

CASE NO.:
Appeal (crl.) 10 of 1994

PETITIONER:
UDAY SINGH

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 04/09/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI.

JUDGMENT:

RAJENDRA BABU, J. :

This appeal arises out of the order made by the Allahabad High Court affirming the conviction of Uday Singh, the appellant and another, Gainda Singh, who has since deceased, under Section 302 read with Section 34 IPC and sentencing them to imprisonment for life.

The prosecution set out its case as follows : that Gainda Singh and the appellant are brothers and both of them are cousins of Shishupal Singh, who died in a fight between Gainda Singh and the appellant on the one hand and Shishupal Singh and others on the other; that the cause of the fight is that while Kanhai Singh, Shishupal Singh and Satyapal Singh started digging on 29.1.1977 at 9 A.M. for laying foundation in the portion that had fallen to their share in a partition of the Chaupal that had taken place before the village panchayat on 23.1.1977, the appellant along with Gainda Singh obstructed the digging; after that there was heated exchange of words, which led to fist fight; it is stated that Babu Singh, one of the accused, slapped Shishupal Singh and Gainda Singh threw a brick towards Kanhai Singh, which hit him. Shishupal Singh and Satyapal Singh came forward to save Kanhai Singh. The appellant hit the end of the lathi at Shishupal Singh who thereupon fell down; that taking advantage of the same Gainda Singh and the appellant caught hold of the neck of Shishupal Singh and pressed and soon thereafter Shishupal Singh died.

A post-mortem examination of the dead body of Shishupal Singh was conducted by Dr. J.K.Agarwal [PW 6] who found two injuries. PW 6 noticed one contusion with swelling of 2" x 2" on the front of the neck middle part. On opening, the subcutaneous tissues were found ruptured and extravasation of blood was present. There was also fracture on hyoid bone. The other injury to the testicles was simple in nature. In the opinion of the doctor [PW6], the death occurred on account of asphyxia as a result of strangulation.

The Trial Court, on examination of the evidence on record, concluded as follows:

"The evidence, however, does not establish any guilt of murder against Smt. Rumali and Sri Babu Singh. The evidence on record shows that all the four accused came with the intention of obstructing Kanshi Singh and his sons from digging the foundation. It has been held above that Sri Kanshi Singh and his sons were trespassing over the joint land and

causing disturbance in the title and interest of the accused. The accused had a right to ask Kanshi Singh and his sons for desisting from this act. There is nothing to show that there was any common intention of committing murder. At the outset they simply forbade Kanshi Singh and his sons and there must have been some exchange of abuses. As admitted by Shanker Singh some persons threw brick bats on behalf of Kanhai Singh and others. Sri Babu Singh simply slapped Shishupal and caused no other injury. Sri Kanhai Singh had himself stated that neither he nor any body else had the slightest apprehension that any of the accused will strangle Shishupal. Shanker Singh also stated that they kept silent because there was nothing to show that any grievous injury will be caused by the accused. There is no evidence that any body stated or asked co-accused to cause injury to any body. Thus there is no evidence of any common intention. Even when Uday Singh and Gaiinda Singh attacked Shishupal there was nothing to show that they want to cause grievous injury. Others who joined them, may be presumed to have developed a common intention of committing hurt to Shishupal or Kanhai Singh but they cannot be attributed a common intention of causing death. Neither Sube Singh nor Smt. Rumali did say or do anything which may show that they had any intention or shared any common intention other than the intention of causing injury and in any way obstructing Kanhai Singh from digging the foundation. They cannot, therefore, be held liable for the offence of murder though they will be deemed liable of having caused hurt to Shishupal and Kanhai Singh."

After having concluded in the manner as aforesaid, the Trial Court held them guilty under Section 302 read with Section 34 IPC. The High Court, on appeal after re-appraisal of evidence, observed the presence of contusion around the neck of the deceased, Shishupal Singh is enough indication of use of force by hand and considering the nature of injury and the pressure put by the appellant and Gaiinda Singh was so severe that internal bleeding had also taken place inasmuch as the hyoid bone had been fractured and thus the intention of the appellant and Gaiinda Singh to cause the death of Shishupal Singh was proved beyond all reasonable doubt. The High Court concluded that the appellant and Gaiinda Singh had been rightly convicted under Section 302 read with Section 34 IPC.

From the findings recorded by the Trial Court as well as the High Court, it is clear that fight between two parties started all of a sudden as a result of obstruction caused for digging of the foundation and there is no evidence to show that the accused attacked the deceased with deadly or dangerous arms [or weapons]. It was only in a fight, hand to fist, that both Gaiinda Singh and the appellant have held the neck of the deceased, Shishupal Singh with such force as to ultimately result in strangulation and his death. It is very difficult to conceive as to how much pressure was applied either by Gaiinda Singh or the appellant on the deceased's neck so as to cause death. It would be reasonable to hold that the injuries were caused by the appellant on the deceased in a sudden fight where no arms [or weapons] were used and that fight took place in a heat of passion and no common intention to kill the deceased could be inferred. We cannot definitely conclude who actually inflicted fatal injury as evidence on record discloses that Gaiinda Singh and the appellant both strangled the deceased, which action is part of sudden unarmed fight nor can we conclude that the appellant had an intention to cause death or cause such bodily injury as is likely to cause death, though we attribute to him knowledge that such act is likely to cause death. Thus the appellant and Gaiinda Singh are guilty of culpable homicide not amounting to murder.

In the circumstances, we set aside the conviction recorded by the Trial Court as affirmed by the High Court under Section 302 read with Section 34 and instead convict him under Section 304, Part II and reduce the sentence to imprisonment for a period of seven years. The bail granted earlier shall stand cancelled and the appellant shall surrender before the Trial Court and be committed to prison to serve out the remaining part of the sentence

The criminal appeal is partly allowed in terms stated above.

JUDIS