

Satyanarain

Vs

State of Madhya Pradesh

Criminal Appeal No. 127 of 1969

(A. N. Grover, M. H. Beg JJ)

14.03.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Madhya Pradesh High Court.
2. The facts briefly are that one Khulesar was murdered on October 25, 1966, at 12 noon in village Kawali in the district of Bilaspur in Madhya Pradesh. Originally 20 persons were committed to stand the trial under Section 302, Indian Penal Code, read with Section 149 and other sections. The Second Additional Sessions Judge, Bilaspur acquitted 12 persons and convicted the remaining eight under Section 302, read with Section 149 and other section on whom a sentence of imprisonment for life was imposed. The present appellant filed an appeal to the High Court. The other convicted persons also preferred appeals. All these appeals were disposed of by a common judgment by which the conviction of all the appellants was upheld. Only Satyanarain - the appellant - has come up in appeal to this Court.
3. It is somewhat unfortunate that the High Court has delivered a highly sketchy judgment and has not given proper consideration to the points on which the decision of the case hinged. It is common ground that in village Kawali there were two parties or factions. One was led by the deceased, Khulesar while the other was led by one of the accused, Prem Singh. The party to which Satyanarain belonged was commonly known as Zakar Party. A number of proceedings and cross proceedings had taken place between these parties particularly under Section 107, Cr. P.G. The first information report of the occurrence was lodged by Rooplal, P.W. 5, who was not an eye-witness. In that report the name of the appellant was not mentioned. The eye-witnesses were four, namely, P.W. 1, Padumaram, P.W. 4, Nathu, P.W. 7, Banamli and P.W. 8, Ram Rattan. Nathu did not mention the name of the appellant at all in his statement as one of the assailants. According to Padumaram the appellant shouted that the deceased be killed. The latter was assaulted by Chaviram and Bundram with an iron fitted lathi and table respectively. The remaining accused showered blows with lathis and tabbal. Padumaram was a Panch of the Panchayat of the village of which Khulesar deceased was the Sarpanch. It is clear from Ext. P-59, that a complaint was filed under Section 107, read with Section 117 against Khulesar deceased and 14 other persons which included Padum. So far as P.W. 7, Banmali is concerned, Mr. Shroff for the State has very properly placed no reliance on him because it was admitted by him that a civil litigation was pending between him and the appellant. He was, therefore, clearly interested in involving the appellant. Moreover he stated in the examination-in-chief that the appellant inflicted 3 to 4 blows with a cane on the head of the deceased but in the statement recorded by the police he had made no mention of this at all. P.W. 8, Ram Rattan admitted that there were two parties in the village and both parties were tried under

Section 107, Cr. P.C. He was arrayed along with Khulesar and others. Moreover Khulesar was the elder brother of his father. Mr. Shroff conceded that all these witnesses were partisan or interested and it was not safe to base conviction of the appellant on their evidence unless some corroboration was found in the other evidence or material on the record. The learned trial judge found corroboration from the testimony of Bharat Kunwar, P.W. 6, Chinilal, P.W. 9 and Bihari, P.W. 2, who had deposed that they had seen some of the accused persons going towards Khulesar's Tikra armed with weapons. But Bharat Kunwar, P.W. 6, is the wife of Khulesar deceased. Chinilal P.W. 9, simply said that Banmali, P.W. 7, had told him that Khulesar had been killed and that the assailants were the accused persons including the appellant. Bihari, P.W. 2, is a brother-in-law of Padumaram P.W. 1. He did not even name the appellant as one of the persons who was seen going towards the field of Khulesar. We are completely at a loss to understand how the evidence of these witness could furnish any corroboration of the evidence of the eye-witnesses. Mr. Shroff has also pointed out that a bamboo stick was recovered at the pointing of Satyanarain and that some clothes were taken into possession from his person containing washed stains of blood. The lathi did not have any blood stain nor were the clothes sent for chemical examination. These, could, therefore, not be pressed into service as corroborative piece of evidence so far as the appellant is concerned. The learned trial judge as well as the High Court did not devote the necessary attention to these salient and material matters. All that the High Court did was to say :

"Admittedly the conviction of the accused appellants are mainly based on the testimony of four eye-witnesses namely, Padumaram (P.W. 1), Nathu (P.W. 4), Banmali (P.W. 7) and Ramratan (P.W. 8), and while appreciating their testimony the learned Additional Sessions Judge has relied on the principles laid down in the case of Masalti and Others v. State of U.P., AIR 1965 SC 202, in order to determine how many of the prosecuted accused were proved to be the members of the unlawful assembly. He has also relied on the views expressed in the case of State of Bombay v. Rusy Mistry, AIR 1960 SC 391 and Mardansingh v. State of M.P., AIR 1963 MP 97, in order to hold that the discrepancy or any infirmity in the first information report, as was canvassed before him on behalf of the accused, did not affect his findings against the accused whom he convicted. He has also relied on the views expressed in the cases reported in AIR 1950 SC 216; AIR 1965 Punj 27 and AIR 1965 Mys 284, in order to determine to what extent the testimony of the police officials can be relied upon."

4. In view of what has been stated above we have no manner of doubt that the conviction of the appellant could not possibly be sustained on the evidence produced by the prosecution. His appeal is, therefore, allowed and he is acquitted of the offences with which he was charged.

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