

PETITIONER:
JAI SINGH @ BANDU AND ANOTHER

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 24/04/1996

BENCH:
HANSARIA B.L. (J)
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HANSARIA B.L. (J)
RAY, G.N. (J)

CITATION:
JT 1996 (4) 728 1996 SCALE (3)786

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

HANSARIA.J.

Two Mahalle brothers - Narendra and Ramesh - Were done to death on the night intervening 4th 5th September, 1978. Five persons were booked for trial for the murder which included two Rathod brothers - Jai Singh and Raj Singh. Of the three remaining accused, and Raj Singh. Of the Rathod brothers and two-Ghanshyam and Sudhakar -are said to belong to the of Rathod brothers.

2. To start with, the relationship between the Mahalle brothers and Rathod brothers was quite thick. They used to take keen interest in the local panchayat politics. They, however, fell out when the election for Shegaon village took place in the month of May, 1978. Gadgenagar, in which the two deceased resided, was a part of village Shegaon. Both the groups wanted their own candidate to become Sarpanch. Bhaskar Kale was the candidate of the Rathod brothers, while Mahalle brothers desired their relative Dilip to become Sarpanch. It is Bhaskar, however, who got elected. The relationship got strained thereafter and political jealousy are. Nothing untoward occurred till Pola of 1978; but after Pola occurred on 2.9.1978, Bhaskar was severally beaten on the afternoon of 3rd September at Amravati. He had to be hospitalized. Accused Raj Singh @ Raju suspected that Narendra had some hand in the incident. Thereafter, the present occurrence occurred past midnight of 3rd September itself, when, it is alleged, that the aforesaid five persons murdered the two Mahalle brothers. The trial saw the conviction of the five accused under section 302/149; in the alternative 302/34. The accused were also convicted under sections 147 and 148.

3. The five convicts preferred four different appeals. The State also appealed as the trial court had awarded sentence of life imprisonment for the principal offence of murder. According to the State, Stake, death penalty was the proper sentence. The High Court by the impugned judgment dismissed

all five appeals.

4. During the pendency appeal before the High Court, accused No.3, Devi Das had died. During the pendency of these appeals, accused No.5 Sudhakar, has died. We are thus required to find out whether accused Nos.1, 2 and 4, namely Jai Singh & Bandu, Raj Singh @ Raju Ghanshyam have been legally convicted under the aforesaid sections.

5 Being seized with judgment of affirmance, we are really called upon to decide whether the conviction is against the weight of materials on record or suffers from any legal infirmity. As to the latter, submission advanced is that the courts below erred in law in awarding alternative convictions with aid of section alternative conviction with the aid of section 34 as 149 of the Penal Code. The submission must be taken to have been squarely answered against the appellants because of what has been stated by a Constitution Bench in Willie (William) Slaney vs. State of Madhya Pradesh, AIR 1956 SC 116. In That case, this Court spelt out the scope of two sections and, what is important for our purpose, the fact of absence of charge under these sections. There the charge was under section 302/34, but the only co-accused having been acquitted, the conviction of the left out accused, who was the appellant, was challenged on the ground that the element of common intention having got dropped out, the conviction of the appellant was not sustainable. In the two concurring judgments it was pointed out that the omission to frame a frame a charge or the departure from the charge cannot cannot invalidate conviction unless prejudice has been caused. We would say the same about the about the alternative conviction in the present case. We, therefore, find no legal infirmity in the conviction as awarded.

6. Insofar as the factual aspects are concerned, there is much to deal with insofar as Bandu and Raju are concerned. They have been named as assailants, and categorically, by the two deceased, who are examined as PWs.2 and 3. The medical findings amply corroborate their evidence. Recovery of some articles having human blood in them lend further Assurance as regards their guilt. The fact that accused Bandu was a resident of Badnera of Amravati, which is at a considerable distance from Gadgenagar, which fact is brought to our notice to throw doubt on his involvement, is not material because Gadgenagar is also a part of Amravati. So too the fact that the group of the blood found on the dhoti of Raju could not be determined, cannot be taken to be an exculpatory circumstance, as has been urged by Shri Sushil Kumar appearing for him, because though the blood group in the dhoti could not be determined, the motorcycle which was found at the spot and which admittedly belonged to Raju had blood stains on it. This clearly shows that Raju had come to place of occurrence on his motorcycle along with others the facts as found, therefore, clearly establish his involvement in the crime. His name is the FIR lodged within an hour of the occurrence leaves nothing to doubt regarding his involvement.

7. The main contention of Shri Sushil Kumar and Shri Mittal is really related to the conviction of appellant Ghanshyam. In this connection, it has been first submitted that in the FIR accused persons were stated to be resident of Gadgenagar, whereas Ghanshyam lived in Moraba, which is about 2-3 kms. away from Gadgenagar. It is also urged that he was not in village politics and as such and no motive to take the lives of the two Mahalle brothers. The further submission is the FIR his surname had not been given, as that document speaks only of Ghanshyam and there

is material on record to show that many Ghanshyams resided in Gadgenagar. The finale is that the courts below had disbelieved his participation in the Crime. We are, therefore, urged to accept the plea of alibi as advanced by him; more so, as he had no injury on his person and no blood stains were found on the cloths seized from him.

8. The FIR having been lodged close on the heels of the murder of two adult male members, it cannot be reasonably expected that the widows would have mentioned the places of residence of each accused separately. So, we do not find reason to disbelieve the eye-witnesses about the presence of Ghanshyam at the spot merely because it happened to be stated in the FIR that all the culprits were residents of Gadgenagar. It has to be remembered that Moraba is also a locality of Amravati, as is Gadgenagar. It deserves to be pointed out that appellant Ghanshyam had come to be arrested at about 4 am. of 4th September itself which clearly shows that it was he who had been involved in the crime. the non-mention of surname of ghanshyam in the FIR has no importance, in view of what has been stated above and also because in the dying declaration about which PW.2 Chandraprappa deposed, her husband Narendra had stated about "Ghanshyam Agrawal" being one of the assailants when Rithe, a neighbour, had asked Narendra as to who had caused the injuries. the surname of appellant Ghanshyam is Agrawal.

9. The fact that appellant Ghanshyam was not directly involved in politics cannot throw doubt about his sharing of common intention with Bandu and Raju inasmuch as he belonged to the group of these accused. The fact that Ghanshyam had no injuries on his persons or that his clothes did not contain blood stains would cause no dent to the eyewitness account given by PWs.2 and 3. So also the fact that the allegation against him that he had hit one of the deceased with stone was not accepted is not material, inasmuch as the evidence also is that he had given kicks which would be born out by the medical findings inasmuch as on the body of Narendra apart from incised and penetrating lacerated wound, there were abrasions as well.

10. We are, therefore, not persuaded to hold that Ghanshyam was not present at the scene of occurrence and he had not shared the common intention with others in committing the crime.

11. So, no case for our interference with there conviction of the three appellants has been made out; and the sentence being imprisonment for life for the crime of committing the of two brothers. the appeals have to be dismissed which we hereby do.