

Dargahi and Others

Vs

The State of U. P.

Criminal Appeal No. 25 of 1970

(H. R.Khanna, A. Alagiriswami JJ)

04.09.1973

JUDGMENT

KHANNA, J. –

1. The nine appellants, Dargahi (60), Ishaq (40), Mangrey (60), Janu (30), Khalil (25), Noor Mohammad (40), Kallu (40), Sirajul (45) and Babu (35) were tried in the court of the learned Sessions Judge Barabanki for various offences in connection with an occurrence which resulted in the death of Lachhman Prasad (50). It was alleged that the head of Lachhman Prasad was chopped off and was carried away by the culprits. Injuries were further stated to have been caused to Ramji P.W. during the course of the occurrence. The trial Court acquitted the appellants. On appeal filed by the State, the Allahabad High Court reversed the judgment of acquittal. The nine appellants were convicted under Section 302 read with Section 149 Section 323 read with Section 149 and Section 201 read with Section 149 Indian Penal Code and were sentenced to undergo imprisonment of life, rigorous imprisonment for a period of one year and rigorous imprisonment for a period of four years respectively. In addition to that, Khalil and Ishaq appellants were convicted under Section 148 Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of two years, while the remaining seven appellants were convicted under Section 147 Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of one year. The sentences in the case of each of the appellants were ordered to run concurrently. The appellants thereafter came up in appeal to this Court by special leave.

2. The prosecution case is that Lachhman Prasad deceased was the Pradhan of village Bahrauli. The Sub-Divisional Magistrate of Fatehpur directed Lachhman Prasad deceased to sell fish from a pond of Bahrauli village, but the deceased refused to comply with that direction. Lachhman Prasad was thereupon suspended and Munney Miyan who was Up-pradhan was directed to discharge the functions of Pradhan. Munney Miyan executed 28 Pattas of land belonging to the Gram Samaj in favour of various persons, including Mangrey, Babu, Ishaq and Janu accused. A Patta was also executed by Munney Miyan in favour of Jamal, nephew of Dargahi accused. Lachhman Prasad filed a writ petition in the High Court challenging the order of the Sub-Divisional Magistrate of Fatehpur suspending Lachhman Prasad. The High Court accepted the writ petition. The 28 persons in whose favour Pattas had been executed by Munney Miyan, in the meanwhile, filed applications to the Tehsildar of Fatehpur for necessary mutation in their favour. Lachhman Prasad deceased objected to the land being mutated in favour of the Patta holders. The Pattas were thereupon cancelled. Revision petitions were filed by the Patta holders against the cancellation of Pattas but those revision petitions were dismissed by the Additional Commissioner on July 1, 1966, five days before the present occurrence. Another cause of enmity between Lachhman Prasad and the accused was that one Tejinder Singh had executed a sale deed in respect of a portion of a farm known as

Punjabi Farm in favour of Ramji (P.W. 4). Ramji belongs to Azamgarh district, while Lachhman Prasad deceased as well as the accused belong to district Barabanki. Lachhman Prasad deceased was an attesting witness of the sale deed executed by Tejinder Singh in favour of Ramji. The accused who are gaddis objected to the sale in favour of Ramji. Lachhman Prasad deceased pursued the matter on behalf of Ramji in connection with that dispute. Ramji stayed with Lachhman Prasad deceased at his house for about four or five months before the present occurrence on account of that dispute.

3. On the morning of July 6, 1966, it is stated, Ramji P.W. and Lachhman Prasad left Lachhman Prasad's village Barhaulti to go to the office of the Tehsildar at Fatehpur in connection with the dispute relating to the mutation of land purchased by Ramji. Ramji rode on the cycle and Lachhman Prasad sat behind on the carriers of the cycle. Ramji and Lachhman Prasad were accompanied by Harihar Nath, Gur Saran and Behari P.Ws. Harihar Nath is the brother of Lachhman Prasad deceased and is the Lekhpal of the village. Harihar Nath being Lekhpal had to go to the Tehsil on that day. Gur Saran was going to the Tehsil on that day as he had made an application for obtaining Tacavi loan for purchase of bullocks. Behari was in need of paddy seedlings and, according to him, as he was not getting the same in his village he was going to village Bhitauli to obtain the seedlings.

4. The case of the prosecution further is that at about 7 a.m. when Ramji and Lachhman Prasad arrived near the bridge of Chauri river, the nine accused emerged from both sides of the bridge. Ishaq and Khalil were at that time armed with Bankas, while the remaining seven accused were armed with lathis. The accused gave lathi blows to Ramji and Lachhman Prasad deceased, as a result of which they both fell down. Ramji ran away leaving the cycle while Lachhman Prasad deceased was held down and was given further lathi blows. Khalil and Ishaq then severed the head of the deceased by cutting the neck with their Bankas. Leaving the headless body at the spot, the accused then ran away with the head towards the south. Harihar Nath, Gur Saran and Behari who were shortly behind Ramji and Lachhman Prasad deceased witnessed the occurrence from a nearby distance. The occurrence was likewise witnessed by Ramji who stood at a short distance from the place where Lachhman Prasad was assaulted by the accused. Leaving Gur Saran and Behari near the headless body of Lachhman Prasad deceased, Harihar Nath proceeded along with Ramji P.W. to Police station Kursi at a distance of two miles from the place of occurrence and lodged there report Ka-4 at 7.35 a.m. Ramji P.W. was thereafter sent to Kursi dispensary at a short distance from the police station. The injuries of Ramji were examined by Dr. S. N. Dhawan at 8.30 a.m. The doctor found a contusion in the left forearm besides two abrasions on the person of Ramji. The injuries were simple and were of about two hours duration.

5. Head Constable Kunj Behari Lal (P.W. 8) after registering the case went to the place of occurrence and reached there at 9 a.m. The Head Constable prepared the inquest report relating to the headless body of the deceased. The different articles lying at the spot were also taken into possession. The Head Constable found blood marks from the bridge up to a distance of four furlongs towards the south of the place of occurrence. At about 4 p.m. the Head Constable learnt that a severed head was lying in Chauri river at a distance of about four miles from the place of occurrence. The Head Constable then went to that spot and took into possession a broken skull along with pieces of bones.

6. Post mortem examination on the body of Lachhman Prasad deceased was performed by Dr. D. K. Srivastava on July 7, 1966. The doctor found three incised wounds, two contusions and three abrasions on the headless body of the deceased. The incised wounds were as under :

"1. Incised wound 13" in circumference and 4 1/2" in the diameter at the level or 3rd cervical vertebrae. All the soft parts, blood vessels and nerves were found cut through and through. Third cervical vertebrae was also cut through and through.

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7. Two incised wounds 1" x 1/4" x 1/4" x skin 1" apart on the first phalanx and on the root of right small finger."

On internal examination, the doctor found that the third cervical vertebrae and the spinal cord had been cut through and through. Trachea and oesophagus were also found to have been cut through and through. The severed head was found by the doctor to be extremely mutilated. The whole thing was extremely pulverised into bits and could not be reshaped. A portion of the upper jaw and sixteen pieces of bones were lying separately. On clearing the structure, the doctor found a clean cut wound on the severed head and the headless body could be of one and the same person.

7. Ramji P.W., it is further alleged, knew Dargahi, Mangrey, Khalil and Ishaq accused before the present occurrence. He did not know the remaining five accused. Application was made on behalf of the seven of the accused, i.e. accused other the Dargahi and Mangrey, that identification parade be held in which Ramji might be asked to identify them. Ramji then stated that he knew only two of the accused, namely, Khalil and Ishaq, and as such, could identify only those two accused. The identification parade in respect of the remaining five accused was not held. At the identification parade, Ramji correctly identified Khalil but he could not identify Ishaq accused. Ramji ascribed his failure to identify Ishaq to the fact that Ishaq had a smaller beard at the time of the occurrence while at the time of the identification parade, he (Ishaq) had grown a longer beard.

8. At the trial Harihar Nath (P.W. 1), Gur Saran (P.W. 2), Behari (P.W. 3) and Ramji (P.W. 4) gave ocular evidence regarding the occurrence and supported the prosecution case. The accused in their statements denied the prosecution allegations regarding their participation in the assault on Lachhman Prasad deceased and Ramji P.W. According to the accused, they were not present at the scene of occurrence and had been falsely involved in this case on account of enmity.

9. The learned Sessions Judge was not impressed by the evidence of the four eye-witnesses. Harihar Nath was found to be inimical to the accused and as such, it was not safe, in the opinion of the Sessions Judge, to act upon his evidence without independent corroboration. The presence of Gur Saran and Behari at the scene of occurrence was, according to the Sessions Judge, highly doubtful. Regarding Ramji, it was observed that he knew only four of the accused and even out of them, he could not identify one of them correctly. The prosecution, in the opinion of the learned Sessions Judge, had failed to prove the complicity of the accused persons beyond reasonable doubt and they were entitled to the benefit thereof.

10. On appeal the High Court considered the evidence of the four eye-witness and found the same to be convincing. There was, in the opinion of the High Court, no cogent reason for the trial Court to discard the evidence of the four keys-witnesses and to doubt their presence at the scene of occurrence. In the result the High Court accepted the appeal, reversed the judgment of the trial Court and convicted and sentenced the accused as mentioned earlier.

11. In appeal before us Mr. Nuruddin on behalf of the appellants has argued that the High Court should not have reversed the judgment of acquittal of the trial court. As against that, Mr. Rana on

behalf of the State submits that there were substantial grounds for the High Court to interfere with the judgment of the trial Court. The submission of Mr. Rana, in our opinion, is well founded.

12. The prosecution has examined four witnesses of the occurrence and they have all supported the prosecution case. Out of the four eye-witnesses, Harihar Nath (P.W. 1) is the brother of Lachhman Prasad deceased. Harihar Nath admits enmity with the accused and that fact would make the Court scrutinise his evidence more closely. If that evidence can stand that test, it can be acted upon in spite of the inimical relations of Harihar Nath with the accused. Gur Saran P.W. and Behari P.W., the other two eye-witnesses, have no enmity with the accused and we find no particular reason as to why they should depose falsely against the accused. The submission made on behalf of the appellants that Gur Saran and Behari are chance witnesses and that the Court should not therefore place much reliance upon their testimony, in our opinion, is not well founded. The occurrence took place on the road going to Fatehpur. In the very nature of things the occurrence could have been witnessed by the persons going on that road. In a sense any one going on the road in question at the time of the occurrence would be a chance witness but that fact by itself would not be enough to discredit his testimony.

13. The last eye-witness to be examined in case is Ramji (P.W. 4). Ramji had injuries on his person which were received by him at the time of the occurrence and there can be hardly any doubt regarding his presence at the scene of occurrence. Although according to Ramji, he knew only four out of the nine accused and even out of those four he could not identify one of them, the fact remains that every according to Ramji there were nine appellants. The names of the nine appellants have been mentioned by the other three eye-witnesses. No reason has been shown to us as to why the other three eye-witnesses should spare some of the assailants and falsely mention in their place names of innocent persons as the assailants.

14. An important circumstance which has to be borne in mind in the present case is that the first information report about the occurrence was lodged by Harihar Nath P.W. at 7.35 a.m. at police station Kursi at a distance of two miles from the place of occurrence. The occurrence took place at 7 a.m. The trial Court accepted the prosecution allegation that the occurrence had taken place at the time and place mentioned by the prosecution. The fact that the first information report was lodged within 35 minutes of the occurrence at the police station at a distance of two miles from the place of occurrence and the fact that in the aforesaid report the names of the accused and the culprits as well as the names of the eye-witnesses were mentioned lends considerable corroboration to the testimony of Harihar Nath P.W. regarding the participation of the accused appellants in the present occurrence.

15. It is well settled that the High Court in appeal under Section 417 of the Code of Criminal Procedure has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. We have been taken through the judgments of the trial Court and the High Court and we find that the judgment of the High Court is not vitiated by any such infirmity as may call for interference by this Court. The appeal consequently fails and is dismissed.

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