by the knives on the person of the deceased who was an old man of 70 years and unarmed. On receipt of these injuries he had fallen down. The injuries were caused in furtherance of common intension suddenly formed. When the grand children and other relatives of the deceased came forward to save Brij Kishore even then the accused started wielding the knives and had caused injuries on Vimal Kumar (P.W. 12), Kamal Kumar (P.W. 14) and Shanti Devi. This was because they had suddenly formed the plan to attack the deceased. In order to bring a case under Section 34 I.P.C. it is not necessary that there must be a prior conspiracy or pre-meditation. The common intension can be formed in the course of occurrence. The law is well-settled in this regard.

17. The suddenly formed common intention also extended to causing injuries to Vimal Kumar (P.W. 12), Kamal Kumar (P.W. 14) and Shanti Devi. Therefore, Section 34 I.P.C. will clearly get attracted in the case of those accused who were wielding the knives. It is in this background the case of Hari Om has to be examined. As stated earlier, he had no occasion to wield the lathi against the deceased since on receipt of knife injuries he had fallen down. But what is significant is his subsequent conduct. When the other relations came to the rescue of Brij Kishore he would wield lathi against them but for the common intention, Kamal Kumar (P.W. 14) had sustained one incised wound muscle deep on the left hip lower part and five abrasions on his left fore arm middle and lower region. Shanti Devi had sustained one incised would muscle deep on the right fore arm outer and

lower one third part below the wrist. Vimal Kumar (P.W. 12) also had sustained one incised wound muscle deep on the left forehead above the inner part of left eye brow and four abrasions on different parts of his body. Likewise, Mahabir Saran had sustained injuries. The fact that Mahabir Saran had not been examined as a witness does riot, in any way, affect the prosecution. Therefore, this is a case in which the common intention has been clearly established.

18. As regards Rajiv Kumar, as the High Court had pointed out, no material was placed either during the trial or before the High Court to establish that Rajiv Kumar was a child on the date of the commission of the offence. Therefore, it is too late in the day to produce a certificate before this Court and we reject the same.

19. Turning to Banke Bihari's case three witnesses, Pramod Kumar (P.W.1), Vimal Kumar (P.W. 12) and Kamal Kumar (P.W. 12) speak about his participation in the crime. Pramod Kumar (P.W. 1) would say that Vijay, Bankey and Rajiv started stabbing his grandfather with knives. Vimal Kumar (P.W. 12) states as follows:

All these four accused were abusing to his maternal grandfather and Vijay, Rajeev and Bankey were armed with knives and Hari Om had lathi. The accused armed with knives started stabbing with their weapons to his maternal grand father who fell down after getting the knife injuries. They tried to save him. Then the accused also beat them with knives and thus causing injuries to all the injured, the deponent, Kamal Kumar, Smt. Shanti Devi and Mahabir Saran. When they tried then the accused went towards north and he had seen and identified them with the help of electric bulb lights available on the spot. He knew well all the four accused from before.

20. Kamal Kumar (P.W. 14) testifies to the following effect:

These four accused Bankey, Rajeev, Vijay and Had Om were abusing to his maternal grandfather. Hari Om Das armed with a lathi and other accused were armed with knives. Their maternal grandfather was beaten with knives and they started to save him, then they were also beaten with knives and lathi blows causing injuries to him, Vimal Kumar and Smt. Shanti Devi. His maternal grandfather had fallen down due the knife injuries when they cried then the accused ran away towards the north.

21. To not one of them a suggestion was thrown on behalf of this accused that he was not present and that he is falsely implicated. This vital aspect ought to have been brought out in the cross-examination.

22. The argument that F.I.R. came to be prepared by the police is wrong. There is no necessity for the employment of a particular language in the F.I.R. which after all is the first information about the crime which sets the police in motion. The fact that two years ago Pramod Kumar (P.W. 1) had come to know the name of this appellant is no ground to discard the F.I.R. when he had actually witnessed the entire occurrence. We do not find any relevance of the citation in Hawa Singh's case

(supra) in these circumstances. Thus we reject these contentions.

23. As far as Vijay Kumar in SLP (Crls. 3081-82/84) is concerned he died pending the special leave petitions.

24. In the result, these appeals and special leave petitions will stand dismissed.