

Keshav Dev S/O Chunilal

Vs

State of U. P.

Criminal Appeal No. 136 Of 1971

P. Jagmohan Reddy, K. K. Mathew, G. K. Mitter JJ )

02.05.1972

JUDGMENT

MITTER, J. -

1. This is an appeal by Special Leave from a judgment of the Allahabad High Court upholding the conviction of the appellant under Sections 302, 324 and 452, I.P.C. and the reference under Section 374, Cr.P.C., for confirmation of the death sentence passed against the appellant.

2. The facts may be shortly stated as follows. The appellant is a cousin of one Het Ram, who had a wife by the name Smt. Ram Pyari. According to the prosecution case the appellant wanted to develop illicit connection with the said Ram Pyari which was resisted by her. She had complained about his advances to her husband who made a report against the appellant on December 31, 1968. The house of Het Ram is situate at a distance of about 40 paces from his shop on a road leading from the house to the shop. At about 10.30 p.m. on the night of June 8, 1969, Ram Pyari was lying on a cot in her house with her two daughters one aged about 8 months who was on the same cot with her and the other aged about three years on a cot close by that of Ram Pyari. Hearing shrieks from the house several persons including Het Ram and two prosecution witnesses by the name of Ulfat Ram and Gaffar rushed to the house of Het Ram. The houses of the said prosecution witnesses were even closer to Het Ram's house than his shop. The first information report was lodged by Het Ram at 10-45 p.m. to the effect that the children had raised an alarm crying that Keshav Dev had thrown acid on them and that on hearing their alarm he from his shop, Lala Ulfat, Gaffar Dhobi, Tulsi Ram Teli and Om Prakash Tamoli rushed up. They Keshav Deo in the light of an electric bulb coming out of Het Ram's house and running. He was chased but could not be caught. Het Ram's wife and children had received serious burn injuries. The miscreant had left a bottle at the place of occurrence.

3. The evidence given by Het Ram before the Sessions Court was that he had heard the cry of his wife that Keshav Dev had killed her whereupon he immediately rushed to his house. He had seen Keshav Deo running away from the door of his house and recognised him in the light of an electric bulb. The evidence of Ulfat Ram was also to the effect that he had heard a voice from the side of the house of Het Ram saying "Keshav has killed me". When he entered the house alongwith Om Prakash Tamoli, Tulsi and others they saw Het Ram's wife crying sitting on the cot and saying that Keshav had killed her. His shop was about 25 to 30 steps from the house of Het Ram. The prosecution witness Gaffar made a very similar statement. According to him the voice which he heard was quite intelligible and when they went inside they found Het Ram's wife speaking in a faltering voice.

4. Ram Pyari was taken to the village hospital where the doctor who examined her suggested that she should be taken to the District Hospital at Etah but before she could be removed she passed away the next morning. The evidence of this doctor was that Ram Pyari remained unconscious till her death and she was not able to speak. The injuries of Ram Pyari are done of the daughters, Usha, were sufficient to cause death in the ordinary course. The daughters died in the hospital at 10-15 a.m. on the day following Ram Pyari's death. The medical officer of the District Hospital, Etah who had performed the post-mortem gave evidence to the effect that there were corrosive burns on various parts of the body of the deceased including the head, face, lips, neck, both the breasts, chest, abdomen and waist on about 50 per cent. of the area. In cross-examination this doctor said that the deceased would have lost her sight immediately after the falling of acid over her eyes.

5. The point sought to be made on behalf of the appellant before us is that the testimony of the eye-witnesses cannot be accepted in view of the medical evidence in the case. Dr. Chaturvedi who had examined her in the village hospital had stated that the eye sight of Ram Pyari "might have gone immediately after the acid had been thrown". He was examined again before the High Court when he stated that Ram Pyari must have become unconscious within a minute or so. In cross-examination by counsel for the State he said that it was possible that the injured person might have retained consciousness for 2 or 3 minutes after the incident and that the eyes of the injured must have opened on the sprinkling of the acid whereafter the acid must have gone inside the pupils and they must have affected thereby. He was however not in a position to say definitely if the outer parts of her eye lids were injured and he had not mentioned any such injury in his injury report.

6. Counsel for the appellant tried to build up a case on the strength of this evidence that if Ram Pyari had acid smeared on her face she could not have seen the appellant and as she might have become unconscious within a minute or so she could not have even cried out and the statement of the witnesses that they had heard Ram Pyari saying that it was the appellant who had thrown acid on her cannot be accepted.

7. In our view the suggestion is not worthy of acceptance. Almost simultaneously with the shriek of the injured four or five people rushed to the house of Het Ram. There is no dispute that the injuries were caused by throwing of acid extensively over the body of the deceased and her two daughters. The challenge is only as to the identity of the culprit. It is difficult to believe that the story of acid-throwing could have been cooked up within 15 minutes of the incident specially when the names of several witnesses were given in the first information report at least two of whom were examined before the Sessions Court. That there was enmity between the appellant and Het Ram does not admit of any doubt or dispute. As the acid was thrown on various parts of her body there is no knowing exactly which part of the body of the deceased the acid touched first. If it was not the eyes which were affected first and there was an interval of even a few seconds between the contact of the acid on a part of the body other than the eyes and the contact on the eyes themselves it would be quite reasonable to hold that the deceased had seen the miscreant and as the appellant was a known person, there would be no difficulty in shouting out his name as the killer.

8. Counsel also tried to raise a suggestion that it was Het Ram who had done the misdeed and had tried to foist the crime on to the appellant. We think it is wholly an impossible and imaginary story. No such suggestion was ever made to Het Ram in his cross-examination. If it was Het Ram who responsible for this dastardly crime it is difficult to believe that he would have thrown acid on his three years old daughter or eight month's old child.

9. We also cannot accept the suggestion made before us that Het Ram and the other two prosecution

witnesses could not have reached the house of Het Ram in time to hear the deceased uttering anything as she must have become unconscious at once. As we have already said the distance of Het Ram's shop from his house was only 40 paces or 60 ft. It could be covered in less than a minute. The other two witnesses were even closer to his house. That there was a shriek which attracted the attention of those people cannot be questioned. Both courts have accepted the dying declaration of Ram Pyari that it was the appellant who had done the misdeed and we see no reason to take a different view.

10. The appeal is therefore dismissed and the sentence and order passed by the High Court will stand.

</html