

A

IMTIAZ AND ANR.
v
STATE OF UTTAR PRADESH

FEBRUARY 15, 2007

B

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

C

Penal Code, 1860—Sections 302, 324, 148 and 149—Dispute between parties—Murder of one and grievous injury to other—Conviction under—Justification of—Applicability of s. 34—Held: Act of accused pre-meditated and not sudden—Accused failed to discharge the burden that incident was sudden and there was sudden provocation by the other side—Thus, s. 300 exceptions 1 and 4 not attracted—Twelve accused came armed with weapons and surrounded the deceased and the injured person—They did not inflict injury to the deceased but in fact attacked the injured—Thus, s. 34 applicable.

D

According to the prosecution case, there was dispute between complainant, his brothers and the appellants. On the fateful day, appellants armed with spears and lathies having common object reached there and forbade complainant and his brothers from cleaning their drain and when they did not stop, appellant Q inflicted spear blow on AQ-complainant's brother and appellant B and I inflicted spear blow on M-complainant's other brother. The remaining accused surrounded complainant and his brother swinging their lathies and exhorted their companions. Both the brothers sustained spear blows and AQ succumbed to his injuries Appellants were convicted and sentenced under sections 148, 302/149 and 324/149 IPC. High Court upheld the order. Hence the present appeals.

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Dismissing the appeals, the Court

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HELD: 1.1. The occurrence clearly shows that the act of the accused was premeditated, and not sudden. The holding of deadly weapons such as spears and lathies and their conduct both show that the appellants reached there with a definite intention. For claiming any exception, the burden heavily lies upon the accused. Appellants failed to discharge this burden. Therefore, the incident was not sudden and does not fall within exception 4 of section 300 IPC. [Para 19] [704-A, B]

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1.2. For taking the benefit of the sudden provocation under exception 1 of Section 300 IPC, it was incumbent upon the appellants to prove beyond doubt that the complainant or his brothers abused or used any other provocative words which were sufficient to provoke a reasonable person in ordinary circumstances. Appellants failed on this count also to prove that the complainant or his companions abused them or used provocative words. Therefore, the case does not fall under exception 1 of section 300 IPC. [Para 20] [704-B, C]

2.1. Common intention may develop on the spot among a number of persons and hence pre-concert in the sense of distinct previous plan is not necessary to attract section 34 IPC. Also, it is not necessary to adduce direct evidence of common intention. The intention may be inferred from the surrounding circumstances and the conduct of the parties. [Paras 26 and 27] [705-B, C]

2.2. From the facts of the case it is clear that all the accused came armed with spears and lathies. All the twelve accused surrounded deceased AQ as well as the injured person M. They attacked the deceased and the injured who sustained spear blows and AQ succumbed to his injury. Appellants who were armed with spears had inflicted a spear wound on M in his ilium. No doubt the appellants had not inflicted the injury on the deceased but they had come along with others armed with spears and lathies, and they, in fact, did attack the injured. Hence, section 34 IPC clearly applies to the instant case. [Paras 21, 22, 24, 25 and 28] [704-D, E, F; 705-A, B, D]

State of U.P. v. Iftikhar Khan & Ors., [1973] 1 SCC 512, referred to

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 211 of 2007.

From the Judgment and Order dated 4.8.2006 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1099/1981.

R.K. Dash, T.V. George for the Appellants.

Dr. R.G. Padia, D.K. Goswami, Sanjay Kumar Singh and Anuvrat Sharma for the Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. Leave granted.

A 2. This appeal has been filed against the impugned judgment of the Allahabad High Court dated 4.8.2006 in Criminal Appeal No.1099 of 1981.

3. Heard learned counsels for the parties and perused the record. By that decision the High Court has upheld the conviction of the appellant under B Sections 148, 302/149 and 324/149 IPC and sentences them to life imprisonment apart from other sentences.

4. The prosecution version, as disclosed by P.W.2 Ali Raja in the F.I.R. lodged at 9.25 a.m. on 19.12.1979 at P.S. Raunapur Azamgarh was that there was a dispute between him and the accused (appellants) regarding the flow of the drainage of his latrine which was disrupted by the accused appellants by making constructions and by raising the level of their land; that a civil case filed by him was pending in Court; that on 19.12.1979 at about half past 7 a.m. he (Ali Raza) and his brothers Abdul Qayum (deceased) and Mustakin (P.W.3) were cleaning the Nabdan (the filthy water of their latrine); that the accused appellants Qamaru-Zama, Maqbool, and Imtiaz armed with spears and the accused appellants Samkadar, Hasnain, Munsafi, Gyasuddin, Sharif, Ramjan, Ayob, Yusuf and Anwar armed with lathies, having common object, reached there and forbade him and his brothers from cleaning their Nabdan; that the witnesses Haju Usman, Daud and Salauddin also reached there; that he and his brothers did not stop the said cleaning work whereupon accused appellant E Qamaru-Zama, with intention to commit murder, inflicted a spear blow on Abdul Qayum (deceased) and accused appellants Maqbool and Imtiaz inflicted spear blows on P.W.3 Mustakin (injured); that remaining accused surrounded him and his brothers, by swinging heir lathies and exhorting their companions; that Abdul Qayum and Mustakin sustaining spears blows, fell on the ground and Abdul Qayum succumbed to his injury; that many villagers had assembled there; that accused appellants fled away towards their houses. F

5. The investigating Officer Sri Onkar Singh (P.W.8) reached the spot, prepared the necessary documents and sent the dead body for postmortem. The injured Mustakin was sent for his medical examination.

G 6. P.W.6 Dr. G.M. Lal conducted autopsy of Abdul Qayum on 20.12.1979 at 3.30 p.m. and found a single ante mortem injury on his corpse. The injury is reproduced below:

H 1. Punctured wound ^{1/2} c.m. x cavity deep on the left side chest, 3" above the left nipple, margin sharp irregular.

7. The Doctor found duration of death as one and a half-day. It tallies with the time of the occurrence. In his opinion, the death occurred due to shock and hemorrhage as a result of an ante-mortem injury. A

8. The injured Mustakin P.W.3 was medically examined by P.W.6 Dr. G.M. Lal on 19.12.1979 at 2 p.m. The following injuries were found on his person:- B

1. Lacerated wound 1.5 cm x $1/2$ cm., on the left side head, 8 cm. above the lobe of left ear.
2. Dislocation of right shoulder joint with traumatic swelling 7 cm. x 4 cm. With deformity. Advised X-ray of right shoulder. C
3. Punctured wound 1 cm. x $1/2$ cm. x 1 cm. deep on the left ilium.
4. Traumatic swelling 3 cm. x 2 cm. on the left thigh. Advised X-ray.

9. Injuries No.2 and 4 were kept under observation and X-ray of these injuries was advised. Injuries No.1 and 3 were found simple. In the Doctor's opinion, injury no.2 was greivous as there was dislocation of the shoulder. Injury no.3 was caused by a sharp pointed weapon and the remaining injuries were caused by a blunt object. D

10. After recording the statements of the witnesses and after the usual investigation, P.W.8 Omkar Singh (I.O.) submitted the charge sheet Ext. Ka. 18 against all the accused persons for offences under section 147, 148, 149, 325, 324 and 302 IPC. E

11. The case was committed to the Court of Sessions, the charges were framed against the accused appellants and thereafter eight prosecution witnesses and one Court witness were examined. F

12. The Trial Court after considering the evidence on record convicted the appellants under Section 302 and other provisions of the Indian Penal Code.

13. The appellants filed an appeal before the High Court which has been dismissed and hence this appeal. G

14. P.W.2 Ali Raza (complainant) deposed on 24.11.1980 that about 11 months ago at about half past 7 a.m. he and his brothers Mustakin and Abdul Qayum were clearing their Nabdan situated near the boundary wall of H

A Samkadar; that the deceased Abdul Qayum was digging a pit whereas he and Mustakin were extracting the soil; that meanwhile accused Qamru Zama, Maqbool, Imtiaz, Sakadar, Hasnain, Munsafi, Mohammed Yusuf, Gayasuddin, Sharif, Ramjan, Ayoob and Anwar reached there; that accused Qamru Zama, Maqbool and Imtiaz were armed with spears and the rest were armed with lathies; that the accused persons forbade him and his brothers from cleaning the Nabdan but he and his brothers declined to their objections; that the witnesses Usman, Daud and Salauddin also reached there; that the accused persons said "MAR DALO SALO KO VA HADDI PASLI TOD DO" whereupon the accused Qamru Zama inflicted a spear blow on Qayum who sustaining spear injury fell down; that accused Maqbool and Imtiaz with their spears attacked Mustakin who sustaining injury also fell down; that he (Ali Raja) succeeded in escaping; that the accused persons had inflicted a lathi blow also upon Mustakin; that Abdul Qayum had died at the spot; that the occurrence was witnessed by Usman, Daud, Salauddin, and Yusuf and also by the accused's relatives Isimdar, Kalwa Hussain, Aihsan and Sadar Uddin; that after committing the occurrence the accused persons left by the western side.

15. PW.3 Mustakin (injured) deposed on 25.11.1980 that the occurrence took place one hour after sun-rise about 11 months back; that he and his brother Ali Raza were cleaning their Nabdan and his another brother Abdul Qayum was digging a pit; that the twelve accused persons (Qamru Zama, Maqbool, Imtiaz, Munsafi, Gayasuddin, Mohd. Yusuf, Hasnain, Sharif, Ramjan, Samkadar, Ayoob and Anwar) after forming an assembly, reached there; that the accused Qamaru Zama, Maqbool and Imtiaz were armed with spears whereas the other nine accused persons were armed with lathies; that the accused persons asked him and his brothers not to clean the Nabdan; that the witnesses Usman, Salauddin and Daud also reached there; that he and his brothers did not stop the work even after the objection of the accused persons whereupon they exhorted "SALO KO JAN SE MAR DO", that accused Qamaru Zama inflicted a spear injury on the left side of the Qayum's chest; that he (Mustakin) attempted to flee away but the accused persons encircled him; that accused Maqbool and Imtiaz inflicted spear blow on him; that the remaining accused persons who were holding lathies kept him encircled; that any one of them had inflicted a lathi blow from his back side; that his brother Ali Raza, getting an opportunity, run away from the place of the occurrence; that Qayum had died on the spot; that he (witness) also fell down and became unconscious and later found himself on a cot in front of his door. The witness explained that spear given by accused Maqbool caused wound in his thigh

and spear wielded by accused Imtiaz could not cause the injury by its pointed side, as he bent down. A

16. PW.4 Salauddin deposed that the occurrence took place one hour after sun-rise; that he was at his tube-well which was hardly 100 yards away from the place of occurrence; that upon hearing a hue and cry he reached the spot and saw that all the accused were forbidding the complainant and his brothers Mustakin and Abdul Qayum from cleaning the Nabdan but they did not pay heed to their objection; that the accused Qamaru Zama, Maqbool and Imtiaz were armed with spears whereas the remaining accused were armed with lathies; that Qamaru Zama inflicted spear blow on Abdul Qayum who sustaining the spear injury fell down; that Ali Raza succeeded in fleeing away but Mustakin could not make good his escape; that accused Maqbool and Imtiaz inflicted a spear blow upon Mustakin. B C

17. P.W.5 deposed on 26.11.1980 that the occurrence took place about 11 months back about one hour after sun-rise; that he was going towards his field from his house; that he saw that a hot altercation was going on between the accused persons and Ali Raza, Mustakin and Abdul Qayum; that Abdul Qayum was digging a pit whereas Ali Raza and Mustakin were cleaning the Nabdan; that the complainant and his brothers did not stop working even after the objection raised by the accused persons; that accused Qamaru Zama attacked Abdul Qayum by inflicting a spear blow upon him; that sustaining the spear wound, Abdul Qayum fell down and died; that accused Maqbool and Imtiaz inflicted spear blows upon Mustakin; that the remaining accused persons had surrounded Mustakin and were exhorting that he should not escape; that getting an opportunity Ali Raza escaped and fled away; that Mustakin sustained a lathi blow also; that thereafter all the accused persons ran away. D E F

18. A perusal of the evidence shows that the three accused who have been convicted were armed with spears while the other nine accused were with lathies.

19. On the date and time of occurrence, the complainant Ali Raza and his brother deceased Abdul Qayum and injured Mustakin were cleaning their Nabdan and digging a pit. Qamaru Zama armed with a spear (deadly weapon) along with the appellants who were also armed with spears (and 9 others armed with lathis), reached their and forbade them from cleaning the Nabdan. The complainant and his brothers did not stop the cleaning work of Nabdan. Then appellant Qamaru Zama inflicted the spear blow upon Abdul Qayum and G H

A the appellants Imtiaz and Maqbool inflicted spear blows on Mustakin. The aforesaid occurrence clearly shows that the act of the accused was premeditated, and not sudden. The holding of deadly weapons such as spears and their conduct both show that the appellants reached there with a definite intention. For claiming any exception, the burden heavily lies upon the accused. The appellants failed to discharge this burden. The incident, therefore, was not sudden and does not fall within Exception 4 of Section 300 IPC.

20. For taking the benefit of the sudden provocation under exception 1 of Section 300 IPC, it was incumbent upon the appellants to prove beyond doubt that the complainant or his brothers abused or used any other provocative words which were sufficient to provoke a reasonable person in ordinary circumstances. The appellants failed on this count also to prove that the complainant or his companions abused them or used provocative words as afore-mentioned. We, therefore, hold that the case does not fall under exception 1 of Section 300 IPC.

21. Learned counsel for the appellants submitted that since the appellants had not attacked the deceased Abdul Qayum, they could only be convicted under Section 324 IPC and not under Section 302. We do not agree. In our opinion Section 34 IPC clearly applies to the facts of the case as held by the High Court.

22. There is no doubt that all the accused came armed with spears and lathies. It has also come in evidence that all the twelve accused surrounded deceased Abdul Qayum as well as the injured person Mustakin (PW3). The appellants who were armed with spears had inflicted a spear wound on Mustakin in his ilium. Hence, in our opinion, Section 34 clearly applies in this case.

23. In *State of U.P. v. Iftikhar Khan & Ors.*, [1973] 1 SCC 512, this Court held that to convict a person with the aid of Section 34 IPC, it is necessary to establish that a criminal act was done in concert, pursuant to a pre-arranged plan. However, it was also observed that it is difficult, if not impossible, to procure direct evidence to prove the intention of a person. After all, one cannot enter into the mind of a person to find out his intention. Hence, the intention has to be inferred from the circumstances of the case.

24. In the present case it is no doubt true that the appellants attacked the injured Mustakin and not the deceased Abdul Qayum. However, from the

facts of the case it is clear that all the accused came armed with spears and lathies and they attacked the deceased and the injured who sustained spear blows and Abdul Qayum succumbed to his injury. A

25. No doubt the appellants had not inflicted the injury on the deceased but they had come along with others armed with spears and lathies, and they, in fact, did attack the injured. B

26. It is well settled that common intention may develop on the spot among a number of persons and hence pre-concert in the sense of distinct previous plan is not necessary to attract Section 34 IPC.

27. Also, it is not necessary to adduce direct evidence of common intention. The intention may be inferred from the surrounding circumstances and the conduct of the parties. C

28. In the present case, we see no reason to disagree with the High Court that Section 34 IPC was attracted to the facts of the case. D

29. Hence, we find no merit in the appeal which is accordingly dismissed.
No cost.

N.J.

Appeal dismissed.