

State of U. P. and Another

Vs

Jaggo Alias Jagdish and Others

Criminal Appeal No. 21 of 1968

(C. A. Vaidialingam, A. N. Ray JJ)

30.03.1971

JUDGMENT

RAY. J. -

This is an appeal by special leave from the judgment, dated March 17, 1967, of the High Court at Allahabad acquitting all the accused, acting aside their convictions and sentences passed by the Session Judge, Agra and rejecting the reference made by the Session Judge, Agra for confirmation of death sentences passed upon the accused Sri Mohan, Hari Mohan and Ishaq alias Irshad.

2. There were seven accused. They were Jaggo alias Jagdish, Madan Mohan, Sri Mohan, Hari Mohan, Sri Chand, Sri Narayan and Ishaq. Madan Mohan, Sri Mohan and Hari Mohan were sons of Gaya Prasad. Sri Chand and Sri Narayan were sons of Ninua Ram. Ishaq was the servant of Madan Mohan, Shri Mohan and Hari Mohan. They were charged for the murder of Lalu alias Raj Gopal. All the accused excepting Jaggo alias Jagdish were committed under Section 148 of the Indian Penal Code and Section 302, read with Section 149 of the Indian Penal Code. Jaggo was committed under Section 147 of the India Penal Code and section 302, read with Section 149 of Indian Penal Code.

3. The prosecution case was that Lalu was Pairokar of Kali Charan in a Criminal case filed by him against Jaggo and another person named Iqbal. On July 17, 1965, the day fixed for hearing of the case, Sri Chand and Madan Mohan abused Lalu and threatened him for doing Pairvi in that criminal case. The same evening Lalu was talking to Ramesh, Tara Chand and Munna Lal at Bhogipura crossing at Agra City in front of Sarwan's shop. All the accused suddenly came and shouted at Lalu that they would teach him a lesson. Lalu ran inside the lane between the shops of Sita Ram and Lal Singh. The accused pursued him. Lalu was overtaken. The accused assaulted Lalu even after he had fallen. A number of persons including Munna Lal, Girja Prasad, Bahadur Singh, Sarwan, Hari Babu, Tara Chand and Ramesh Chand are said to have witnessed the occurrence. After giving numerous blows the accused ran away. Munna Lal and Sarwan took Lalu in a rickshaw to a hospital. Dr. Balbir Singh examined Lalu at 10 p.m. munna Lal wrote a report and took it in Police Station at Loha Mandi and lodged it there shortly after 10 p.m. Lalu died after mid-night.

4. The post-mortem examination was held in the early hours of the morning. The death was due to shock and haemorrhage as a result of the injuries which were noted to be thirty eight in number.

The Session Court held that all the accused were guilty.

5. There were five witnesses Munna Lal, Sita Ram, Bhikari, Sarwan and Tara Chand. The prosecution called them as eye-witnesses. The Sessions Court accepted the evidence of each of them

and gave the following reasons. The witness Munna Lal is Lalu's brother. The relationship of Munna Lal should be a reason for "a strict scrutiny" of the evidence of Munna Lal so that "the possibility of false implication of the accused on account of enmity should be avoided". On a scrutiny of the evidence of Munna Lal, the statement was worthy of credence. Munna Lal was a truthful witness because he did not deny the fact that he appeared as a witness against Sri Narain and Sri Chand. Sita Ram admitted his connection with Lalu and Kali Charan and that would show that Sita Ram was a trustworthy witness. The evidence of Sita Ram was corroborated by the statement of independent witness like Bhikari Lal. The absence of the name of Sita Ram from the first information report was not a ground for rejecting his evidence. Bhikari Lal was not mentioned in the first information report rejecting his evidence. Bhikari Lal house was near the place of the occurrence and Bhikari was expected to be at his house. Bhikari's presence at the time of the occurrence was found to be proved by reliable evidence. Bhikari was a surety for one Kali Charan. Bhikari admitted the fact and therefore he was a truthful witness. Sarwan's evidence was challenged on the ground that once he had filed an application against Madan Mohan. His evidence was corroborated by other facts and circumstances. He was a witness of the locality. His name was mentioned in the first information report. He corroborated Munna Lal. Tara Chand's evidence was challenged by the accused on the ground that Tara Chand was a partyman of Krishna Swarup Upadhyaya. There was no evidence worth reliance the Krishna Swarup Upadhyaya had and hand in the prosecution of the case.

6. The Session Court dealt with the medical evidence that some of the injuries could be caused with knife and held that the medical evidence corroborated the statements of the eye-witnesses. Bhikari, Sarwan and Tara Chand were described by the Session Court to be independent witnesses who could not be said to be inimical to the accused.

7. The Session Court found that the medical evidence established that Lalu received a number of incised wounds and the injuries in the opinion of the doctor were sufficient in ordinary course of nature to cause death of Lalu. The Session Court held that Lalu died as a result of the injuries which he received.

8. The High Court held that all the eye-witnesses were partisan witnesses. Munna Lal was found to be involved in proceedings under Sections 107/117 of the Criminal Procedure Code along with Krishna Swarup Upadhyaya. That case was started by a person called Gopi about two years prior to the alleged occurrence. Krishna Swarup Upadhyaya was acquitted. The others were convicted. Gopi was said to belong to the party of the accused in the present case. The High Court therefore found that Munna Lal was on inimical terms against the accused. Sarwan admitted that he had been threatened by Sri Mohan and Sarwan had filed an application against Sri Mohan. Sarwan also admitted that Sri Mohan had assaulted him. Sarwan admitted that he had made an application against Madan Mohan. Hari Mohan and Sri Mohan were the brothers of Madan Mohan and Ishaq was their servant. The High Court held that it was clear that Sarwan was on inimical terms with some of the accused. Tara Chand had stood surety for Gopal in an assault case. Sita Ram admitted that the Police had started a case against Lalu, Kali Charan, Gopal and Puran. Gopal and Kali Charan were co-accused in the case in which Tara Chand stood surety for Gopal. The accused were parties in a case filed by Kali Charan under Section 324 of the Indian Penal Code. Sita Ram admitted that he was a party with Krishna Swarup Upadhyaya in a case under Section 107/117 of the Criminal Procedure Code. Sita Ram himself stood surety for Kali Charan in a case in which Kali Charan, Gopal, Puran and Lalu were co-accused. The High Court therefore found that Sita Ram had interest in favour of Kali Charan and against the accused who were the accused in the case filed by Kali Charan under Section 324 of the Indian Penal Code. Bhikari admitted that he had stood surety for Kali Charan in the assault case. The High Court found that Sita Ram and Bhikari who were not

mentioned in the first information report had been sureties for Kali Charan in the assault case.

9. It was said by counsel for the appellant that the following features would indicate that the prosecution case was true. The first information report was lodged within 20 minutes. Munna Lal though a relation to Lalu would be the last person to allow the culprit to go away unpunished. Munna Lal's evidence should be therefore all the more believed. Bhikari, Sarwan and Tara Chand were not relations and were independent witnesses who had no enmity against the accused. It was also said that the High Court did not consider the evidence of Bhikari and Sita Ram. Though motive may not be necessary in all cases, it was said that the High Court did not deal with the question of motive. All these contentions turn on the evidence of the eye-witnesses.

10. Counsel on behalf of the appellant contended that the Sessions Court Considered the criticism against the witnesses and gave reasons as to why the evidence of the witnesses was acceptable whereas the High Court did not give any reason. It was emphasised on behalf of the appellant that Munna Lal who was a relation should have particular reasons to see that the real culprit was punished and therefore Munna Lal's evidence should be accepted. The Sessions Court did not give any reason as to why in spite of relationship Munna Lal's evidence was acceptable. Merely saying that the evidence was carefully scrutinised or saying that Munna Lal was a truthful person because of his admission of appearing as a witness against Sri Narain and Sri Chand, does not by itself give any reason for holding that Munna Lal is a truthful witness. Munna Lal could not deny the factum of giving evidence in that criminal case. It would be impossible to deny his association in that case. The High Court did not characterise Munna Lal as a partisan witness on the ground of relation but on the entirely different ground that Munna Lal was involved in proceedings along with Krishna Swarup Upadhyaya. That case was brought by a person called Gopi who belonged to party of the accused. Krishna Swarup Upadhyaya was acquitted. Swarup's filing the application against Madan Mohan was not a ground for rejecting his testimony by the Sessions Court. Sarwan filed applications against Sri Mohan and Madan Mohan who were accused in the present appeal. The High Court therefore gave a cogent reason for holding that Sarwan was on inimical terms. Tara Chand was found by the Session Court not to be partyman of Krishna Swarup Upadhyaya. The High Court said that Tara Chand himself admitted that he had stood surety for Gopal in an assault case. Sita Ram was found to be a party with Krishna Swarup Upadhyaya in a case which was started against Munna Lal and Krishna Swarup Upadhyaya. Kali Charan had stood surely for Sita Ram. Sita Ram stood as a surety for Kali Charan. All these witnesses were found to have a real partisan flavour. We are in agreement with the reasoning of the High Court as to why these witnesses were found to be partisan.

11. The High Court was dealing not only with the appeal but also the reference in the death sentence. Sections 374, 375 and 376 of the Criminal Procedure Code indicate the powers to be exercised by the High Court in death reference. The High Court was exercising the dual jurisdiction. One was the appellate jurisdiction under Section 423, Criminal Procedure Code and the other was the reference jurisdiction under Section 75 of the Criminal Procedure Code relating to sentence for confirmation.

12. On an entire consideration of the evidence the High Court gave sound reasons for the conclusion that the witnesses and in particular Munna Lal, Sarwan and Tara Chand bore ill-will and enmity against the accused Sita Ram and Bhikari were not totally free from the partisan character because Sita Ram was a party along with Krishna Swarup Upadhyaya in a criminal case. Kali charan had stood surety for Sita Ram in a criminal case. Sita Ram himself also stood surety for Kali Charan in a case where Kali Charan, Puran, Gopal and Lalu were co-accused. Bhikari was also a surety for Kali

Charan in an assault case. The High Court was therefore correct in referring to the various criminal cases in which they were arrayed. All the eye-witnesses belonged to the particular group of the accused.

13. The High Court was also correct in referring to two other features of the prosecution case. The first is that Ramesh who was mentioned in the first information report was not examined. The second was about the medical evidence.

14. Ramesh is the person with whom Lalu was talking at the time of the alleged occurrence. Ramesh was mentioned in the first information report. It is true that all the witnesses of the prosecution need not be called but it is important to notice that the witness whose evidence is essential to the "unfolding of the narrative" should be called. This salutary principle in criminal trials has been stressed by this Court in the case of *Habed Mohammad v. The State of Hyderabad* (1954 SCR 475 : AIR 1954 SC 51 : 1953 SCJ 678 : 1954 SCA 514) for eliciting the truth. The absence of Ramesh from the prosecution evidence seriously affects the truth of the prosecution case.

15. This Court in *Habeed Mohammad's case* (supra) referred to the observations of Jenkins, C.J., in *Ram Ranjan Roy v. Emperor* (ILR 42 Cal 422 : 19 CWN 28 : 27 IC 554) that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a public prosecutor is to represent the administration of justice so that the testimony of all the available eye-witnesses should be before the Court. Lord Roche in *Stephen Senivaratne v. The King* (AIR 1936 PC 289 : 39 Bom LR 1 : 164 IC 321) referred to the observations of Jenkins, C.J. and said that the witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution. That is why this Court in *Habeed Mohammad's case* (supra) said that the absence of an eye-witness in the circumstances of the case might affect a fair trial. On behalf of the appellant it was said that Ramesh Chand was won over and therefore the prosecution could not call Ramesh. The High Court rightly said that the mere presentation of an application to the effect that a witness had been won over was not conclusive of the question that the witness had won over. In such a case Ramesh could have been produced for cross-examination by the accused. That would have elicited the correct facts. If Ramesh were an eye-witness the accused were entitled to test his evidence particularly when Lalu was alleged to be talking with Ramesh at the time of the occurrence.

16. The High Court was also correct in holding that it was significant that Sita Ram and Bhikari were not mentioned in the first information report but were called as witnesses who gave evidence of having been present at the time of occurrence. The High Court correctly said that it was a strange feature of the present case. Counsel on behalf of the State referred to the evidence of the Sub-Inspector who said that when he went to the place of occurrence he found Sita Ram and Bhikari. That would not prove that they were present at the time of the occurrence. Further if Sita Ram and Bhikari were really present at the time of the occurrence one would normally expect their names in the first information report. Sita Ram and Bhikari were not eye-witnesses but were introduced to shape the prosecution case.

17. The High Court referred to the medical evidence that the injuries meaning thereby incised wounds were caused with heavy sharp edged weapons and that the lacerated wounds were caused by a blunt weapon like Lathi. The doctor also said that the incised wounds were caused with a heavy sharp edged weapon like Pharsa. The injuries were, according to the doctor, sufficient in the ordinary course of nature to cause death. It was also the medical evidence that some of the injuries

could be caused by knife having 9 inch long blade. Both the doctors who were examined said that the deceased had no stab wound on his person. On this medical evidence the High Court correctly said that it was highly improbable that a number of persons attackin the victim with Lathis, Pharsas and knives would simultaneously attack the victim not even with the object of giving a stab wound, but only cause him minor incised wounds of the kind mentioned by the doctors.

18. Munna Lal, Sita Ram and Bhikari all said that Lalu was assaulted be those armed with knives after Lalu had fallen. Tara Chand did not mention that Lalu fell down. Sarwan stated that the assailants were standing while assaulting the deceased. The High Court rightly held that the evidence of Munna Lal, Sita Ram and Bhikari was not truthful that knife injuries were caused after the victim had fallen.

19. The medical evidence was that there were found injuries of abrasion. It could not be caused unless Lalu was dragged. The evidence was that Lalu was putting on a Baniyan and Tahmad at the time of the incident. The alleged eye-witnesses said that Lalu was not dragged at all but was assaulted. The medical evidence therefore showed that there was a false implication of several assailants including those alleged to be armed with knives. It could not be said without any reasonable doubt that the assailants who were there were armed with Pharsas and Lathis. The prosecution case was therefore not established beyond any reasonable doubt.

20. The High Court rightly acquitted the accused. The appeal is therefore dismissed. The accused are set at liberty.

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