

Kanauji

Vs

State of U. P.

Criminal Appeal No. 186 of 1969

(Shelat, J.)

18.02.1970

JUDGMENT

SHELAT, J. -

1. The appellant and one Javitri were tried by the Sessions Judge, Etah, on the charge of their having killed one Rampa at about 4 p.m. on May 10, 1965, while she was watching the mango trees in her grove. The Sessions Judge gave the benefit of doubt to the two accused and acquitted them. On appeal by the State of Uttar Pradesh, the High Court sustained the order of acquittal of Javitri, but on assessment by it of the evidence on record set aside the order of acquittal in favour of the appellant, convicted him under Section 302 of the Penal Code and imposed upon him the sentence of death. This being a case where the sentence of death has been imposed after reversal of the order of acquittal passed by the Sessions Judge, this appeal is as of right under Article 134(1)(a) of the Constitution.

2. The deceased Rampa, a widow, was, prior to her death, possessed of certain agricultural lands including the said mango grove. She had no children and therefore if she were to die without disposing of her said properties, the said Javitri, also a widow, would have been her nearest next of kin and inherited Rampa's properties. The appellant is one of three brothers of the said Javitri.

3. There is no dispute that the deceased Rampa was murdered while she was in her mango grove. According to the prosecution, the appellant and Javitri went to the said grove, the appellant with a spear and Javitri with a Gandasa, and apprehending that the deceased was about to convey her lands in favour of her two nephews, Naubat and Ulfat, that is, her brother's sons and thus deprive Javitri of her right to inherit the said properties on the death, the appellant in common intention with Javitri attacked Rampa with a Gandasa carried by Javitri and killed her outright. The attack was seen by Shiam Lal (P.W. 3), a potter of the village, who had gone nearby to fetch some clay, and by Ajudhi (P. W. 6), a neighbour of Rampa, who also had his mango grove next to Rampa's and in whom Rampa appears to have considerable confidence. The two of them used to keep a watch of each other's grove sometimes singly and sometimes together. It appears that Rampa had disclosed to him and certain other persons in the village her intention to transfer her said lands to her said two nephews. According to the prosecution, Rampa had that afternoon taken with her Brahma (P.W. 7), the grand-daughter of Ajudhi (P.W. 6). Just before the appellant and Javitri arrived there, Brahma and some other children were playing at the grove. On their arrival the appellant asked the children to go away and thereupon the children returned to the village leaving Brahma who remained there concealing herself in a ditch nearby. Almost immediately after the children had returned to the village, Shiam Lal and Ajudhi came running to the village shouting that Rampa had been murdered by the appellant and Javitri. P.W. 1 Badri, the son of Rampa's sister, on receiving this information

from the other residents of the village, had a report scribed by Datta Ram (P.W. 2) and lodged the same at about 6.30 p.m. at the nearest police station. If the incident took place at about 4 p.m., as was the prosecution case, the first information report was promptly lodged considering that the village was at a distance of about 7 miles from the police station. Badri was not a witness to the incident and, therefore, whatever he dictated to Datta Ram was from the information he received in the village. The F.I.R., nonetheless, mentioned the two accused, also set out the weapons, namely, a spear and a Gandasa with which Rampa was killed, and the names of persons who witnessed the incident, namely, Shiam Lal and Ajudhi and the children who were playing at that place, viz., Brahma, Ramesh, Radhey Shiam and Munni. Of these children, Brahma and Radhey Shiam were examined as prosecution witnesses. The F.I.R. lastly set out the relationship between Rampa, Javitri and the appellant, and the fact that the appellant and Javitri were displeased at the intended transfer by Rampa of her properties in favour of her nephews.

4. Badri (P.W. 1) did not claim to be an eye-witness as is clear from his evidence. He was in his house when the incident, according to the prosecution, took place. His evidence makes it clear that being an illiterate person he dictated the F.I.R. to witness Datta Ram from the information which he had received from the villagers, who in turn were told about the incident by Ajudhi and Shiam Lal. It is true that in his examination-in-chief he stated that those two witnesses had told him that Javitri was present at that time. That obviously is a mistake, for, later on he has in clear terms clarified that he dictated the F. I.R. from facts which he had come to know from others and that Ajudhi and Shiam Lal had not directly told him anything about the incident. Badri being the son of Rampa's sister, it was natural that he would get the F.I.R. prepared and lodge it.

5. The contention against his evidence was that being a near relation of the deceased Rampa, Badri was an interested witness. That contention, however, has no importance, for, he has not claimed to be an eye-witness which he could have easily done if he wanted to perjure himself. He has not chosen to do so. On the contrary, he conceded that whatever he had stated in the F.I.R. was from what he learned from the villagers. One thing, however, is certain that almost immediately after the incident the names of the appellant and Javitri were given out in the village as the persons responsible for the death of Rampa. Even the weapons with which they were alleged to have been armed were mentioned and that was how Badri came to mention them in the F.I.R. so far as the making of the F.I.R. was concerned, it did not, therefore, matter that its maker happened to be a near relation of the deceased. The other criticism was that though Badri disclaimed in his evidence any personal knowledge about the incident, he had in the F.I.R. tried to make out as if he was one of the persons along with Datta Ram who had seen the appellant and Javitri running away from the grove after killing Rampa. In support of that contention reliance was placed on the following sentence in the F.I.R. :

"I, Datta Ram and others who were working in the Khaliyan (threshing floor) have seen them both running away after they had committed the murder."

We have compared this sentence as translated with the original Hindi. It seems to us that the pronoun 'I' in that sentence means Datta Ram and not Badri. It appears that while writing out the F.I.R. Datta Ram introduced in it his own version that he and others, who were at the time at his threshing floor, had seen the appellant and Javitri running away immediately after the murder. It is not possible, therefore, to say from the aforesaid sentence that Badri was attempting thereby to be a witness of something which occurred immediately after the incident or that he claimed to be in the vicinity of the scene of the offence at that time. Even if the pronoun 'I' were to be taken to mean Badri, that again would not make any substantial difference because in his evidence he totally

disclaimed any personal knowledge either about the incident in question or his having seen Javitri and the appellant running away from the scene of the offence. Therefore, to the extent that the F.I.R. mentions the appellant and Javitri, whose names were given out in the village as persons responsible for the murder, and the names of the witnesses, that document and the evidence relating to its making were reliable and the High Court cannot be said to be in error in relying upon it for the limited purpose of showing that Shiam Lal, Ajudhi and the two child witnesses were said to be at or near the scene of the offence when it took place.

6. The principal witnesses on whom the prosecution depended for its case were Shiam Lal, Ajudhi and his grand-daughter Brahma, P. Ws. 3, 6 and 7. Their evidence was sought to be corroborated by evidence of Radhey Shiam (P.W. 8) and Datta Ram (P.W. 2). The former claimed to have seen the appellant and Javitri at the scene of the offence immediately before the murder and the latter claimed to have seen them running away from the scene of the offence with a spear and a Gandasa immediately thereafter. We have, therefore, to see whether the evidence of these witnesses was satisfactory and was properly relied upon by the High Court.

7. Shiam Lal, P.W. 3, had that afternoon gone to fetch some clay for his work as a potter. At about 4 p.m. when he was returning with it and was about 20 to 25 paces away from Rampa's grove he heard her alarm and he saw the appellant attacking her with a Gandasa and Javitri standing nearby. A spear stood at that time fixed in the ground nearby. He also noticed Ajudhi (P. W. 6) coming from the other side and his grand-daughter Brahma standing near where Rampa was being attacked. He and Ajudhi raised an alarm whereupon the appellant threw away the Gandasa and picking up the spear ran towards the village with Javitri who had in the meantime picked up the Gandasa and wrapped it in a gunny bag cloth. Both he and Ajudhi followed them to the village, the latter taking Brahma with him, and then informed the villagers of what had happened in the grove. That was how the villagers came to know of Rampa having been killed and the names of the appellant and Javitri being the persons concerned with that killing having been given out from the very outset.

8. If this part of the evidence were to be accepted, it is clear that Shiam Lal was an eye-witness who was Rampa being murdered by the appellant. But relying on a statement by him in his cross-examination, it was contended that he could not have reached the place by the time Rampa was killed. The statement relied on was that he had seen the two accused in the grove while he was on his way to get the clay, that he did not see the girl, Brahma, at that stage at the scene of the offence and that he returned with the clay after about an hour or an hour and a half when he was the appellant attacking Rampa with the Gandasa. This was also the statement on which the Sessions Judge mainly refused to rely on the evidence of this witness. It is obvious that if the witness took one hour or more to gather the clay and had seen the two accused in the grove on his way there, it is impossible that on his return from there he could have seen Rampa being killed by the appellant. The appellant could not have awaited for all that time to kill Rampa. But there is one clue in this very statement for which his evidence was discarded by the Sessions Judge, and that is his statement that while he was going to get the clay he had not seen the girl Brahma near the scene of the offence. The evidence shows that the girl had accompanied Rampa when she went to the grove, that the girl was thereafter playing with some children from the village and that when the two accused followed Rampa there, the appellant had shouted at the children to go away whereupon the children went back to the village but Brahma remained there concealing herself in a ditch nearby from where she could see the appellant striking at Rampa with the Gandasa. This evidence of all the three witnesses was that when Ajudhi came there the girl was still there and being in a terrified state, Ajudhi had picked her up and brought her to the village. If the girl, therefore, was there but Shiam Lal had not seen her while he was on his way to get the clay, it was because the two accused had by

that time come there, the appellant had shouted at the children to go away and Brahma had concealed herself in the ditch. It was nobody's case that Shiam Lal had fetched any large quantity of clay, the collecting of which would take an hour or an hour and a half. If Brahma concealed herself nearby immediately after the appellant and Javitri came there and saw from there the attack on Rampa, an hour or more could not have elapsed between the arrival of the accused and the attack on Rampa. The attack on Rampa must have been made within a few minutes after the arrival of the appellant and Javitri. If, therefore, Shiam Lal saw the appellant and Javitri while he was going to collect the clay and also saw the applicant attacking Rampa on his return from that place he could not have taken an hour or more, as he said, in getting the clay. It is not uncommon, as the High Court has observed, that people in villages often have not a precise notion of time when they mention it. Nobody stated that Shiam Lal had fetched a large quantity of earth which could have taken an hour or more to collect. Therefore, his statement as to the time cannot be taken literally. Shiam Lal's presence at the time of the incident is not only vouch-safed by Ajudhi and Brahma, but also by the fact that it was he who along with Ajudhi ran back to the village and raised there a hue and cry that the appellant had killed Rampa. That was how Badri could mention almost immediately thereafter while dictating the F.I.R. to Datta Ram his name and that of Ajudhi as eye-witnesses. Thus viewed, the argument that Shiam Lal had taken an hour or more to collect the earth and, therefore, could not have been witness to the incident cannot be sustained.

9. Ajudhi (P.W. 6) had, as aforesaid, his grove next to Rampa's. He was on friendly terms with Rampa and for that reason sometimes he used to keep a watch on her grove and sometimes she did the same for him. Sometimes both together used to keep a watch on their groves. Being friendly with her, Rampa had confided in him that she intended to give away her properties to her nephews. Javitri would obviously resent being so deprived of an inheritance. Being thus friendly with Rampa, there was nothing unusual in Rampa confiding in him. There does not therefore seem to be any difficulty in accepting that part of his evidence. Since his relations with Rampa were friendly, it is equally not surprising that Rampa would bring along with her Brahma to the grove when she went to keep a vigil on it. The girl and the other children would make the grove a place to play at as they would get a few mangoes fallen on the ground. There was thus nothing unbelievable in Ajudhi's case that he went over that afternoon to his grove both for the purpose of seeing that everything was alright there and for bringing back Brahma. It was no doubt a coincidence that at the time of the attack on Rampa it happened that he was approaching the place from the village side and Shiam Lal from the opposite side. But such a coincidence cannot be said to be improbable so as to justify a refusal to believe his evidence. His presence, besides, is corroborated not only by Shiam Lal and Brahma, but also by the fact of his having run to the village along with Shiam Lal and both of them having raised an alarm that the appellant had killed Rampa. Indeed, that was how the residents of the village came to know about the incident and Badri in the F.I.R. could state that the appellant and Javitri were responsible for Rampa's death and Shiam Lal and this witness had seen her being killed. An attempt appears to have been made in his cross-examination to show that he was in some way or other interested in Rampa's lands. That was totally repudiated by him and the attempt merely remained a bare allegation unsupported by any evidence. The Sessions Judge, however, discarded his evidence on the ground of certain discrepancies. In our view, these discrepancies were minor and not of any serious nature and were given unduly exaggerated importance, not warranting its rejection by him for that reason alone.

10. Besides these two witnesses, the prosecution examined Brahma (P.W. 7). Her presence at the time of the incident gets assurance not only from the evidence of Shiam Lal and Ajudhi, but also from the fact that immediately after the incident blood was noticed on her nose by Ajudhi while he was bringing her back to the village. She herself also testified to that fact. Her evidence could have

been accepted but for the last statement in her cross-examination where she admitted that Ajudhi had told her to say that the accused had "cut the throat of Dadi (meaning the deceased) and escaped". That suggests that before going into the witness-box she had been prompted by Ajudhi to say that the accused had killed Rampa. Though in the very next sentence she denied the suggestion that she was not present and had not seen the occurrence, the High Court was right in not depending upon her evidence.

11. Radhey Shiam (P.W. 8), though a boy of 12 or 13 years of age, was certified by the Sessions Judge, after a preliminary examination, to be competent to give evidence. He had gone to Rampa's grove with another boy named Ramesh. He proved the presence of Brahma with the deceased at that time and also the arrival there a little later of the appellant and Javitri, the former carrying a spear and the latter a Gandasa in a gunny bag cloth. He did not claim to be one who had seen the incident because, according to him, as soon as the two accused came there the appellant asked them to go away whereupon he and Ramesh, the other boy, returned to the village. It was his case, however, that very soon thereafter he heard that the two accused had killed Rampa. It will be noticed that he did not say that Brahma also had returned to the village with them. That was because, as testified by Brahma, the girl had remained there concealed in a ditch, so near that some blood fell on her nose when Rampa was killed.

12. Lastly, there was the evidence of Datta Ram (P.W. 2), who had written out the F.I.R. at the instance of Badri. His evidence was that he had seen from his threshing floor the appellant and Javitri running towards the village immediately after the murder. Cross-examined on the F.I.R. he had written out, he said that he wrote it out exactly as Badri dictated to him. At that state he conceded that the F.I.R. did not contain the statement that he had seen the two accused as deposed by him, though he had told that fact to Badri. That statement does not seem to be correct because the F.I.R. contains the sentence earlier referred to, namely, "I, Datta Ram and others, who were working in the Khaliyan (threshing floor) have seen them both running away after they had committed the murder". It will be seen that Badri never claimed to have seen the accused at or near the scene of offence either before or after the murder. He was candid enough to state that he was in his house at the time of the incident and that it was as a consequence of what others in the village told him that he got the F.I.R. written out by Datta Ram. In the light of Badri's evidence, therefore, the pronoun 'I' in the aforesaid statement in the F.I.R. cannot mean Badri claiming to have been in Datta Ram's threshing floor and having seen from there the appellant and Javitri running away towards the village. It would, therefore, seem that while writing out the F.I.R. Datta Ram appears to have introduced into that document the statement about his having seen the two accused running from the direction of Rampa's grove towards the village.

13. The evidence of the witnesses shows that the F.I.R. was prepared almost immediately after the incident and lodged with the police without any undue delay. That document not only mentions the names of the appellant and Javitri but also the names of all the witnesses, the motive for the crime and the fact of the two accused being from the very outset talked about in the village as the persons responsible for the crime. The reference of the last fact in the F.I.R. lends assurance to the evidence of the two eye-witnesses that immediately after the crime they ran to the village raising a hue and cry that the appellant and Javitri had killed the deceased Rampa. Badri's evidence shows that it was in consequence of this hue and cry that he went to Datta Ram's place and got the F.I.R. written out. Badri, no doubt was related to Rampa, but his evidence clearly points out that he was in no way interested in the property of Rampa, and therefore, has no motive in getting a false F.I.R. prepared. Had he such a motive, he could have easily claimed to be one of the eye-witnesses or at any rate a witness claiming to have seen the accused either going to or returning from the place of occurrence.

The F. I.R. having been prepared with promptness and lodged without any undue delay, there was hardly any scope for these witnesses to have assembled and confabulated among themselves to involve the appellant and Javitri falsely. Besides, the evidence shows that if at all there could be any motive for involving the accused falsely, such a motive would be harboured by the nephews of the deceased as they were to get the property if Rampa had not been killed and had been able to transfer her property in their favour at the exclusion of Javitri's right as the next of kin to inherit it after Rampa's demise. Neither Badri nor the two eye-witnesses had any such right or expectation. The evidence of these eye-witnesses, therefore, was not in any way weakened by any motive which would serve as an inducing fact for any false testimony.

14. It is true that the Trial Judge did not regard the evidence as convincing beyond any doubt and declined to rely on it on the ground that it was in some respects discrepant. We have examined the discrepancies shown by him in his judgment but we agree in regard to them with the High Court that they were not substantial and were in fact minor. It seems that the approach of the learned Trial Judge to the evidence was one of suspicion which led him to give to those discrepancies an exaggerated significance. Indeed, some of the discrepancies mentioned by him could hardly be said to be contradictions and which could be properly relied on for rejecting the evidence of the witnesses. The High Court, in our view, was right in the conclusion which it arrived at on its own assessment of the evidence that the Trial Judge was not justified in discarding it on the mere ground of discrepancies. It is true that the Trial Judge had the advantage of seeing the demeanour of the witnesses. But it was not as if he discarded their evidence on the ground of demeanour but on the ground of there being discrepancies in their evidence. Having gone through the entire evidence with counsel, we ourselves felt the difficulty in discovering from it how and why the witnesses could have falsely involved the appellant as the person responsible for Rampa's death.

15. Counsel, however, attacked the High Court's reversal of the order of acquittal passed by the Trial Judge mainly on two grounds : (1) that the prosecution case, as disclosed through the witnesses, was improbable, that the witnesses were related in one way or other with the deceased and were, therefore, made to swear the testimony which they gave, and (2) that the F.I.R. on which the High Court placed importance was not lodged with the promptness apparently appearing from the evidence. The suggestion was that it was highly improbable that the appellant would kill the deceased in the afternoon when he could be easily seen by the neighbouring farmers, that therefore, the murder must have taken place in the early morning, the body must have been found in the afternoon and the F.I.R. prepared thereafter. It is difficult to see an improbability in Rampa having been killed in her grove in the afternoon. The incident took place on a hot summer day when the assailant could well believe that no one would be near about. It was also not the reason when the neighbouring farmers would be in their fields cultivating. In those conditions the appellant might well hope to accomplish the crime and slip away without being noticed. On the other hand, it would not have been easy or even possible to take Rampa's life in her house in the village without being seen by the neighbours and even caught. Neither the time nor the place of the crime can, therefore, be said to be improbable. The medical evidence shows that at the time of the post-mortem examination semi-digested food was found in the stomach of the deceased and on that basis the doctor pronounced the opinion that Rampa must have taken food some 3 or 4 hours before the murder. That evidence rules out the possibility of the murder having taken place in the early hours of the morning, the body having been discovered in the afternoon and the F.I.R. then having been prepared. The murder could not also have taken place at night, because there was no occasion for Rampa to go to the grove at night. There was no such evidence nor was even a suggestion made to any one of the witnesses that Rampa had gone to the grove at night. On these facts, the High Court was justified in giving significance to the F.I.R. having been written out almost immediately after

the murder and there being no time or scope for Badri to have collected persons willing enough to involve the appellant either falsely or on a mere suspicion. It is true that an attempt was made in the cross-examination of these witnesses to establish some sort of relationship between them and the murdered woman. The evidence, however, was not precise. But, even if it is taken that there was any such relationship, that by itself could not be a valid ground for rejecting their evidence, especially in view of the fact that immediately after the incident the two eye-witnesses had come running into the village openly naming the appellant and Javitri as the persons responsible for the crime and the F.I.R. having been got written on that basis. We cannot, therefore, find any valid reason justifying the rejection of the evidence of the eye-witnesses.

16. For the reasons aforesaid the High Court was right in setting aside the order of acquittal passed by the Trial Judge and on a fresh assessment of the evidence by it in convicting the appellant. Since Javitri's acquittal was sustained by it and no appeal has been filed against it we do not say anything about her alleged association in the crime. Considering the gruesome nature of the attack on the deceased, the weapon used, the nature of the injuries caused and lastly the reason for that attack, it can hardly be said that the extreme sentence imposed upon the appellant by the High Court was not in the circumstances justified.

17. The appeal fails and is dismissed.

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