

AKLOO AHIR
v.
STATE OF BIHAR
(Criminal Appeal No. 836 of 2009)

MARCH 11, 2010*

[Harjit Singh Bedi and C.K. Prasad, JJ.]
2010 (4) SCR 604

The following Order of the Court was delivered

O R D E R

This appeal by way of special leave arises out of the following facts:

At about 5.00 p.m. on 10th January 1981 Kishore Bhagat had returned home along with his father after feeding their cattle. As they were entering the door of the house Garju Ahir one of the accused (since deceased) emerged from the North side and asked Kishore Bhagat to return his fodder machine. Kishore Bhagat, however, refused to do so on which Garju fired a shot at him which did not hit its target. Appellant Akaloo Ahir, thereafter, came from the same direction and fired another shot at Kishore Bhagat which too missed its target. Following this attack, Suresh Singh and Brij Mohan Ahir too came there and Suresh Singh handed over a cartridge to his companion who fired a shot with his gun which hit Kishore Bhagat on his chest and stomach killing him at the spot. Several other accused armed with traditional weapons, thereafter, attacked Kishore Bhagat and caused several injuries to him as well and having done so the accused ran away from the spot leaving the dead body at the place where it had fallen.

On the completion of the investigation the accused Brij Mohan Ahir was charged for the offence under Sec.302 of the IPC whereas the others were charged under Sec.302/34 of the IPC. Garju Ahir and Akaloo Ahir, the present appellants, were charged under Section 307/34 of the IPC and under

Sec.27 of the Arms Act as well. The Court of Sessions in the course of its judgment held that the prosecution story had been proved beyond doubt and that all the accused other than Garju Ahir (who had died during trial) were liable to conviction and sentence for the offences under which they have been charged. The matter was, thereafter, taken in appeal to the High Court and the High Court partly reversed the judgment of the trial Court holding that as the accused who had been armed with traditional weapons had not caused any injuries in the light of the statement of the Doctor, they were entitled to acquittal. The appeal filed by Suresh Singh, Brij Mohan Ahir and Akaloo Ahir was, however, dismissed. The present appeal has been filed in this Court only at the instance of Akaloo Ahir.

Mr. P.S. Mishra, the learned senior counsel has raised only one argument during the course of hearing. He has pointed out that from the facts it had emerged that the appellant could not have been roped in with the aid of Sec.34 of the IPC for the offence of murder as there was no evidence to suggest any common intention along with the two co-accused who had committed the murder. He has pointed out that there were four sets of accused, the first being Garju Ahir, since deceased, the second Akaloo Ahir, the appellant herein, the third Suresh and Brij Mohan Ahir and finally the others six accused who had been acquitted by the High Court. He has further submitted that even assuming that the appellant was guilty of having fired a shot at Kishore Bhagat which had missed the target, the sentence of R.I. of ten years imposed under Sec.307/34 should be reduced.

The learned State counsel, Mr. Ritesh Chaudhary, has, however, submitted that the facts revealed that the accused had all come together pursuant to their common intention to kill Kishore Bhagat and his father and to settle once for all the animosity between them. He has accordingly submitted that the judgment of the High Court needed to be affirmed.

The facts as are relevant have been given above. We find absolutely no suggestion whatsoever in the prosecution evidence of pre-concert or proof of a prior meeting of minds between the appellant herein and his co-accused. There is admittedly evidence to show that there was animosity between some of the accused and the complainant party but in the light of the fact that the accused against whom the animosity had been suggested have been acquitted, this fact does not in any way come into play against the present appellant.

It has also to be noticed that the accused were all living in close proximity to each other and could have been attracted to the spot on account of the noise that had been raised on account of the first attack by Garju Ahir. It has come in evidence that both parties were residents of Pokhra Tola which consisted only of 25 houses, all bunched up together. The possibility therefore that they had been attracted to the place of incident on account of noise and had not come together with a pre-planned objective to commit murder cannot be ruled out. It has been suggested by Mr. Chaudhary that Akaloo Ahir and Brij Mohan Ahir had come out from the same heap of straw which showed a pre-planned attack and a prior meeting of minds.

We, however, see from the evidence of PW.5 Rama Shankar Yadav an eye witness, that there were two different heaps of straw near the place and the two accused had come out from behind different heaps. In any way there is no evidence to suggest that there was any prior meeting of minds. We are, therefore, of the opinion that the conviction of the appellant under Sec. 302/34 of the IPC is not called for. In the light of the fact that the appellant had fired a shot which missed its target his conviction under Sec. 307 has, therefore, to be maintained. The sentence is, however, reduced from ten years to five years.

With this modification the appeal is dismissed.