Sahaj Ram and Others

Vs

The State of U. P.

Criminal Appeal No. 131 of 1969

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

17.11.1972

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal by special leave, by accused Nos. 1 to 4, 8 and 9 is against the judgment and order, dated January 13, 1969, of the High Court of Allahabad confirming the conviction and the sentences imposed on them by the Second Additional Sessions Judge, Meerut. All the appellants have been convicted under Section 302, read with Section 149, I.P.C. and sentenced to imprisonment for life. Appellants 3 and 6 (accused Nos. 8 and 9) have been convicted under Section 143, I.P.C. and each of them has been sentenced to rigorous imprisonment for 18 months. Appellants Nos. 1, 2, 4 and 5 (accused Nos. 1 to 4) have been convicted under Section 147, I.P.C., and each of them has been sentenced to rigorous imprisonment for one year. All the sentences have been directed to run concurrently.

2. The six appellants along with four others, who were accused Nos. 5 to 7 and 10, were tried by the learned Sessions Judge for offences under Section 302, read with Sections 149, 147 and 148 of the Indian Penal Code. Accused Nos. 5 to 7 and 10 were acquitted by the learned Sessions Judge and there was no appeal by the State challenging their acquittal. For purposes of convenience the appellants before us will be designated as group I and the acquitted accused will be designated as group II.

3. The prosecution case in brief was as follow : The accused belonging to group I are very closely related and are descendants of a common ancestor belonging to the same family. In or about 1958 there was a marpit between some of the accused of this group and their friends on the one hand and Kartar Singh alias Kartara, the deceased, his brother, Aman Singh and their friends on the other. The dispute related to the breaking of a mend. In the said marpit, accused 2 and 3 received injuries which resulted in cases being registered against both parties under Sections 147 and 323, I.P.C. Ultimately the cases were registered as having been compromised. Notwithstanding this compromise the relationship between the accused belonging to group I and the deceased were not cordial.

4. The accused belonging to group II had very great enmity towards the deceased, who was strongly supported by P.W. 7 and some of his friends. One Smt. Kuri whose son-in-law was, P.W. 7, had some lands in the village. The wife of P.W. 7 was her only daughter. P.W. 7 had desired that the lands of his mother-in-law should be given to his wife. The lands were being cultivated by the deceased. Kartar Singh, for about ten or eleven years. Though Shmt. Kuri wanted to give the lands to her daughter's children (child of P.W. 7), accused Nos. 5, 6 and 7 belonging to the 2nd group

fraudulently got a sale deed executed in their favour of the lands in question on December 14, 1964. One of the attesting witnesses to this document was accused No. 10 belonging to this group. The 2nd group wanted to get possession of the properties which attempt was very strenuously resisted by the deceased, Kartar Singh, supported by P.W. 7 and certain others. This led to a series of criminal complaints and civil litigation, each one alleging that the other was committing criminal acts against them. In view of this bitter enmity, the accused belonging to group II had a strong motive to put and end to Kartar Singh, who was obstructing possession being taken by them.

5. The accused belonging to both these groups became friendly with each other because of the common enmity against the deceased and accordingly joined together and assaulted Kartar Singh at about 12 noon on September 14, 1965, when the latter was working in his fields, and inflicted very serious injuries which resulted in his instantaneous death. The first information report was given by P.W. 1 who was working in the adjoining fields and had seen the occurrence. Investigation followed and all the accused were apprehended and put up for trial.

6. The case of the prosecution, it will be seen was that the appellants as well as the acquitted accused formed an unlawful assembly with the common object of committing the murder of Kartar Singh and did commit his murder by attacking him and inflicting serious injuries which proved fatal. Accused Nos. 8, 9 and 10 were stated to have been armed with spears and as such they were charged with an offence under Section 148, I.P.C. and all the other accused were charged for an offence under Section 147, I.P.C. The prosecution relied on the evidence of P.Ws. 1, 4 and 10 as having witnessed the occurrence. The learned Sessions Judge examined Shitabi and Ram Prasad as court witnesses 1 and 2 respectively. These persons, though mentioned in the charge-sheet as having witnesses the occurrence, were not examined by the prosecution. The accused belonging to the different groups also examined some witnesses on their side. It is to be noted particularly that some of the witnesses examined on the side of group II specially implicated the present appellants as having committed the crime.

7. The accused of the 1st group pleaded ignorance about the whole incident. Though they admitted the marpit of the year 1953, they stated that after the compromise entered into between them and the party of the deceased in that year there had been no cause for grievance or enmity between them. The report, Ext. Ka-8, stated to have been made by the first appellant (accused No. 1) to the police about previous incident on the same day, was denied by him. This accused further denied having any friendship or association with the accused belonging to the 2nd group. The accused belonging to group II pleaded that they had legally obtained the sale deed of the lands in question from Smt. Kuri on paying a consideration of Rs. 14,000 and that the said transaction was a genuine and honest transaction. They further pleaded that P.W. 7, who wanted the property to be given to his wife by Smt. Kuri, was very much disappointed and he along with one Aman Singh and the deceased, who claimed to be in possession, were creating considerable trouble to them. They also accepted as true the various litigations and criminal complaints that were pending in the courts regarding this lands to which they were parties. But they pleaded ignorance of the occurrence which resulted in the death of Kartar Singh.

8. The learned Sessions Judge recorded the following findings :

The prosecution had let in no evidence as to why the accused belonging to the two groups should join together for committing the murder. The plea of possession of the land by the deceased is bogus and is a make-believe affairs. The 2nd group had no motive to commit the murder as they were in possession of the properties by virtue of the purchase from Smt. Kuri. Court witnesses Nos. 1 and 2

in their statement to the police had named all the ten accused as having assaulted the deceased. But in their evidence before the court they had stated that only the six accused belonging to group I assaulted the deceased with dangerous weapons and caused his death. The explanation given by them for naming all the ten accused before the police was that the sub-inspector threatened to beat them if the accused belonging to the 2nd group were not implicated. Notwithstanding this circumstance, their evidence regarding the present appellants could be believed. Though the first information report purports to have been given by P.W. 1, the contents of the same have really been furnished by P.W. 7 and his friend, Aman Singh, who were bitterly opposed to the 2nd group of accused, and P.W. 1 was only a figure head. There is great discrepancy between the time and the scene of occurrence and regarding certain other matters in the said report. P.Ws. 1 to 3 have a motive to falsely implicate the accused of the 2nd group and, therefore, their evidence regarding the participation of those accused is false and has to be rejected. But nevertheless their evidence can be accepted so far as the accused in the first group are concerned. Though the case of the prosecution was that the first accused sustained certain injuries during the occurrence at the hands of P.W. 1, nevertheless that case has not been proved by the prosecution. But the report, Ext. Ka-8, filed by the first accused earlier in the day before the police regarding a quarrel between him and the deceased can be taken into account as it provided the immediate provocation for the murderous attack made by the accused of the 1st group on Kartar Singh later in the day. The accused of the 1st group attacked Kartar Singh with spears and lathis and caused injuries which resulted in his death and, therefore, they are guilty of the offence with which they were charged. But as the evidence given by P.Ws. 1 to 3 regarding the participation of the four accused belonging to group II is false, their evidence will have to be rejected and in consequence those accused were entitled to acquittal.

9. The High Court has confirmed the conviction of the appellants. The reasoning of the High Court is briefly as follows :

The evidence of the court witnesses 1 and 2 is false and no reliance can be placed on their evidence even so far as the accused of the 1st group were concerned. These witnesses have gone behind their statements given to the police in which they had implicated all the ten accused. Even eliminating the evidence of these two witnesses, there is evidence of P.Ws. 1 to 3 which can be accepted against the present appellants. The matter mentioned in Ext. Ka-8 by the first accused can be taken into account, as that furnished the motive for the appellants attacking the deceased. Even though the circumstances under which the appellant received the injury have not been established or proved by the evidence let in by the prosecution, the State can reply upon the facts referred to in Ext. Ka-8. The learned Sessions Judge has only given the benefit of doubt so far as the accused of the 2nd group are concerned and that does not in any manner minimise the evidence given by P.Ws 1 to 3 against the accused of the 1st group. The conviction of the appellants is, therefore, supported by the evidence.

10. Prima facie it may appear that the conviction of the appellants is in consequence of more or less concurrent findings arrived at by both the learned Sessions Judge and the High Court. If so, this Court will not normally reappraise the evidence in an appeal under Article 136 of the Constitution unless among other things, there is a glaring mistake committed by the courts or there has been an omission to consider vital pieces of evidence.

11. We will presenting show that there has been very serious mistakes committed by both the learned Sessions Judge as well as the High Court and the attack levelled against the judgments by Mr. Frank Anthony, learned counsel for the appellants, is well founded. In the view that we take, it is not necessary for us to minutely consider the evidence of P.Ws. 1 to 3 in any great detail. The

learned Sessions Judge has categorically found that the prosecution has not adduced any evidence to how as to how the accused belonging to the groups had joined together to attack the deceased. The first information report refers almost exclusively to the various litigations - civil and criminal - between the 2nd group on the one hand and Kartar Singh, P.W. 7 and others on the other. All those allegations will only lead to the conclusion that there has been bitter enmity between Kartar Singh, supported by P.W. 7 and the members to the 2nd group. The first information report is completely silent as regards any motive that could be attributed to the accused belonging to the first group. It has also been found that the facts mentioned in the first information report were really furnished not by P.W. 1, the mother of the F.I.R., but by P.W. 7 and his companion, Aman Singh. These aspects have not been taken into account by the High Court in considering the credibility of the witness, who deposed against the appellants.

12. According to the prosecution Shitabi, C.W. 1, was with the deceased at the time of the occurrence. Ram Prasad, C.W. 2, was also an eye-witnesses to the occurrence. Their names have been mentioned in the first information report, as also in the charge-sheet as persons who had witnesses the attack on the deceased. Under those circumstances there was a duty on the part of the prosecution to have examined them as witnesses for the purpose of unfolding its case. These witnesses, when examined by the police, had implicated all the ten accused as having taken part in the attack. But when giving evidence in Court, they have implicated only the present appellants. The plea on behalf of the appellants was that these two witnesses have been won over by the 2nd group and they have been made to give evidence against the 1st group alone. The explanation of the said witnesses for implicating the 2nd group in there statement to the police was that the sub-inspector had threatened to beat them if they did not name all the ten accused. The finding of the learned Sessions Judge is that these two witnesses have been purposely withheld by the prosecution because they will not be implicating the accused of the 2nd group in Court. Mr. Uniyal, learned counsel appearing for the State, pointed out that when the other eye witnesses, P.Ws. 1 to 3, have been examined, it was unnecessary for the prosecution to have examined C.W. 1 and 2, we are not inclined, in the circumstances of this case, to accept this contention. As pointed out by this Court in Habeeb Mohammed v. The State of Hyderabad, (1954 SCR 475 : AIR 1954 SC 51 : 1954 Cr LJ 338) though the prosecution is not bound to call all available witnesses irrespective of considerations of number or reliability, witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution, whether in the result the effect of their testimony is for or against the case of the prosecution. This Court approved the decision of the Judicial Committee in Stephen Seneviratne v. The King (AIR 1936 PC 289 : 164 IC 545 : 39 Bom LR 1) laying down a similar proposition. In this case the first information report clearly states that Shitabi, C.W. 1, was an employee of the deceased and he was with his master at the time of the incident. He has also given information about the incident to P.W. 1 and others. Whatever justification there may have been for not examining Ram Prasad, the prosecution, in our opinion, was not justified in keeping back Shitabi. The reasons given by the prosecution that he will go behind his statement given to the police is no justification or excuse for keeping him back. Though the learned Sessions Judge accepted the evidence of C.Ws. 1 and 2, the High Court has characterised them as unreliable witnesses even so far as the present appellants are concerned. These two witnesses have deposed that P.Ws. 1 to 3 were not any where near the scene of occurrence. Unfortunately the High Court has not taken into account these circumstances when it chose to accept the evidence of P.Ws. 1 to 3. The evidence of C.Ws. 1 and 2 has no doubt been accepted by the learned Session Judge, though their evidence regarding the 2nd group has been rejected as thoroughly unreliable as characterised by the High Court.

13. Another circumstances is that both the learned Session Judge and the High Court have

committed a serious error in relying upon the Ext. Ka-8, Ka-8 is a report stated to have been lodged by the first accused at about 3.30 p.m., before the police on September 14, 1965. The first accused is stated to have mentioned that there was a quarrel between him and the deceased because the latter had cut the sugarcane crop and in the said quarrel he sustained an injury. It is in evidence that the first accused had sustained an injury on that day. But the case of the prosecution throughout has been that he sustained an injury when P.W. 1 beat him with a stick at the time when the first accused along with nine other accused attacked Kartar Singh. P.W. 6 has given evidence to the effect that there was no cutting of sugarcane crop by Kartar Singh and that there was no quarrel between him, the deceased and the first appellant. This evidence has been accepted by both the courts. P.Ws. 1 to 3 in their evidence have stated that during the assault made by the ten accused on Kartar Singh, P.W. 1, when going to the rescue of the deceased wielded his lathi which caused an injury to the first accused. In the first information report it is stated that P.W. 1 wielded his lathi during the incident and cause an injury to the first accused. When the first accused was examined by the Sessions Court under Section 342, the question put to the accused and his answer were as follows :

> "Question. - It is in evidence that Girwar P.W. wielded his stick in self defence causing injuries to you and that when he was intervening, you and the other accused persons threatened him and he, therefore, stood behind the other spectators for safety. What have you to say to this ?"
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> "Answer. - This is incorrect".

14. Girwar referred to in the above question is P.W. 1. Another question put to him was to the effect that he had lodged a report, Ext. Ka-8. The first accused denied having lodged any such report. Both the learned Sessions Judge and the High Court have very profusely relied on Ext. Ka-8 and they have come to the conclusion that the incident mentioned therein by the first accused himself had provided the immediate provocation for the deadly assault on Kartar Singh by the accused on group I. In our opinion, both the courts were totally unjustified in relying upon Ext. Ka-8. The prosecution case throughout was that P.W. 1 caused the injury during the occurrence to the first accused. The first information report and the evidence let in before the court was also to the same effect. The first accused was also asked to explain that evidence. The motive pleaded by the prosecution for the present appellants attacking the deceased was the marpit of 1958. No other evidence has been placed before the courts by the prosecution regarding any subsequent ill-will or enmity between the present appellants and Kartar Singh. The courts, having ignored those circumstances, tried to find a motive themselves by relying on Ext. Ka-8, which is erroneous. Mr. Uniyal no doubt referred us to the decision in Dal Singh v. The King Emperor, (44 IA 137 : AIR 1917 PC 25 : ILR 14 Cal 876) to the effect that the statements made by the first accused in Ext. Ka-8 are not by way of confession and that such statements are admissible in evidence. In our opinion the said decision does not assist the State. If really the prosecution was relying on any statement made by the accused regarding the particular incident for which he was being tried, then it maybe stated that it is a relevant piece of evidence. But the position before us is entirely different. The case of the prosecution regarding the circumstances under which the first accused sustained an injury was totally different from what is stated in Ext. Ka-8 by the first accused. That the prosecution does not accept those statements, is clear by the evidence of P.Ws. 1 to 3 and also of P.W. 6. In view of the stand taken by the prosecution in this case, no support or reliance should have been placed by the courts on Ext. Ka-8. Further, this was not even a case where the prosecution was trying to find support from the statements contained in Ext. Ka-8. On the other hand, both the courts, in the absence of any evidence regarding motive, tried to find out some reason as to why the appellants may have had a motive to attack the deceased. If once Ka-8 is eliminated, there is absolutely no material on record

to show as to why the appellants should have attacked the deceased on the day in question.

15. The last circumstances to be considered is the reliance placed by the courts on P.Ws. 1 to 3. The learned Sessions Judge has accepted the evidence of these witnesses because of the fact that their evidence found corroboration from C.Ws. 1 and 2. But the High Court has categorically rejected the evidence of C.Ws. 1 and 2 as being unreliable and false even so for as the appellants are concerned. The High Court has not considered as to what value has to be attached to P.Ws. 1 to 3 when once the witnesses, who corroborated them, were found to give false evidence. The High Court has further proceeded on the basis that the learned Sessions Judge has not disbelieved the evidence of P.Ws. 1 to 3 when acquitting the accused belonging to the 2nd group. This is a very serious mistake committed by the High Court because the Trial Court has categorically recorded a finding that the evidence of P.Ws. 1 to 3 is false so far as the 2nd group is concerned. The High Court, while proceeding on the basis that only benefit of doubt was given to those accused, has not considered the evidence of P.Ws. 1 to 3 properly. There is a clear finding of the Sessions Court to the effect that P.Ws. 1 to 3 had a very strong motive to falsely implicate the four accused forming group II. In view of these circumstances, the High Court's consideration of the evidence of P.Ws. 1 to 3 is faulty and erroneous. The conviction of the appellants by the High Court is based exclusively on the evidence of these witnesses giving great importance to Ext. Ka-8. We have already held that Ext. Ka-8 should not have been taken into account. Having due regard to the other circumstances referred to above, the evidence of P.Ws. 1 to 3, even as regards the appellants, stands considerably discredited and no conviction can be based on such an evidence. This really is a case, in our opinion, where the courts have substantially disbelieved the substratum of the prosecution's case and have reconstructed a story of their own against the appellants.

16. In the result the judgments and orders of the learned Sessions Judge and the High Court convicting the appellants of the offences referred to earlier as well as the sentences imposed on them are set aside and the appellants are acquitted. The appeal is allowed.

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