

SUPREME COURT OF INDIA

Thakur Prasad

Vs.

State of M.P.

Crl.A.No.95 of 1952

(Mehr Chand Mahajan, S. R. Das and Ghulam Hasan, JJ.)

27.01.1953

JUDGEMENT

S. R. DAS, J. :

1. The appellant Thakurprasad along with seven other persons was sent up for trial on a charge under S. 302/149, Penal Code, for having on 11-11-1950 between 9 and 10 a. m. at Mouza Paoni in Tehsil Mungeli of District Bilaspur in the State of Madhya Pradesh murdered one Nem Singh who was a co-sharer of the appellant in the Malguzari of Mauza Paoni. The Second Additional Sessions Judge, Bilaspur, who tried the case acquitted two of the accused, namely, Nandi and Nirghani and found the remaining six accused including the appellant to be guilty of offence under S. 302/149, Penal Code. The appellant Thakurprasad was sentenced to death subject to confirmation by the High Court and the remaining five to transportation for life.

There was an appeal to the High Court of Madhya Pradesh but the appeal was dismissed except to the extent that the death sentence of the appellant Thakurprasad was reduced to one of transportation for life. All the six accused person applied to this Court for special leave to appeal under Art. 136 of the Constitution of India but leave was granted only to the appellant Thakurprasad and the application, so far as it related to the other five accused persons, was dismissed. We are, therefore, concerned only with the appeal of Thakurprasad.

2. At the trial Thakurprasad took up a plea of alibi alleging that at the time of the occurrence he was not at Mauza Paoni but was attending a meeting of Malguzars called at Mauza Kundah which is about nine miles away from Mauza Paoni. No defence witness was examined on behalf of the appellant Thakurprasad in support of this plea of alibi. The only evidence relied on by the appellant is a statement made by one of the prosecution witnesses, namely, Mahabir (P. W. 12), who stated that he had seen the appellant Thakurprasad at the meeting at Kundah. Reliance was also placed by the appellant on the fact that his name had not been mentioned in the first information report. Both the Courts below rejected the plea of alibi. They held that the fact that the name of the appellant Thakurprasad had not been mentioned in the first information report was not decisive because Ghunaha who had lodged the first information report was not an eye-witness of the occurrence. The Additional Sessions Judge as well as the High Court accepted as correct the evidence of the several eye-witnesses all of whom deposed to the appellant Thakurprasad being present at and having taken part in the occurrence. Both the Courts also came to the conclusion that even if the appellant Thakurprasad had attended the meeting at Kundah as spoken to by Mahavir (P. W. 12) that did not militate against his being also present at and having taken part in the occurrence at Paoni. The plea

of alibi involves a question of fact and both the Courts below have concurrently found that fact against the appellant Thakurprasad. This court, therefore cannot, on an appeal by special leave, go behind that concurrent finding of fact.

3. The only additional point urged before us is the absence of any injury on the person of the appellant Thakurprasad and it is urged that this circumstance is only consistent with his not having participated in the marpit. This point does not appear to have been pressed before the lower Courts. It is not even referred to in the grounds of appeal to the High Court. Further, the absence of any injury on the person of the appellant Thakurprasad may indicate that he did not actually take a leading part in dealing blows to Nem Singh or members of his group but it does not necessarily militate against his being present at the fracas and directing the operation as deposed to by the eye-witnesses. Further, the absence of the name of the appellant Thakurprasad in the first information report and the absence of marks of injury on his person are only material and relevant for the purpose of appreciation of the evidence. The Courts below having come to a definite finding on the evidence before them that the appellant Thakurprasad was a member of the un-lawful assembly and took some part in inflicting injuries on Nem Singh in prosecution of their common object, this Court cannot go behind the concurrent finding.

4. The result, therefore, is that this appeal must fail and is dismissed.

Appeal Dismissed.

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