

State of U. P.

Vs

Sheo Ram

Criminal Appeal No. 149 of 1972

(H. R. Khanna, Y. V. Chandrachud JJ)

14.08.1974

JUDGMENT

CHANDRACHUD, J. -

1. Ten persons were tried by the learned Sessions judge, Orai, for various offences arising out of the death of one Bhagat Ram and injuries to three others. The learned Judge acquitted three of them and convicted the remaining seven. The learned Judge acquitted three of them and convicted the remaining seven. The respondent, Sheo Ram, was convicted under section 302 and was sentenced to death. He was also convicted like others under section 148 and Sections 323, 324, 325 and 307 read with Section 149 of the Penal Code. Those who were convicted filed an appeal in the High Court of Allahabad while the State Government filed appeals against those who were acquitted by the learned Judge. By its judgment dated November 10, 1971 the High Court upheld the conviction of three out of the seven persons convicted by the trial Court and ordered the acquittal of the remaining four. The State appeal against the acquittal of three persons was dismissed by the High Court. This appeal by special leave is filed by the State against the Judgment of the High Court acquitting the respondent Sheo Ram. We are not concerned in this appeal with the judgment of the High Court in regard to the remaining nine accused.

2. At about 12 noon on April 10, 1970 the respondent Sheo Ram who appears to have been the Sub-Editor of a daily newspaper called "Dinvir" and four students went to the Halwai shop of the deceased Bhagat Ram. They ate heartily but refused to pay the bill. During the course of a quarrel which ensued between them and the servant of the deceased they gave a threat that they will come back to teach a good lesson to everybody. A report about this incident was lodged by Bhagat Ram at the Orai police station at about 12.30 p.m.

3. At about 4.30 p.m. on the same day a group of 12 or 13 persons including the respondent is alleged to have gone to Bhagat Ram's shop. They were armed with various weapons and are alleged to have caused injuries to Bhagat Ram, his brother Bhajan Lal, to his father Dilamal and to his sister's husband Lakha Mal. Bhagat Ram received a fatal stab injury, Bhajan Lal received a contused injury which caused a fracture, Dilamal received two lacerated wounds and two contusions while Lakha Mal received an incised injury. These persons were taken to the hospital but Bhagat Ram was already dead. The cause of death was a puncture wound over his right scapula.

4. The First Information Report of the occurrence was lodged by Bhajan Lal at about 5 p.m. It mentions the name of the respondent with his description as the "Editor of Dinvir". The Report does not ascribe any particular part to the accused mentioned therein nor does it mention that the respondent Sheo Ram was armed with a knife.

5. The scope of this appeal is narrow for two reasons. There is no credible evidence to hold that the respondent caused the stab injury to Bhagat Ram and for that reason it would be difficult to accept the appeal filed by the State in its entirety. The other reason is that even accepting the findings of the High Court it would be difficult to distinguish between the case against the respondent and that against the three persons whose conviction has been upheld by the High Court. At the least the High Court ought to have convicted the respondent of those charges of which the three others were convicted.

6. Agreeing with the trial Court the High Court held that the presence of the eye-witnesses at the time and place of occurrence could not be doubted. Out of the six eyewitnesses examined by the prosecution Bhajan Lal and Lakha Mal had received injuries during the incident. Ramphal was working as a servant in Bhagat Ram's shop while Panna Lal, Janki and Bhagwan Das were neighbouring shopkeepers.

7. The High Court has further held that the persons who went to Bhagat Ram's shop had formed an unlawful assembly but that the object of heat assembly was to cause grievous hurt to Bhajan Lal and others. Learned Counsel have taken us through the entire evidence but we see no reason why the concurrent finding of the High Court and the Sessions Court in regard to the formation of unlawful assembly and to the extent at least of the limited object of that assembly should not be accepted. The witnesses had no previous enmity with any of the accused except on account of the incident which had taken place in the afternoon. As observed by the High Court the witnesses would normally be present in their shops at the time of the occurrence and those shops are situated in the same locality as the shop of the deceased Bhagat Ram. The High Court has acquitted the respondent on the ground that the First Information Report does not mention that he was armed with a knife or that he had caused the stab injury to Bhagat Ram. In fact the F.I.R. does not refer to any details and what holds good in regard to Kanhaiya Lal, Dasrath and Ram Sarup whose conviction for certain offences has been upheld by the High Court must hold good in regard to the respondent also.

8. We are unable to agree with the High Court that the possibility that the respondent was implicated on mere suspicion could not be excluded or that since as a sub-Editor of 'Dinvir' the respondent had criticised the local police, they could be inimical to him and might have involved him falsely. There is no evidence to justify the apprehension of the High Court that respondent was involved on account of suspicion. The assumed enmity with the local police is largely a matter of guess-work arising out of the manner in which a line seems to have been added to the complaint Ka-26 which was lodged by Bhagat Ram in respect of the earlier incident. The last sentence of that Report reads to say that Bhagat Ram apprehended danger to his life and property and that one of the persons who had come to the shop was Sheo Ram, i.e. the respondent. Even assuming that the last sentence is an after-thought, it would not be fair to the police to jump to the conclusion without any evidence whatsoever that the addition was made at their instance as they were piqued by the pungent writings of the respondent in his newspaper.

9. The High Court has recorded a finding that none of the prosecution witnesses had any enmity against the respondent. But the High Court felt that the case against him underwent an improvement from stage to stage which "clearly suggested that there could be some agency which was interested in making out a most difficult case for Sheo Ram. Even his nomination could be at the instance of that agency". It is impossible to accept this finding unsupported as it is by any evidence whatsoever. The High Court was, therefore, in error in holding that the respondent was entitled to the benefit of doubt on account of the fact that he might have been implicated at the instance of the local police who were "displeased" with him.

10. Bhajan Lal, Lakha Mal, Panna Lal and Ramphal had correctly identified the respondent in the identification parade but the High Court thought that it was not safe to accept that evidence because one other witness had identified an accused called Dasrath instead of the respondent. That would be a good reason for not relying on the evidence of that witness but we are unable to agree that the evidence at least of the two injured witnesses, Bhajan Lal and Lakha Mal, and of Ramphal the servant of Bhagat Ram could be discarded for that reason.

11. As the case against the respondent is indistinguishable from that of Kanhaiya Lal, Dasrath and Ram Sarup whose conviction for certain offences has been upheld by the High Court, the appeal filed by the State must succeed partly. We set aside the order of acquittal passed by the High Court in favour of the respondent and uphold his conviction under Sections 323, 324 and 325 read with Section 149 of the Penal Code. We also uphold the sentence imposed upon him by the learned Sessions Judge for these offences. The maximum sentence imposed on the respondent by the Session 32 read with Section 149. The sentence for the two other offences shall run concurrently with that sentence.

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