

Angnoo and Others

Vs

State of Uttar Pradesh

Criminal Appeal No. 209 of 1967

(V. Bhargava, I. D. Dua JJ)

11.09.1970

JUDGMENT

BHARGAVA, J. -

1. The ten appellants in this appeal were convicted for offences punishable under Section 148 of the Indian Penal Code and Section 302, read with Section 149 of the Indian Penal Code, and each one of them was awarded concurrent sentences of two years rigorous imprisonment for the first offence and imprisonment for life for the second offence. The conviction was recorded in respect of the murder of one Mahadeo on the 12th November, 1964.

2. The prosecution case was that Mahadeo had appeared as a witness in an enquiry under Section 202 of the Code of Criminal Procedure which was being held on a complaint filed by one Chotai for an offence under Section 500, I.P.C., against Angnoo appellant. That complaint was filed by Chotai on the ground that Angnoo had earlier lodged a false report with the police against Chotai and his brother Sumer for an offence under Section 454, I.P.C. After Mahadeo had been examined as a witness in the enquiry, the Court issued summons against the accused. The service of the summons on Angnoo took place on 12th November, 1964. On that day, at about noon, Mahadeo had gone from his village Banyan Khera to another village Rampur, one mile away. It may be mentioned that eight of the appellants belonged to the same village Banyan Khera where Mahadeo resided, while two of them resided in neighbouring villages. When Mahadeo was returning about an hour before sunset and had reached place, two furlongs away from his own village Banyan Khera, near the field of one Badal, the ten appellants are alleged to have come out of an ambush and attacked Mahadeo with spears and Kantas. Five of the appellants were armed with spears and the other five with Kantas. Mahadeo raised a hue and cry and also tried to defend himself with the Lathi which he was carrying. He was, however, badly injured and died as a result of those injuries on the spot. A number of witnesses had arrived near the place of occurrence and saw part of the attack on Mahadeo. When some of the witnesses wanted to come near, one of the appellants, Barjor fired a warning shot in the air with his pistol, so that none of the witnesses came very close. They all remained at a distance of about 50 paces from the place of incident. After having caused injuries to Mahadeo, the appellants escaped to the north through the fields and, thereafter, witnesses came near Mahadeo and found him dead. Mahadeo's brother Puttu Lal dictated a report of the incident which was written down by prosecution witness Raja Ram. It was then given to one Kallu to be taken to the Police Station Qasimpur. On the basis of that written report, the First Information Report was recorded at Qasimpur at 8-30 p.m. The offence was, however, committed at a place which fell within the circle of Police Station Auras, so that a copy of the report recorded at Police Station Qasimpur was sent to the Police Station Auras, where the information reached at 11-30 p.m. Thereafter, the case was investigated and the appellants were sent up for trial. The Trial Court relied

on the evidence of five eye-witnesses and the medical evidence to record the conviction of the appellants for the offences mentioned above. The High Court upheld the conviction and dismissed the appeal filed by the appellants. Consequently, the appellants have come up in this appeal by special leave.

3. The Trial Court convicted the appellants on the basis of the evidence of five eye-witnesses P.W. 1, Puttu Lal, brother of Mahadeo deceased, P.W. 2 Maiku, P.W. 3 Shri. Krishna, P.W. 4 Raja Ram and P.W. 5 Juddhi. The argument that has been advanced before us on behalf of the appellants is that the evidence of these witnesses should not have been accepted by the courts because of five reasons. First, there was delay in lodging the First Information Report; secondly, there was conflict between the medical evidence and the evidence of the eye-witnesses; thirdly, it was not probable that these witnesses could have arrived sufficiently close to the scene of occurrence in time to see the actual assault on Mahadeo; fourthly, it was not very probable that they would be able to recognise all ten appellants as assailants of Mahadeo; and fifthly, all the eye-witnesses are partisan witnesses and should not have been relied upon. All these arguments were advanced before the High Court also, and the High Court did not find any force in them. Having heard learned counsel, we are also unable to hold that any of these grounds would justify our interference with the concurrent decision of the Trial Court and the High Court.

4. It is true that, according to the prosecution witnesses, the incident took place at about 4.30 p.m. The time has been estimated on the basis of the version of the witnesses that it took place one hour before sunset and, during those days, the time of sunset was about 5.30 p.m. The report was lodged at Police Station Qasimpur, five miles away at 8.30 p.m. part of the delay is explained by the circumstance that some time must have been taken in looking after Mahadeo before his brother Puttu Lal could gather his wits to dictate the report, and then time must have been taken in actual dictation while the report was being recorded by P.W. 4 Raja Ram. It however, appears that the report written without the aid of any artificial light and, consequently, writing of the report must have been completed by about 6-30 p.m. Thereafter, that written report was given to one Kallu to be taken to village Qasimpur and he left the place of occurrence on cycle. It is true that, normally, he should have gone straight to the police station it should have been recorded much earlier than 8.30 p.m. However, the explanation for the delay could not be put forward by the prosecution, because Kallu turned hostile and could not be examined by the prosecution for this purpose. It seems to be probable, as indicated by the High Court, that Kallu, for some reason or the other, did not proceed straight to the police station and went off for his own work and, realising that he had committed this mistake, he may have turned hostile to the prosecution. The absence of the explanation for the delay committed by Kallu, under these circumstances, cannot be considered to be a grounds for disbelieving the eye-witnesses.

5. So far as the question of conflict between medical evidence and the evidence of eye-witnesses is concerned, the submission is based on the fact that, amongst the 27 injuries which were received by Mahadeo, there were four blunt-weapon injuries. According to the prosecution witnesses, the weapons that were carried by the assailants and were used in the attack were a spear and Kantas. The arguments was that neither a spear nor a Kanta could cause a contusion, bruises or a depression on the head and, consequently, the evidence given by the eye-witnesses does not fully explain all the injuries received by Mahadeo. It appears to us that most of these witnesses arrived at the scene of occurrence after the attack had already started and were able to see only part of the incident, so that some blows must have been inflicted on Mahadeo before their arrival and some after their arrival. It may be that they failed to notice that some of the assailants were carrying Lathis or, more probably, some of the assailants used their spears like Lathis. They gave blows wielding spears as Lathis

rather than thrusting the spears every time. They may have done so even before some of the witnesses arrived. The use of a spear in such a manner will not be very unnatural if a large number of persons surround one single man and try to beat him. In such a situation, it may be easier to wield the spear as a Lathi than to try and thrust it at the person being attacked. There is, therefore, in our opinion, no conflict at all between the medical evidence and the evidence given by the eye-witnesses.

6. The witnesses came from different places. Puttu Lal P.W. 1 and Juddhi P.W. 5 both came from their village Banyan Khera, which was at a distance of about two furlongs from the scene of occurrence. The distance was not so great that, after hearing the first hue and cry raised by Mahadeo, these two witnesses could not have come in time to see part of the assault on Mahadeo. They both stated that they stopped at a distance of about 50 paces from the place from where Mahadeo was being beaten and saw the occurrence from that place. As pointed out by the High Court, the appellants were in the filed of Badal about 100 paces away where they were concealing themselves. It is possible that Mahadeo started raising a hue and cry as soon as he saw these appellants rushing at him. These cries having been heard by Puttu Lal and Juddhi, they must have started running immediately towards the scene of occurrence and could, therefore, very well come in time to see some of the blows falling on Mahadeo. The other three witnesses Maiku, Shri. Krishna and Raja Ram were also not much further away. In this connection, Shri. Krishna's evidence is challenged on the ground that, according to him, he arrived in village Khanjhri at about 2 or 2.30 p.m., stayed there for half an hour, and was then coming back when he saw this incident. Khanjhri is at a distance of only five furlongs from the scene of occurrence. The argument was that, if he left Khanjhri at about 3 p.m., he could not still be between that village and the scene of occurrence, because he could not have taken 1 1/2 hours to cover a distance of less than five furlongs. This argument overlooks the circumstances that villagers have no watches or clocks and only give timing from their estimate. It can very well be that Shri. Krishna may have made a mistake of more than an hour in respect of the time of his arrival in village Khanjhri and may have also under-estimated the period during which he stayed there before starting back. In fact, villagers have very little idea of distances also; and this is clear from the evidence of P.W. 4 Raja Ram who stated that his village was at a distance of half a mile from the scene of occurrence. According to him, he heard the shouts when he had covered about 1 1/2 miles away from the village which distance, according to him, would be 90 steps. At the same time, he stated that when he heard the shouts, he was 50 steps away from the place of occurrence. It was pointed out to him by the Court that, according to his evidence, the total distance between the scene of occurrence and his village was half a mile, while, calculating from his own position, the distance would be only 90 steps plus 50 steps. He was unable to explain the discrepancy. It is obvious that he had no idea of distances. We are unable to agree with learned counsel for the appellants that, from these circumstances, an inference can at all be drawn that Raja Ram was nowhere near the scene of occurrence and did not see the assault on Mahadeo.

7. So far as the possibility of recognising the ten appellants is concerned, all the witnesses have stated that they arrived within a distance of about 50 steps while the assault was still going on. All the appellants were well-known to the witnesses and there is no reason to doubt their evidence that they were able to recognise all the ten of them. Persons well-known can be recognised within a very short time. The appellants were seen by them while continuing the attack on Mahadeo and while they were going away after completing the assault.

8. So far as the last point is concerned, it does appear that two of the witnesses are not independent. Juddhi is the son of Chotai who has litigation with Angnoo appellant. Seven of the other accused are

related to Angnoo, while the two of them are said to be his friends, these two being he Ram Adhar and Barjor Singh. Maiku once appeared as a witness for the prosecution in a case against Ram Adhar and, in that case, his evidence was disbelieved by the Court on the ground that he was a partisan witness. It, however, appears to us that at least the other three witnesses are quite reliable. Puttu Lal is, no doubt, the brother of deceased Mahadeo, but this very circumstance would, in our opinion, add to the value of his evidence, because he would be interested in ensuring that the real culprits responsible for the murder of Mahadeo are punished and not innocent persons. Shri. Krishna and Raja Ram are both totally independent. No relationship between them and any other interested person has been established. They have no motive to gave wrong evidence against the appellants.

9. Considering all these circumstances, we are unable to hold that the High Court committed any error in upholding the conviction of these appellants. The appeal fails and is dismissed.

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