

Guli Chand and Others

Vs

State of Rajasthan

Criminal Appeal No. 134 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

30.11.1973

JUDGMENT

BEG, J. -

1. The six appellants before us by special leave were tried by the Additional Sessions' Judge of Gangapur and convicted under Section 147, Indian Penal Code and sentenced to one year's rigorous imprisonment as well as under Section 302, Indian Penal Code read with Section 149, Indian Penal Code and sentenced to life imprisonment. The convictions and sentences had been upheld by the High Court of Rajasthan.

2. The party of the accused had been claiming possession over a field called "Bhaiwala" over which there had been some litigation between two parties so that the Naib Tehsildar was appointed as Receiver by the orders of the S.D.O. Gangapur. The Revenue Courts then upheld the claim of Brijmohan the murdered man who was said to be in actual possession of it. The party of the accused had threatened him so that proceedings under Section 107, Criminal Procedure Code had to be instituted against the accused who had also been prosecuted for the theft of the crop by (sic) Brijmohan. The theft case was pending when an occurrence took place on the morning of August 16, 1965 over the ploughing of the field by a tractor taken by the party of Brijmohan. In this incident, two of Brijmohan's brothers and four of the accused persons were said to have been injured. A report had been lodged at the Police Station. It was in this state of tense feelings between the two sides that the accused are said to have proceeded in a group at about 5 p.m. on August 16, 1965 to give Brijmohan a beating when he was returning to his house after taking a bath in a pool of water. They are said to have caught him in the field of Champoli, P.W. 5, and given him a beating witnessed by Shri Das, P.W. 1, Basantilal, P.W. 2, Ramjilal Mina, P.W. 3, Champoli, P.W. 5, Lohde, P.W. 6, and Banwarilal, P.W. 7. Out of the six alleged eye-witnesses only Champoli, P.W. 5, Lohde, P.W. 6, and Banwarilal, P.W. 7, the son of the deceased Brijmohan, are residents of village Timava where the occurrence took place. The three other alleged eye-witnesses belong to other villages. The High Court had examined the evidence of each one of the eye-witnesses and found it unsafe to rely upon the evidence of any witness except Champoli whose evidence was accepted by it mainly on the ground that he was a resident of village Timava and he was a Mina by caste. The accused were also Minas by caste so that, in the opinion of the High Court, the evidence of a Mina against members of his own caste could be considered reliable. But, the High Court did not examine facts and circumstances which throw doubts on the complete reliability of Champoli also. The learned Counsel for the appellants has submitted that the High Court had erred in failing to consider objections to the testimony of the only eye-witness relied upon by it.

3. Learned Counsel for the State of Rajasthan had contended that the High Court was in error in

holding that Champoli, P.W. 5, was the only reliable witness. Learned Counsel attempted to take us through the evidence of each of the other alleged five eye-witnesses and submitted that it was not unacceptable. We will, therefore, consider the objections of the High Court to the evidence of these five alleged eye-witnesses, namely, Shri Das, P.W. 1, Basantilal, P.W. 2, Ramjilal, P.W. 3, Lohde, P.W. 6, and Banwari, P.W. 7, before taking up the evidence of Champoli, P.W. 5.

4. Shri Das, P.W. 1, apart from being a chance witness from another village, stated that he had not been examined by the police, although he was, according to himself, present in the village Timava to witness the occurrence in the morning as well as the one in the evening, and, for some unexplained reason, remained in the village until the next morning when a police Head Constable came to the spot. He stated that he informed the Head Constable that he was a witness of the murder. But, in the Committing Magistrate's Court, he had definitely stated that the Head Constable neither enquired anything from him nor did he tell him that he was a witness of the murder. When the contradiction was put to him he said that he may have so stated in the Committing Magistrate's Court although the truth was that he had informed the Head Constable. He was shown to have been examined by the police 5 or 6 days after the occurrence.

5. Basantilal, P.W. 2, also a resident of another village, who had claimed in the Committing Magistrate's Court that he had been present in village Timava since 11 a.m., tried, at the trial, to shift the time of his arrival in the village to 3 or 4 p.m. His statement indicated that when he reached the spot Brijmohan had already fallen down and did not raise any alarm. But, he had stated in his evidence before the Committing Magistrate, that the deceased had raised an alarm on being beaten. This witness was also examined 5 or 6 days after the occurrence.

6. Ramjilal, P.W. 3, again a witness of another village whose presence in Timava at the time of occurrence is not satisfactorily explained, stated that he had not himself seen the occurrence at all although he had made contrary statements earlier. He was declared hostile and cross-examined by the prosecution. His evidence was rightly considered worthless by the High Court.

7. Lohde, P.W. 6, is certainly a resident of Timava. But, he was shown to have been regularly deposing against the accused persons. The High Court considered the testimony of such a witness to be too 'hazardous' to be acted upon.

8. The evidence of Banwari, P.W. 7, the son of deceased Brijmohan, a resident of Timava, had been rejected by the High Court mainly because he deposed that the accused had continued beating Brijmohan even after he had fallen down. This witness had lodged an F.I.R. dated August 18, 1965 at 2 p.m. at Police Station Gadh Mora, 14 miles away from the place of occurrence, in which he gave out the names of Shri Das, Basantilal, and Ramjilal as eye-witnesses. He had added there that "many other persons were also there but none of them intervened".

9. We have also examined the evidence of Champoli, P.W. 5, the only witness considered thoroughly reliable by the High Court. We are unable to agree with the view that this witness is really so reliable as the High Court thought him to be even though he may be a Mina by caste and a resident of Timava. Ramjilal, P.W. 3, definitely stated that this witness was actually standing at the well with Lohadia and not in the field in which the occurrence took place. But, it is difficult to believe Ramjilal, P.W. 3, the rightly discarded witness, if the presence of Champoli, who is a chance witness from another village, is itself very doubtful. Hence, this fact, by itself, may not be enough to discard Champoli. Lohde, P.W. 6, had stated that Champoli, P.W. 5, had come with Ramjilal after the beating of Brijmohan had started and that a number of persons then collected at the well. According

to Lohde,, P.W. 6, a resident of Timava who had been deposing for Brijmohan and against the accused persons regularly, Champoli came to the well after he had reached there. This also does not mean that Champoli could not be present at the place from where he is alleged having witnessed the occurrence. He may have gone to the well a little afterwards. Champoli had also stated that Brijmohan fell when Bhonria put his own leg in between the legs of Brijmohan. But, he had stated earlier that Brijmohan fell on receiving lathi blows. If, as he had stated, he had turned round to see the occurrence in his field when Brijmohan had raised an alarm, presumably after beating had started, it was unlikely that he would see anyone tripping Brijmohan. But, this may be characterised as a minor discrepancy which was not inexplicable by faulty observation or memory. What makes the evidence of Champoli really hazardous was that he is not only not mentioned by name with the other witnesses in the F.I.R. but he had been actually arrested by the police for some unknown reason, and was kept locked up before he gave his statement. It may also be mentioned here that the statements of prosecution witnesses were recorded under Section 164, Criminal Procedure Code also during the investigation. It is true that the evidence of Champoli is not as reliable as the High Court thinks. Furthermore, the evidence of alleged eye-witnesses is mostly of general character and does not specify the parts played by various accused persons.

10. It can, however, not be overlooked that the witnesses had given evidence at the trial in August and October 1966, of an occurrence which had taken place on August 16, 1965. It is also not unlikely that the appellants had, as the witnesses had deposed, attempted to terrify witnesses of their own village. Some of the evidence of witnesses of other villages, who may not have been present at all, is certainly unreliable. But, after examining the whole evidence in the case, we find that the cumulative effect of the evidence against the accused persons is sufficiently convincing for the trial Court as well as the High Court to have come to the conclusion that the offence with which the accused were charged were established against them beyond reasonable doubt. We should hesitate very much to substitute our own conclusions for theirs in such a case.

11. The High Court had certainly given sufficiently good reasons for distrusting the evidence of witnesses who did not belong to village Timava although, even out of these, Shri Das, P.W. 1, and Basantilal, P.W. 2, are mentioned in the F.I.R., Courts have held that the testimony of a chance witness, although not necessarily false, is proverbially unsafe. In the case before us, however, there is the evidence of Banwarilal, P.W. 7, son of the deceased, and of Lohde P.W. 6, who seems to belong to the party of Brijmohan, as well as of Champoli, P.W. 5, who are residents of village Timava. It has been held by this Court that the mere fact that a witness is a relation or a victim is not sufficient to discard his testimony. In *Dalip Singh and Others v. State of Punjab*, (1954 SCR 145, 152 : AIR 1953 SC 364 : 1953 Cri LJ 1465) this Court said :

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its

own facts.

This is not to say that in a given case, a Judge for reasons special to that case and to that witness cannot say that he is not prepared to believe the witness because of his general unreliability, or for other reasons, unless he is corroborated. Of course, that can be done. But the basis for such a conclusion must rest on facts special to the particular instance and cannot be grounded on a supposedly general rule of prudence enjoined by law as in the case of accomplices."

12. Although the evidence of Champoli, P.W. 5, may not, by itself, be considered good enough to convict the appellations, yet, when there is the evidence of so many witnesses, supported by a great likelihood of the incident in view of the earlier occurrence during the day and the admitted tension between the two sides, it is difficult to hold that no reliance at all can be placed upon the evidence of an attack which is said to have taken place in broad day light. We think that, for the purposes of corroboration, even if Champoli, P.W. 5, falls within the category of only a partially reliable witness, as explained by this Court in *Vadivelu Thevar v. State of Madras*, (1957 SCR 981 : AIR 1957 SC 614 : 1957 Cri LJ 1000) the evidence of Banwari, P.W. 7, and Lohde, P.W. 6, would be sufficient.

13. If corroboration of the allegations of the prosecution witnesses against the accused were needed, it could be found in the motive and the tense feelings between the accused due to the quarrel over the Bhaiwala field and in the injury report showing the merciless beating given to the deceased who sustained the following injuries :

"1" X 1" scar Rt. thigh upper third antr. aspect wearing Langot, Janeo. Advanced age H.M. with gray hairs cut short. P.M. rigidity toned) passed off from limbs. Blister all over the body. Body is swollen. Mouth open. Dark greenish brown (illeg.) Rt. iliac fossa, chest and face. Teeth intact. Blood from nostrils and mouth (illeg.) full swell.

Multiple contusions of different sizes on the head and face. Multiple contusions of different sizes on the upper part of the left side chest. Multiple contusions of different sizes on the left arm and lateral sides. Contusion with abrasion 1" X 1" left forearm centre dorsal aspect. Contusion 1" X 1" left hand dorsum. Contusion 1 1/2" X 3/4" on the centre of the chest and to right side. Contusion 6" X 4" on the lower part of the Rt. arm and upper part of right forearm back side. Contusion of different sizes right side chest. Contusion Rt. arm outer side. Contusion 4" X 2 1/2" upper half of the forearm post. Side Contusions (4) of different sizes on inner side left knee. Contusion with abrasion (4) 1/4" X 3/4" each on the tibial tubercle left side. Abrasion 1/2" X 1/2" upper end of the left leg inner side. Multiple contusion of different (illegible) size middle 1/3rd of the left leg in front. Lac. wound (two) 1" X 1/2" X 1/5" and 1/2" X 3/4" X 1/5" each left leg middle (torned). lac. wound 1" X 1" X 1/2" between great toe and second toe of left foot and fracture at the root of the great toe. Contusion 4" X 3" back of the left thigh. Contusion 1" X 1/2" on the right leg upper third in front. Lacerated wound 1 1/2" X 1/3" X 1/10" Rt. leg centre in front. Contusion 2" X 2" Rt. ankle medial side contusion 1/2" X 1/3" Rt. leg centre in front. Contusion 1" X 1/2" Rt. thigh centre outer side. Contusion 2 1/2" X 1 1/2" above the right knee outer side. Multiple contusions of different sizes of the back of right thigh. Innumerable contusion of diff. sizes coalescing together on the right hip. Several contusion of different sizes on the lower part of the back, lateral sides of the back and waist

region. Contusion 2" X 2" nape of the naked lower part and upper part of the back centre. Multiple contusions of diff. sizes on the left hip all over."

14. It may be mentioned here that, although the evidence of Champoli and some other witnesses against the accused is of a general character without specification of parts played in the beating by the various accused, yet, there was no cross-examination directed against their testimony to discredit their evidence on this ground. Moreover, Lohde, P.W. 6 gave the following description which certainly clarifies the part played by each accused :

"Brijmohan was coming after taking bath at Kund which is at a distance of four-five fields from the village. When he came to the field of Champoliya, accused Bhonriya was going from the side of the village. Bhonriya felled Brijmohan down by kicking him with the foot (Talli lagakar patak diya). Thereafter Kediya, Sampatia, Prasadi, Gulichand, Khayali went on inflicting Lathi blows to Brijmohan. Bhonriya kept on holding him. When he stopped moving his hands and legs the accused went towards the village leaving him there".

In view of the injury report it is not unbelievable that the accused went on beating the deceased even after he had fallen. Such conduct would only go to prove the strength of the feelings of the accused against the murdered man.

15. It seems also worth mentioning in this case that the appellant led to evidence to substantiate their pleas of alibi.

16. It is difficult, after considering the totality of evidence, to hold that the concurrent findings of fact given by the Courts below as regards the proof of guilt of each accused beyond reasonable doubt are really erroneous one may not agree with the assessment of the evidence of each witness individually either by the trial Court or by High Court. Yet, we do not think that this is a fit case for interference under Article 136 of the Constitution. Consequently, we uphold the convictions and sentences of the appellants and dismiss this appeal.

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