

Tika and Others

Vs

State of Uttar Pradesh

Criminal Appeal No. 87 of 1970

(S. N. Dwivedi, Y. V. Chandrachud JJ)

12.11.1973

JUDGMENT

CHANDRACHUD, J. -

1. Seventeen persons are alleged to have participated in an incident of the afternoon of December 17, 1965 in Inchhawala, district Bijnor. Ten out of those were tried by the learned 1st Additional Sessions judge, Bijnor, who acquitted three and convicted the remaining seven under Sections 323 and 332 read with Section 149 and under Section 147 of the penal Code. Each of the seven persons was sentenced to six months R.I. under Section 323, two years under Section 332 and to one year under Section 147. The sentences were directed to run concurrently.
2. In an appeal filed by the convicted persons, the High Court acquitted one of the accused and confirmed the conviction and sentences of the remaining six. This appeal by special leave is directed against that judgment.
3. One Amar Nath was working as a farm servant with a man of supposed influence called Kesho Saran. At about 3. 00 p.m. on December 17, 1965, while Amar Nath was working in the field, 17 persons are alleged to have gone to the field with their cattle. The trespass damaged the crops, upon which Amar Nath asked the trespassers to clear the cattle out of the field. The case of the prosecution is that Amar Nath was thereupon beaten with lathis. On hearing his shouts, 2 constables Ram Kumar and Gurmukh Singh who were on patrol duty went to the field and intervened but they were also assaulted.
4. The defence of the accused was that under the influence of Kesho Saran who was the President of the District Congress Committee, the police acted in a high-handed manner and implicated the accused falsely. The huts of the accused were set upon fire and thereafter the accused were beaten by Amar Nath and the policemen. The accused retaliated in self-defence.
5. It is impossible to accept the defence version that Amar Nath and the 2 police constables were assaulted by the appellants in self-defence. The evidence of Dr. B. B. Gupta who examined 2 of the appellants, Ganga Ram and Gangu, as also the wives of the two other appellants, Tika and Mangal, shows that the injuries received by these 4 persons were utterly trivial. It is not necessary to go so far as to say that the injuries were necessarily self-inflicted, but it is transparent from the evidence of Dr. Gupta and the nature of the injuries that they could not have been caused if Amar Nath and the 2 police constables were to commence the attack. As many as 17 persons had entered the field of Kesho Saran and the evidence shows that Amar Nath was working alone in the field. That circumstance itself negatives the case of the appellants that they wielded their weapons in self-

defence. Amar Nath and the 2 police constables were examined by Dr. K. L. Verma on the night of the incident. Amar Nath had received as many as 11 injuries, mostly on the head and the forehead, Ram Kumar received 4 injuries 3 of which were on the head and the forehead, while Gurmukh Singh had received 2 injuries on the head and the forehead. It is clear from the nature of these injuries that the appellants were aggressors.

6. The case of the prosecution has however to be tested independently of the defence version and in a case of the present nature which depends for its proof on direct testimony, falsity of the defence will not help the prosecution to establish its own case. It is therefore necessary to consider whether the evidence led by the prosecution is sufficient to justify the order of conviction and sentence recorded by the High Court.

7. Counsel for the appellant has taken us through the evidence of Amar Nath, Ram Kumar and Gurmukh Singh, but we see no reason to doubt their veracity. Their evidence is amply corroborated by the injuries received by them.

8. It was urged on behalf of the appellants that the prosecution has examined only interested witnesses and has conveniently dropped independent persons from the neighbourhood who had gathered at the scene of offence on hearing the shouts of Amar Nath. There is no substance in this contention because the 2 police constables had nothing to do with Amar Nath and there is no credible evidence on which to hold that Kesho Saran was a man of such influence that the police would play into his hands and concoct a false case in his favour. The First Information Report was lodged by constable Ram Kumar promptly within a couple of hours after the incident and it contains important seeds of the story which was later narrated in some details at the trial.

9. Counsel for the appellants relied upon the finding recorded by the High Court that the appellants were right in their contention that they were in possession of 4 bighas of the land in which the incident took place. It is urged that if the appellants were in possession of a part of the land that would have no motive for assaulting Amar Nath. In dealing, with this contention it has to be remembered that though the High Court has found that the appellants were in possession of a part of the land, an incident had taken place according to the High Court on the morning of December 17th, when Amar Nath objected to the appellants digging a well in a part of the field. The evidence shows that as a result of the incident which happened in the morning, the appellants went to Kesho Saran's field in the afternoon and started assaulting his servant Amar Nath. The fact therefore, that the appellants were in possession, lawfully or otherwise, of a portion of the field will not justify the conclusion that Amar Nath was the aggressor. As observed earlier, it is unrealistic to suppose that Amar Nath could have ventured single-handed to assault a large group of more than 10 persons.

10. Lastly, reliance was placed on behalf of the appellants on as admitted circumstance that the huts of the appellants were found burnt. The evidence of Rashid, who is an independent witness shows that the huts are situated quite at a distance from the field and that the appellants first took out their belongings from the huts and then set fire to the huts in order to lay the foundation for a possible defence that they assaulted Amar Nath and the 2 police constables because the latter, acting under the influence of Kesho Saran had set fire to their huts. Reshid's evidence has been accepted by the High Court and we see no infirmity therein to take a contrary view of that evidence.

11. In the result we confirm the order of conviction and sentence and dismiss the appeal.

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