

Ram Anjore and Others

Vs

State of Uttar Pradesh

Criminal Appeal No. 65 of 1971

(P. N. Bhagwati, N. L. UntwaliaJJ)

03.12.1974

JUDGMENT

UNTWALIA, J. -

1. The six appellants in this criminal appeal were acquitted by the Sessions Judge of Faizabad in U.P. of all the charges levelled against them. The State filed appeal in the High Court of Judicature at Allahabad, Lucknow Bench. The High Court has allowed the appeal, convicted appellant Ram Kumar under Section 302 of the Penal Code and sentenced him to life imprisonment besides recording his conviction under Section 148 and Section 323 read with Section 149 of the Penal Code. Separate sentences have been awarded on those counts also but they have been directed to run concurrently. Appellants Ram Anjore, Ram Dawan, Ram Dawar, Ram Lakhan and Ram Nihore have been convicted under section 147 and Section 323 read with Section 149 of the Penal Code. The sentence imposed is one year's rigorous imprisonment under each count with a direction that it shall run concurrently. They have preferred this appeal by special leave of this Court. Appellant Ram Kumar's appeal would also lie under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

2. The scope and the power of the High Court in an appeal from the order of acquittal have been enunciated in several decisions of this Court. In a recent decision vide Ram Jag v. State of U. P. ((1974) 4 SCC 201 : 1974 SCC (Cri) 370), Chandrachud, J. speaking for the Court has reviewed several such decisions and summarized the law on the point in the following term : [SCC p. 207 Para 13, SCC (CRI) p. 376]

The principles governing appeals against acquittal are thus firmly established and the issue cannot now be re-opened. The Code of Criminal Procedure by Section 423, has accorded parity to appeals against conviction and appeals against acquittal; the Code makes no distinction between the powers of the appellate Court in regard to the two categories of appeals and therefore the High Court has powers as full and wide in appeals against acquittal as in appeals against conviction. Whether the High Court is dealing with one class of appeals or the other, it must equally have regard to the fundamental principles of Criminal Jurisprudence that unless the statute provides to the contrary, there is a presumption of innocence in favour of the accused and secondly that the accused is entitled to the benefit of reasonable doubt. Due regard to the views of the trial Court as to the credibility of witnesses in matters resting on pure appreciation of evidence and the studied slowness of the appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing and hearing the witnesses where such seeing and hearing the witnesses, where such seeing and hearing can be useful aids to the assessment of evidence, are well-known principles which generally inform the administration of justice and govern the exercise of all appellate jurisdiction.

They are self-imposed limitations on a power otherwise plenary and like all voluntary restraints, they constitute valuable guidelines. Such regard and slowness must find their reflection in the appellate judgment, which can only be if the appellate Court deals with the principal reasons that influenced the order of acquittal and after examining the evidence with care gives its own reasons justifying a contrary view of the evidence. It is implicit in this judicial process that if two views of the evidence are reasonably possible, the finding of acquittal ought not to be disturbed.

For the reason to be stated hereinafter we are of the opinion that the High Court has kept itself well within these limits and bounds in the exercise of its powers. It has not transgressed them in any manner.

3. The appellants and members of the prosecution party are all residents of village Mathia, hamlet of Madania, P. S. Raja Sultanpur, District Faizabad. There are only two dozens of houses in the hamlet. Appellants Ram Anjore and Ram Kumar are brother. So are inter-se appellants Ram Lakhan, Ram Dawar and Ram Dawan. Appellant Ram Nihore is their nephew. There was a long standing enmity between Ram Kumar and Ram Anjore on the one side and Ram Palat, PW 1 the first informant in the case on the other. Raj Mangal, PW 2, Parasnath Bharti, PW 3 are brother. They are the second cousins of Ram Palat. Ram Dhani, PW 4 is nephew of Ram Palat. The occurrence is said to have taken place at about 10.00 a.m. on October 15, 1967 near the house of PW Raj Mangal in which Viswanath, helper of Ram Palat was killed by a spear blow given by Ram Kumar and PWs Ram Palat and Raj Mangal were assaulted with lathis by the other appellants. The genesis of the occurrence is said to be the long standing enmity. The proximate and immediate cause was measurement and demarcation of the fields of appellant Ram Anjore and PW Ram Palat in plot Nos. 305/1 and 305/2 in the morning of the date of occurrence. This was preceded by some incident a day previous on the 14th. The disputed land is situated in village Phulwaria adjoining village Mathia. It is on the boundary. In the division of the plot there was difference between appellant Ram Anjore and PW Ram Palat. The former is said to have ploughed a portion of the land belonging to the latter in the Asarh of 1967.

4. On October 14, 1967 in the morning, appellant Ram Anjore again ploughed one Gattha of land from the field of Ram Palat who objected to the same. Appellants Ram Anjore and Ram Kumar threatened PW Ram Palat holding the spear in their hands. Viswanath the deceased and others intervened. They reprimanded the said two appellants and no assault took place that day. Ram Palat lodged a report at the Police Station at 10.25 a.m. on October 14, 1967. Copy of the said report is Ext. Ka-4. Ram Anjore and Ram Kumar were named but no action was taken on this report as it pertained to a non-cognizable offence under Section 506 read with Section 352 of the Penal Code.

5. According to the prosecution story, on October 15, 1967 Ram Palat called some panches to measure and demarcate the fields which had fallen to the shares of Ram Palat and Ram Anjore so that the dispute at the time of ploughing may not recur. Panches including Viswanath deceased, Parasnath, PW 3, Ram Dhani, PW 4, Bichai (not examined), Bachcha Goshain (not examined) and Balbhaddra Prasad Yadav. PW 5 came to the disputed field and effected the measurement and demarcation thereof. It is said Ram Anjore was present at the time of measurement and demarcation. On being asked by the Panches Ram Palat fixed Jutti (roots of grass) on the line which demarcated the field of Ram Anjore. Ram Anjore did not relish the decision arrived at by the Panches and went away enraged. At about 10.00 a.m. Ram Palat accompanied by Viswanath left the field. When they reached at a distance of 15 to 20 paces north-west of the house of PW Raj Mangal, appellant Ram Kumar armed with a spear and the other appellants armed with lathis came up there from the side of the house of appellant Ram Dawan. They rushed to attack Ram Palat. On alarm

being raised by him, PW Raj Mangal came there. Ram Palat was attacked with lathis by three of the appellants. When Raj Mangal intervened he too was attacked with lathis. Viswanath then wanted to intervene. The appellants thought that he was the person who was playing the principal role in the dispute on the side of Ram Palat and so he should be murdered. Thereupon Ram Kumar struck Viswanath with his spear in his chest. Viswanath fell down and died instantaneously on the spot. Appellants fled away.

6. PW Ram Palat submitted a written report at 1.30 p.m. on October 15, 1967 at the Police Station which was at a distance of six miles from the place of occurrence. Sheo Shanker Singh, PW 13 the Station Officer was not present at the Station when the report was handed over at the Police Station. He arrived there at 3.30 p.m., prepared the Inquest Report of the dead body and started investigation. He left for the place of occurrence at 7.00 p.m. on the same evening and proceeded with the investigation on the spot in the next morning.

7. PW 9 Dr. B. K. Chakravarti, Medical Officer incharge Tanda dispensary, Faizabad did autopsy of dead body of Viswanath on October 16, 1967 at 3.00 p.m. His findings clearly showed that Viswanath died as a result of the spear injury received by him. Dr. S. D. Priyadarshi, PW 10, Medical Officer Dispensary Jehangirganj, District Faizabad, which was situated at a distance of about 12 miles from the Police Station examined the injuries on the person of ram Palat and Raj Mangal on October 16, 1967 at 10.00 a.m. and 10.30 a.m. respectively. He found five contusions of different sizes on the person of Ram Palat, one swelling and four contusions on the person of Raj Mangal.

8. The appellants pleaded not guilty and asserted that they had been falsely implicated. They did not admit that any incident had taken place falsely implicated. They did not admit that any incident had taken place on October 14, 1967. The enmity between the parties was admitted. A suggestion was thrown that Viswanath had been murdered sometime at 3.00 or 4.00 a.m. on October 15, 1967 because of his allegedly illicit connection with the wife of PW Parasnath. Real culprits were not known and the appellants were implicated out of enmity.

9. The learned Sessions Judge gave several reasons for doubting the prosecution case and recorded an order of acquittal in favour of appellants. Some of the reasons given by him were of such flimsy character that they did not merit any consideration in the appellate Court. The salient features in the judgment of acquittal of the trial Court have been noticed, well-discussed and rightly disapproved by the High Court. The judgment of acquittal on the facts and in the circumstances of the case was perverse and was aptly set aside by the High Court.

10. Although the learned Sessions Judge has not clearly and distinctly dealt with the various portions of the prosecution story, he seems to have discarded each and every part of it. The prosecution story as to the incident in the morning of October 14, appears to have been discarded on the ground that in the report Ext. Ka-4 the word "the accused had spears" were subsequently added with another pencil. The High Court has not accepted that the report Ext. Ka-4 was an interpolated one. We may add that the prosecution did not stand to gain anything by addition of the words said to have been added in the report.

11. The demarcation story of the field in the morning of the October 15, has not been accepted by the learned Sessions Judge for the following reasons :

(1) The Panches were all of one party collected by Ram Palat and Viswanath.

(2) The evidence of Parasnath, Ram Dhani and Balbhaddra Prasad Yadav was not reliable because as against the admitted position they said there was no enmity between them and the appellants. PW Balbhaddra had stated that when he reached the spot after the occurrence, Viswanath had fallen north-east of the door of Paras although according to the consistent testimony of the other witnesses he had fallen north-west.

(3) Evidence of Chandrama Singh, PW 11 Sub-Inspector of Police to the effect that while passing that while passing that way he had seen people collected in the disputed field doing some measurement could not be believed as in his report he had not stated that fact.

12. The High Court has rightly brushed aside the criticism of the learned Session Judge and held the demarcation story to be true. Some of the Panches were independent persons. Wife of Viswanath deceased is the sister of appellant Ram Kumar. The mere fact that some of the witnesses did not admit the enmity between the parties was not sufficient to discard their evidence. Balbhaddra's evidence was discarded on a very flimsy ground. Sub-Inspector Chandrama Singh was going to another village in connection with the investigation of a case under Section 379 I.P.C. In the way he had observed the assembly doing the measurement and demarcation work. He had advised them to get the measurement done by the Lekhpal. These matters could not possibly by and were not at all necessary to be mentioned in his report submitted in connection with investigation of another case.

13. The prosecution version of the occurrence has been disbelieved by the learned Session Judge on the grounds as discussed below :

(1) Dr. B. K. Chakravarty deposed that after receiving the spear injury in his abdomen Viswanath could have remained alive for some hours between two to six hours.

14. The High Court has rightly pointed out that the evidence of the doctor read as a whole did not lead to the inference that Viswanath must have remained alive so as to discredit the testimony of the eye witnesses.

(2) Smt. Vidya Devi, PW 6 in her cross-examination had said that on the day of murder, she had risen early like other days and that she had been awake for one hour when she learnt about the death of her husband. The lent support to the suggestion of the defence that Viswanath was murdered in early hours and not at 10.00 a.m.

15. The High Court has pointed out that the evidence in examination-in-chief was clear and categorical, and the lady obviously committed a mistake as to time under the stress of cross-examination. We may add in this connection that it was the duty of the trial Judge to put a Court question to PW 6 for clarification of her statement in cross-examination as to time. Obviously she had no idea of time with exactitude.

(3) The story of removal of Jutti by appellant Ram Anjore four or five minutes before the murder of Viswanath was not correct.

16. Learned Sessions Judge forgot that PW Ram Palat had clearly stated that the uprooting of Jutti by Ram Anjore did not take place in his presence. Uprooted Jutti was found by the Investigating Officer PW 13 in the field. Inferentially therefore Ram Palat must have stated that it was uprooted by Ram Anjore.

(4) There were discrepancies in evidence as to the details and order of assault, namely, who

was assaulted by whom first and who was assaulted second and last.

17. The High Court has pointed out that the discrepancies were of minor character and did not detract from the evidentiary value of the eye witnesses.

(5) There was some discrepancy in the time of departure of the Investigating Officer PW 13 as noted in the General Diary which was 5.00 p.m. and his actual departure being 7.00 p.m. as deposed by him.

18. The High court has pointed out that the Sub-Inspector noted the time of departure as 5.00 p.m. for going to the village of occurrence but when he found Ram Palat and others present at the Police Station he took their statements and then proceeded to the village Mathia. It was not necessary for him to change the time of departure in the general Diary.

(6) The injuries on PWs Ram Palat and Raj Mangal could have been manufactured and they could have been caused by their self-suffering without much pain in order to enable them to be eye witnesses of the occurrence.

19. The reasons given by the learned Sessions Judge in support of his thinking in that fashion are so absurd and baseless that the High Court has rightly not accepted them to be correct. The two witnesses had gone to the Police Station at 3.00 p.m. Injury letters were given to them by the Head Constable Sukhdeo Pandey, PW 12 for going to Jehangirganj. According to them by the time their statements were recorded by the Investigating Officer it was dark. They, therefore, remained at the Police Station in the night and went to Jehangirganj Hospital on the 16th. Their story was not fit to be discarded with reference to the evidence of the Head Constable who deposed only on the basis of the entry of the handing over of the injury letters at 5.00 p.m. on October 15, 1967.

20. Mr. O. P. Sharma, learned Counsel for the appellants criticised the judgment of the High Court and endeavoured to support that of the trial Court. In our opinion the criticism was misplaced, unjustified and not correct. The High Court has dealt with every relevant matter forming the basis of the order of acquittal passed by the trial Court. Learned Counsel characterised the investigation of the case by PW 13 as not being there is nothing in the records of this case to indicate that the Police Officers were favourably disposed towards or partial to the prosecution and adverse to the accused. Learned Counsel further submitted that Ram Palat was the sole enemy of appellant Ram Anjore and Ram Pukar and it is not believable that he was let off with minor lathi injuries and Viswanath, Sarhu of Ram Pukar was done to death by the latter. In our judgment there is no substance in this argument. The common object of the unlawful assembly was to assault Ram Palat and Viswanath. When assault started on the former, halla was raised, people started coming and on being intercepted the other appellants assaulted Ram Mangal. Ram Pukar thrust his spear in the abdomen of Viswanath. Some other persons also arrived at the scene but non-examination of any of them does not detract from the value of the testimony of the eye witnesses namely PWs Ram Palat, Raj Mangal, Parasnath and Ram Dhani. Others arrived at the scene after the occurrence was over and none of them had actually seen it.

21. Before we part with this case we may remark that when the members of the unlawful assembly were armed with lathis and spear the common object of which was to assault Ram Palat and Viswanath, the common object may not be to murder Viswanath, the members of the assembly must have known that at least grievous hurt with a sharp cutting weapon was likely to be caused by any member of the assembly in prosecution of the common object. All the appellants other than Ram

Kumar could have been convicted by the High Court under section 326 read with Section 149 of the Penal Code. This indicated that the High Court has taken a very cautious and lenient view in favour of the appellant and has adopted the safe course of convicting Ram Kumar alone under Section 302 of the Penal Code and others under Section 323 read with Section 149 of the Code. The conviction of all the appellants for rioting, of Ram Kumar under section 148 and other under Section 147 of the Penal Code, was also justified. We find no merit in this appeal and it is accordingly dismissed.

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