

Supreme Court of India

Babu Lal And Others vs State Of Madhya Pradesh on 20 January, 1993

Equivalent citations: AIR 1993 SC 1941, 1993 CriLJ 2667

Bench: K J Reddy, N Singh

JUDGMENT

1. This appeal arises under the provisions of the Supreme Court Enlargement of Criminal Jurisdiction Act. There are three appellants. They were tried for offence punishable under Section 302 read with Section 34, I.P.C. The State preferred an appeal against the order of acquittal and the High Court interfered and convicted all the three under Section 302 read with Section 34, I.P.C. and sentenced each of them to undergo imprisonment for life. The prosecution case is as follows:

The deceased, Nathu Singh, the three accused, who are brothers, and the material witnesses P.Ws. 2, 3 and 5 belong to the Village Jambari, Indore District. P.W. 2 and P. W. 5 are the sons of Ganabai P.W. 3, who is the daughter-in-law of the deceased. The deceased gave a loan of Rs. 1,700/- to one Babu Brahmin who in turn had mortgaged the disputed land. Babu had agreed to sell his land but there was some dispute in respect of the land. On the date of occurrence, namely, 30th October, 1978, at about 12.00 noon, the accused Babu Lal had got the grass of the disputed land cut and was taking it in his bullockcart. The deceased came and told him that unless some body arrives from the Police Station, he cannot take away the grass. Accused Babu Lal thereafter left and in the meantime the deceased, Nathu Singh, sent his son Jagdish (P.W. 5) to the Police Station to call some Police Officers. In the meanwhile the accused Babu Lal came with other two accused. Babu Lal (A-1) was armed with an axe, Ganesh (A-3) was armed with a Dhariya and Behru (A-2) was armed with Ballam. These accused persons started abusing him and said that they will take away the grass and kill him. Thereupon, Babu Lal (A-1) delivered an axe blow on the left leg of the deceased, causing an injury which started bleeding. He gave another a blow on his right leg and accused Behru gave a ballam blow on his left hand and accused Ganesh gave a Dhariya blow on his right hand. The accused Babu Lal gave a blow with blunt portion of the axe on the head. Thereafter the accused went away. P.Ws. 2 and 3, who witnessed the occurrence, took injured to the Police Station and the deceased himself lodged the report at 2.45 p.m. which is registered under Sections 324, 325, I.P.C., etc. P.W. 2 gave another separate statement that he was also beaten on the way. The injured, Nathu Singh, was examined by the Doctor. He found a contused lacerated wound on the left leg, another contused lacerated wound on the left palm and also on the right palm. There were some other injuries on the accused and they were also examined by the Doctor. The injured, Nathu Singh, was admitted in the Hospital and he died on 6th November, 1978. The Doctor, who conducted post-mortem, noticed the fracture of the right parietal region and on internal examination he found that there was a dark black haematoma over right parietal region. He also found the linear fracture of the parietal bone. He noticed other injuries on the left leg, right thumb and another injury on the left leg. He also found a fracture of distal end of fifth metacarpal bone. He opined that the deceased died of coma due to the head injury, which resulted in the fracture of the skull bones. The accused were arrested and after completion of the investigation, the charge-sheet was laid. The prosecution mainly relied on the evidence of P.Ws. 2 and 3, who figured as eye-witnesses. The trial Judge held that these eye-witnesses were present at the scene of occurrence, but rejected their evidence on the ground that their evidence is not corroborated by the medical evidence. The trial Judge examined

their evidence in the light of the medical evidence and held that the injuries found are not in conformity with the overt acts attributed to the respective accused. In coming to this conclusion, the learned trial Judge examined the evidence of the two Doctors and since they did not notice incised wound and also the head injury the trial Judge acquitted two of the accused on that ground and acquitted Behru Singh (A-2) on the ground that he had a right of private defence of property.

2-3. In the appeal, the High Court also held that these eye-witnesses were present and to that extent confirmed the finding of the trial Court. The High Court, however, disagreed with the trial Judge that the medical evidence was in conflict with the direct testimony and also held that the right of private defence had been wrongly given to A-2.

4. In this appeal the learned Counsel for the appellants submits that it is established that the death was due to the head injury which was not noticed by any of the two Doctors, who examined the deceased, and that it is possible that the deceased might have received a head injury some time later, therefore the case under Section 302/34, I.P.C., is not made out. His further submission is that according to the eye-witnesses a sharp-edged weapon was used and no incised wound was found on the deceased and, therefore, there is conflict between the medical evidence and the testimony of the eye-witnesses. We have examined the medical evidence. No doubt the first Doctor described that two injuries as contused lacerated wounds on the leg and the palm. The other Doctor, who examined the injured deceased when he was alive, noticed the punctured wound. Therefore, it may not be correct to say that no injury, which could have been caused by a sharp-edged weapon, was found. Now coming to the head injury, which resulted in death, all the eye-witnesses have stated that Babu Lal (A-1) gave a blow with the blunt portion of axe on the head, which caused only a depression. It is quite possible that first two Doctors, who examined the deceased, did not notice this depression. Only after X-ray examination was taken, the head injury was found and after death during the post-mortem examination, the Doctor clearly found that there was a fracture of the parietal bone and there was haematoma. Therefore, it cannot be said that there is any conflict between the direct evidence and the medical evidence. It must be noticed at this stage that both the Courts have held that both eye-witnesses were present and in the light of the above discussion, then-evidence cannot be rejected on the ground that there was a conflict, which, according to us, has no basis.

5. Now coming to the nature of the offence, according to the eye-witnesses the three accused came together armed with sharp-edged weapons and inflicted injuries which resulted in the fracture of the skull bones. The fracture of the tibia, fracture of the metacarpal bone and some other injuries were also caused. However, if their intention was to cause death, they should have inflicted some more injuries on any vital part of the body but they have given one blow only with the blunt side of the axe and the deceased died only six days later. Therefore, in these circumstances, it cannot be said that they had a common intention for causing the death. But they must be attributed that by inflicting such injuries they were likely to cause the death of the deceased, in which case the offence will amount only to culpable homicide and not murder.

6. In the result, the conviction of the appellants under Sections 302/34, I.P.C., and sentence of imprisonment for life awarded by the High Court are set aside. Instead all three of them are convicted under Sections 304, Part II/34, I.P.C., and each of them is sentenced to five years'

imprisonment.

7. The appeal is allowed partly.