

Laxman and Others

Vs

The State of Maharashtra

Criminal Appeal No. 47 of 1970

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

21.09.1973

JUDGMENT

KHANNA, J. -

1. Five accused Laxman (30), Suka alias Sukhdeo (40), Jyotiram (40), Rajeram (45) and Ramdas (28) were tried in the Court of the Sessions Judge Amaravati under Section 302 read with Section 34 Indian Penal Code for causing the death of Sitaram (40). Learned Sessions Judge acquitted Ramdas and convicted the other four accused under Section 325 read with Section 34 Indian Penal Code and sentenced each of them to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 200 or in default to undergo rigorous imprisonment for a further period of three months. Two cross-appeals were filed against the judgment of the Sessions Judge. One of the appeals was by Rajeram against his conviction and sentence. The other appeal was by the State of Maharashtra praying that the conviction of the accused should have been under Section 302 read with Section 34 instead of Section 325 read with Section 34 Indian Penal Code. The Nagpur Bench of the Bombay High Court dismissed the appeal of Rajeram. The appeal filed by the State was accepted and the conviction of the four convicted accused was altered to that under Section 302 read with imprisonment for life. The four convicted accused thereafter came up in appeal to this Court by special leave.

2. The prosecution case is that Sitaram deceased was employed by Nathamal (PW 1) as a watchman for his fields in the area of village Darapur near Kohlapur. On December 19, 1966, at about 4 p.m., when Nathamal went to the bazar in Kohlapur he was informed by Ramdas accused in the fields. Nathamal then told his son Radheyshyam (PW 3) who is a student, that he had informed about the assault on Sitaram in the fields. Radheyshyam, accompanied by two of the servants, Sadiq and Gaursha, went in a bullock cart to the fields. Sitaram was found by Radheyshyam and others lying in an injured condition in a field. Sitaram was then put in the bullock car and was taken to police station Kohlapur. The bullock cart was driven by Gaursha. On the way, according to Sadiq (PW 5), he was told by Sitaram deceased that he had been injured by the four appellants. On arrival at the police station, Radheyshyam lodged report Exhibit 9 at 6.15 p.m. In that report, the names of the assailants of Sitaram were not mentioned.

3. Sitaram was thereafter taken in the bullock cart to the dispensary in Kohlapur where his injuries were examined by Dr. Shankar Gaikwad (PW 4). Dr. Gaikwad found that the condition of Sitaram was serious. He accordingly sent an intimation to police station Kolhapur, for recording the dying declaration of Sitaram. Head Constable Utamrao then came to the dispensary. The Head Constable obtained a certificate of Dr. Gaikwad that Sitaram was in fit condition to make a statement. Dying declaration Exhibit 38 of Sitaram was then recorded by the Head Constable. The dying declaration

was in the form of questions and answers. In answer to the question as to who had assaulted him, Sitaram mentioned the names of all the five accused. In answer to another question about the weapons used by the assailants, Sitaram stated that he had been assaulted with axe and sticks. Regarding the cause of the assault, Sitaram stated that Suka accused had cut jowar in the past and a report about that had been made by Sitaram. The dying declaration of Sitaram was also signed by Radheyshyam who was present at the time the dying declaration was recorded. Sitaram's condition became serious thereafter. He died at 9 p.m. when he was being put in the cart for being taken to Amravati. Post mortem examination on the body of Sitaram was performed by Dr. Anant Deshpande on December 10, 1966 at 3 p.m. in Amravati. The doctor found 34 injuries on the body consisting mostly of contusions. There was one lacerated wound on left arm, while four injuries consisted of abrasions. The injuries were sufficient in the ordinary course of cause death. The five accused were thereafter arrested.

4. At the trial, the plea of the accused was denial simpliciter. The trial Court did not place any reliance upon the oral dying declaration which was alleged to have been made by Sitaram to Sadiq PW in the bullock cart. Reliance was, however, placed by the trial Court upon the dying declaration Exhibit 38 which had been recorded by Head Constable Utamrao in the dispensary. The trial Court was further of the view that the case against the assailants fell under Section 325 read with Section 34 Indian Penal Code. Ramdas was given the benefit of the doubt and acquitted.

5. On appeal, the learned Judges of the High Court were of the view that the evidence regarding the oral dying declaration of Sitaram to Sadiq in the bullock cart was convincing. The High Court also placed reliance upon dying declaration Exhibit 38 recorded in the dispensary. The High Court was further of the opinion that the case against the convicted accused fell under Section 302 read with Section 34 Indian Penal Code. The four appellants were accordingly convicted and sentenced as above.

6. In appeal before us, Mr. Ram Panjwani has assailed the finding of the High Court in so far as it has accepted the dying declaration of Sitaram alleged to have been made to Sadiq (PW 5) in the bullock cart. It is stated that if such a dying declaration had been made by Sitaram, the same must have also been heard by Radheyshyam who too was present in the cart along with Sitaram and Sadiq. In any case, according to the learned Counsel, Sadiq must have immediately told Radheyshyam regarding the mention of the names of the assailants if those further pointed out that Sadiq made no mention of the dying declaration of Sitaram to Head Constable Utamrao when he came out of the police station and tried to talk to Sitaram at the time the bullock cart was taken to the police station and a report about the occurrence was lodged by Radheyshyam. Although we find force in the above contention of Mr. Ram Panjwani, it is, in our opinion, not necessary to dilate upon this aspect of the matter because we find that the evidence regarding the dying declaration Exhibit 38 made by Sitaram in the dispensary is convincing and reliable. The fact that Sitaram made dying declaration Exhibit 38 in the dispensary is proved by the evidence of Head Constable Utamrao (PW 12) and Radheyshyam (PW 3). Both these witnesses have deposed that the aforesaid dying declaration contained what had been stated by Sitaram deceased. In addition to that, we have the evidence of Dr. Gaikwad (PW 4) that the aforesaid dying declaration was made by Sitaram in his presence and that Sitaram was at that time in a fit condition to make a statement. There appears to be no cogent ground to disbelieve the evidence adduced in this respect. According to dying declaration Exhibit 38, the injuries to Sitaram were caused by the five accused with axe and sticks.

7. So far as Rajeram accused-appellant is concerned, we find that it is the evidence of Nathamal (PW 1) that he had been told by Ramdas accused that Sitaram had been assaulted by Laxman, Suka

and Jyotiram in the fields. This was the first version of the occurrence. There is nothing to show as to why Ramdas should try to exculpate Rajeram. In the circumstances, doubt does arise about the complicity of Rajeram and he must necessarily have the benefit of that doubt. There is, however, no doubt regarding the complicity of Laxman, Suka and Jyotiram. It may be mentioned in this context that appeal challenging his conviction was filed in the High Court only by Rajeram. The other three appellants did not file any appeal in the High Court to challenge their conviction.

8. As many as 34 injuries had been caused to Sitaram. Twenty-nine of the injuries were in the nature of contusions, while one was a lacerated wound and four consisted of abrasions. The injuries had resulted in the fracture of ribs, humerus, ulna and metacarpal bones. Injuries had also been caused to the kidneys and lungs. Some of the injuries had resulted in compound fractures. The number and the nature of injuries caused to Sitaram were such as shows that the intention of the assailants was to cause his death. According to Dr. Deshpande, the injuries were sufficient in the ordinary course of nature to cause death. In the circumstances, the High Court, in our opinion, rightly took the view that the case against the assailants fell under Section 302 read with Section 34 and not under Section 325 read with Section 34 Indian Penal Code. As a result of the above, the appeal of Laxman, Sukhdeo and Jyotiram is dismissed. Rajeram is given the benefit of the doubt. Appeal in respect of Rajeram is accepted and he is acquitted.

</html