

Badri and Others

Vs

The State of U. P.

Criminal Appeal No. 39 of 1972

(Y. V. Chandrachud R. S. Sarkaria, P. N. Bhagwati JJ)

29.07.1975

BHAGWATI, J.-

1. The appellants and one Tulsi Das were charged for offences under Sections 302 and 201, read with Section 149 of the Indian Penal Code. The appellants were also charged for offence under Section 148 and Tulsi Das for offences under Section 147. The Sessions Judge, Hamirpur acquitted the appellants and Tulsi Das of all the offences charged against them. The State preferred an appeal against the order of acquittal, and, setting aside the order of acquittal, convicted the appellants of offences under Section 302 read with Section 149 as well as Section 148 and sentenced each of them to suffer life imprisonment for the offence under Section 302 read with Section 149 and two years' rigorous imprisonment for the offence under Section 148 with a direction that both sentences should run concurrently. The acquittal of the appellants for offence under Section 201 read with Section 149 was confirmed by the High Court and so also was the acquittal of Tulsi Das in respect of the charges preferred against him. Since the acquittal of the appellants in respect of offences under Section 302 read with Section 149 and Section 148 was reversed and the appellants were sentenced to rigorous imprisonment by the High Court, the appellants preferred the present appeal under Section 2(a) of the Supreme Court Enlargement of the Criminal Appellate Jurisdiction Act, 1970.

2. The incident giving rise to the prosecution in the present case took place in village Aunts within the jurisdiction of police station Rath in Hamirpur district. It is clear from the evidence on record, and that was not disputed by either party, that there were at the material time two factions in this village, one consisting of followers of the previous pradhan Bindaban and the other consisting of the followers of Ram Sevak who was pradhan then in the office. There was considerable bitterness and enmity between these two factions and their mutual enmity had already taken twelve lives. The appellants belonged to the faction of Bindaban, while the deceased Chet Ram, who was also known as Karia, companions owed allegiance to the faction of Ram Sevak. The prosecution case was that an incident took place on March 26, 1967 between appellants Nos. 1 and 2 and Tulsi Das on the one hand and one Maddu on the other in which the deceased Chet Ram and one Das assisted Maddu by taking him to the police station and lodging a report against appellants Nos. 1 and 2 and Tulsi Das. This incident, according to the prosecution, roused the ire of the appellants and Tulsi Das which culminated in the attack on the deceased Chet Ram on the next day, that is, March 27, 1967. On that day at about 3 p.m. the deceased had gone for applying Holi tilak. He was accompanied by Ram, Das, Ganga Din, Balli and Ghanshyam. On the way there was the house of one Laxmi with a courtyard. When these persons were near the house of Laxmi, the appellants and Tulsi Das appeared from the northern side. Appellants Nos. 1 and 2 were armed with guns, appellants Nos. 3 and 6 with spears, appellant No. 5 with a pharsa, appellant No. 4 with an axe and

Tulsi Das with a lathi. The deceased Chet Ram, was, at this point of time a few paces ahead of his companions. Appellant No. 1 accosted the deceased Chet Ram and said that he would not let him escape and with these words he fired his gun. The shot hit the deceased Chet Ram whereupon he immediately ran into the courtyard (bakhri) of the house of Laxmi. The appellants and Tulsi Das chased him into the courtyard and appellants Nos. 1 and 2 fired their guns at him. The shot hit the deceased Chet Ram and he fell down. The other appellants then attacked him and gave him blows with the respective weapons in their hands. This was witnessed by Ram and he fell down. The other appellants then attacked him and gave him blows with the respective weapons in their hands. This was witnessed by Ram Das, Ganga Din, Balli and Ghanshyam, who had followed the appellants and were standing at the entrance (paruri). Appellants Nos. 1 and 2 thereafter dragged the dead body of the deceased Chet Ram along the lane and dropped it in front of the house of one Ram Das, Ganga Din, Balli and Ghanshyam too followed the appellants and they saw that after the dead body of the deceased Chet Ram was dropped in front of the house of Buddha carpenter, appellant No. 5 gave two blows on the neck with his pharsa in order to make sure that Chet Ram was dead. In the meantime, one Khem Raj also arrived at the scene. Appellants Nos. 1 and 2 thereafter again removed the dead body and dragged it to village Tola where one Chaitu saw them and from village Tola they dragged the dead body to village Amgaon where, it appears, and 2 were throughout this operation accompanied by other appellants. Ram Das, according to the prosecution went and informed Ram Dayal, father of the deceased Chet Ram, about this incident. Ram dayal immediately left in search of the dead body of his son, but not finding it he returned disappointed. Thereafter he got a report of the incident written by one Mansa Ram and went to the police station Rath and lodged it at 5-30 p.m. on the same day. On receiving the first information report the investigating officer agnihotri proceeded to village Aunts and started investigation. He recorded the statements of the witnesses. He noticed that there was a lot of blood in the courtyard of Laxmi and there were also some pieces of broken teeth at that place. He also incident and found two pellets embedded in the door of Laxmi's house. He also noticed that there was a good deal of blood in front of the house of Buddha carpenter. The dead body could not be traced on that day but on the next day, Agnitortu, following the stains of blood and marks of dragging, reached Bhaira Nala and found the dead body submerged in water held by two heave stones. The post-mortem examination of the dead body was thereafter performed by Dr. K. P. Mittal and after the report of the post-mortem examination was received, a charge-sheet was submitted against the appellants and Tulssi Das.

3. The case was tried by the Sessions Judge, Hamirpur. Before the learned Sessions Judge the prosecution examined several witnesses to prove the case against the appellants. Out of these witnesses, we need refer only to three namely, Ghanshyam, Ram Das and Chandan wife of Laxmi, who according to the prosecution, were eyewitnesses to the incident. The learned Sessions Judge disbelieved these three eyewitnesses by adopting a rather curious process of reasoning. First he examined the prosecution story in regard to dragging of the dead body of the deceased Chet Ram. He held that the theory of dragging was not believable and gave four reasons for taking this view. Firstly, he thought that the dragging of the dead body from the courtyard of Laxmi's house to Bhaira Nala was unnecessary. Secondly, he could not appreciate why it was necessary for appellant No. 5 to give two pharsa blows on the neck of the deceased Chet Ram in front of the house of Buddha carpenter. Thirdly, he felt that it was difficult, if not impossible, for two persons to drage the dead body upto a distance of four furlongs. And fourthly he thought that if the dead body was dragged for such a long distance, there should be quite big post-motem wounds on the dead body, but no such post-mortem wounds were found. He then proceeded to consider the evidence of the witnesses against the background of rejection of the story of dragging. So far as Ram Dayal is concerned, he dismissed the evidence of this witness on the ground that he was not an eyewitness, but at the same

time relied on his evidence for the purpose of holding that there was enmity between the factions of Bindaban and Ram Sevak and the appellants belonged to the former faction while Ram Dayal, Ram Das and the deceased Chet Ram belonged to the latter and it was, therefore, not difficult to believe that Ram Dyal and Ram Das had falsely implicated the appellants. He observed that it was likely that when Ram Dayal lodged the report at police station Rath, he did not know who were the real assailants of the deceased Chet Ram, but implicated the appellants only because the latter belonged to the faction of the deceased Chet Ram and as such not a very reliable person. The evidence of Khem Raj was also rejected and the reasoning given was that he was a ploughman of Prithviraj who was the brother of the Ram Sevak. The same criticism was also levelled against the evidence of Ram Das, and it was held that he was also an interested witness as he belonged to the faction of Ram Sevak. The learned Sessions Judge found it difficult to believe the testimony of this witness when he said that he and the other witnesses entered the pauri of Laxmi and from there saw that part of the incident which took place inside the house and they remained standing there even when the appellants dragged the dead body of the deceased Chet Ram out of the courtyard and carried it away by dragging it. So far as the evidence of Chandan, wife of Laxmi is concerned, the learned Sessions Judge conceded that she was a natural witness, but did not think it proper to place any reliance on her evidence, firstly, because she was not named as a witness in the chargesheet nor was she examined as a witness in the committing Magistrate's court, and secondly, because she mentioned in her evidence only the names of appellants Nos. 1, 3 and 6 and stated that she did not recognise the other assailants, and lastly, because it appeared from her evidence to be doubtful whether she saw the incident which took place in the courtyard. The learned Sessions Judge also pointed out that the first information report omitted to mention that appellants Nos. 3, 4 and 6 had attacked the deceased Chet Ram in the courtyard of Laxmi or anywhere else and this omission was a serious blow to the prosecution case. The learned Sessions Judge on this view held that the evidence on record did not establish the guilt of the appellants beyond doubt and he accordingly acquitted them.

4. The State preferred an appeal against the order of acquittal to the High Court. The High Court closely scrutinised the evidence and on the appreciation of the evidence came to the conclusion that the learned Sessions Judge had erred in acquitting the appellants. The High Court pointed out that the time and place of the incident were established beyond question and they were not challenged on behalf of the appellants. The High Court then proceeded to discuss the reasoning and demonstrated how in its opinion the reasoning was fallacious. The High Court observed that there was nothing inherently improbable in the conduct of the appellant in removing the dead body of the deceased Chet Ram from the courtyard of Laxmi by dragging it. The High Court thought that the explanation given by the prosecution that appellant No. 5 must have given two pharsa blows on the neck of the deceased Chet Ram in front of the house of Buddha carpenter in order to make sure that the victim died was quite plausible. The High Court also did not find it difficult to believe that two persons could have dragged the dead body upto a distance of four furlongs. So far as the argument based on absence of post-mortem injuries on the dead body was concerned, the High Court observed that according to the evidence of Ram Das and Khem Raj the appellants were dragging the dead body in such a manner that on part of the dead body touched the ground except the head and there were two abrasions on the head which supported the case of dragging. The High Court accordingly held that the story of dragging could not be ruled out and the finding of the learned Sessions Judge on that point could not be sustained. The High Court then proceeded to consider the evidence of Ghanshyam Das and Ram Das and held that merely because they were witnesses belonging to the faction of Ram Sevak that was not sufficient reasons for rejecting their testimony. Since the village was faction ridden, it

would be idle to expect independent persons to come forward as witnesses. The High Court accepted the evidence of Ghanshuam Das and Ram Das in so far as it related to the incident outside the house of Laxmi, but in so far as it related to the incident inside the house, the High Court preferred not to rely on the evidence of these two witnesses as it felt that it was rather improbable that they would take the risk of going inside the house when the appellants fully armed were assaulting the deceased Chet Ram. The High Court then considered the medical body of the deceased Chet Ram and the nature of such injuries clearly evidence and observed that the number of injuries found on the dead showed that they must have been caused by not less than five or six persons and they also corroborated the oral evidence of Ghanshyam and Ram Das that the appellants were armed with guns, spears, axe and pharsa. The High Court pointed out that injuries Nos. 1 and 2 in the post-mortem report tallied with the injuries alleged to have been inflicted by appellant No. 5 on the neck of the deceased Chet Ram in front of the house of Buddhu carpenter and they were injuries which could have been caused by pharsa, injuries Nos. 5, 6 and 7 were typical axe injuries and injuries Nos. 12 and 13 were clear spear injuries. There were four gunshot wounds found in the back of the chest of the deceased Chet Ram and this circumstance supported the oral evidence of Ghanshyam and Ram Das that the deceased Chet Ram was chased by the appellants in the courtyard of Laxmi's house when the gunshots were fired. The High Court pointed out :

It is also a significant fact that the mode of assault, the particular points of injuries and the various weapons wielded were all set out in the first information report which was lodged on March 27, 1967 whereas the dead body was recovered later, i.e. on March 28, 1967. If the witnesses had not seen the occurrence the injuries noted in the post-mortem report could not have tallied with those mentioned in the statements of the witnesses.

The High Court also accepted the evidence of Chandan. She was, according to the High Court, a wholly independent witness and there was a ring of truth in her evidence. It is true that she did not mention the names of appellants Nos. 2, 4 and 5 as assailants of the deceased Chet Ram, but she explained this by saying that it was out of fear that she did not mention their names and this explanation was found acceptable by the High Court since these appellants were either the sons or the nephews of Bindaban. The High Court relied on a very significant circumstance, namely, that her statement was recorded by the investigating officer Agnihotri on the same day on which the incident took place and pointed out that it did not matter that she was not examined initially in the Court of the committing Magistrate. The High Court agreed that the first information report did not mention that appellants Nos. 3, 4, 5 and 6 had also attacked the deceased Chet Ram in the courtyard of Laxmi's house or anywhere else, but did not consider this omission to be of any significance since the first information report was lodged by Ram Dayal who was not himself an eyewitness to the incident. The High Court attached great importance to the fact that the first information report was lodged promptly without deliberation or consultation and observed that it had a ring of truth about it. On a conspectus of these various circumstances the High Court took the view that it was sufficiently established by the evidence on record that the appellants had formed an unlawful assembly and in furtherance of the common object they attacked the deceased Chet Ram and intentionally caused his death. The High Court accordingly reversed the acquittal of the appellants and convicted and sentenced each of them for offence under Section 148 and Section 302 read with Section 149. The question is whether the High Court was justified in doing so?

5. Now, if we turn to the judgment of the learned Sessions Judge, we find that it suffers from several infirmities. We may first consider the discussion in regard to the theory of dragging. There are four reasons given by the learned Sessions Judge for rejecting the story of dragging. Each of these four

reasons has been considered and disapproved by the High Court and, in our opinion, rightly. Let us look at the basic facts which are established beyond doubt. It can hardly be disputed that the assault on the deceased Chet Ram took place in the courtyard of Laxmi's house and in this assault, amongst various weapons, guns were used. There and in this assault, amongst various weapons, guns were used. There was a good deal of blood in the courtyard of Laxmi's house and nine pellets and three wads of cartridges were found there and there were also the pellets embedded in the door of Laxmi's house. Then again there was a pool of blood in front of the house of Buddha carpenter and that means that the body of the deceased. Chet Ram must have been carried from near the house of Buddha carpenter to Bhaira Nala. If that be so, how can the story of dragging be regarded as improbable? Does it not stand to reason that the assailants carried the dead body from the courtyard of Laxmi's house to Bhaira Nala by dragging it? Apart from carrying the dead body in a vehicle - which it was nobody's case that the assailants did - dragging was the only mode by which they could have carried the dead body. Of course, it must be remembered that when the witnesses speak of dragging, it does not mean dragging in such manner that the whole of the dead body would be touching the ground. There is, therefore, no point in the criticism of the learned Sessions Judge that it was not necessary for the appellants to drag the dead body when we find that in fact they did carry it from the courtyard of Laxmi's house to Bhaira Nala. It is also difficult to understand the criticism of the learned Sessions Judge that it was not necessary for appellant No. 5 to give two pharsa blows on the neck of the deceased Chet Ram in front of the house of Buddha carpenter when the oral evidence of the witnesses on this point is found amply corroborated by the existence of a pool of blood in front of the house of Buddha carpenter and the medical evidence of injuries Nos. 1 and 2 in the post-mortem report. It cannot be said that the explanation given by the prosecution that appellant No. 5 gave two pharsa blows on the neck of the deceased Chet Ram in order to make sure that he was killed is far fetched or improbable. We also fail to appreciate the remarks of the learned Sessions Judge that it would be difficult for two persons to drag the dead body upto a distance of four furlongs when the evidence on record clearly show that in fact the dead body was carried by the assailants all this distance. The learned Sessions Judge relied on the absence of post-mortem wounds on the dead body in order to raise an inference that the dead body could not have been dragged such a long distance, but this observation is also, in our opinion, not justified. It is the evidence of Ghanshyam that "from beginning to end the dead body was dragged by holding it up only. Only his head was touching the ground." Appellants Nos. 1 and 2 were dragging the dead body in such a manner that no part of the dead body, except the head, touched the ground. If that be so, one can understand the absence of post-mortem injuries on the other parts of the dead body except the head. It may also be noted that, according to the dead body except the head. It may also be noted that, according to Agnihotri, investigating officer, who examined the dead body, he found that there were black dark marks on the back of the dead body and they were, in his opinion, due to dragging. Moreover, there is one very important circumstance which the learned Sessions Judge failed to take into account and it is that Agnihotri, investigating officer could trace the dead body to Bhaira Nala by following the stains of blood and marks of dragging along the path. This circumstance establishes beyond doubt that the dead body was carried by the appellants from the courtyard of Laxmi's house to Bhaira Nala by dragging it and the learned Sessions Judge was plainly and egregiously wrong in disbelieving the story of dragging.

6. The learned Sessions Judge also fell into an error in observing that the deceased Chet Ram was a man of loose character and a bully and "the possibility of Karia have been murdered by some persons residents of this bakhari cannot be ruled out". This was nothing but speculation on the part of the learned Sessions Judge for which there was not the slightest justification in the evidence on record. The learned Sessions Judge also adopted a rather superficial approach in rejecting the

testimony of Ram Dayal, Ghanshyam, Ram Das and Kem Raj on the ground that Ram Dayal, Ghanshyam and Ram Das belonged to the faction of Ram Sevak and were, therefore, interested persons, and Khem Raj was a ploughman of Prithviraj who was a brother of Ram Sevak. The learned Sessions Judge overlooked the fact which he himself took great care to emphasise in his judgment, that there were two factions in the village bitterly opposed to each other and their enmity had already taken a toll of twelve lives and, therefore, it would be idle to expect independent persons to come forward to give evidence otherwise be natural and probable witnesses to the incident. It would not be right to reject their testimony out of hand merely on the ground that they belonged to one faction or another. This Court pointed out in *Raghubir Singh v. State of U. P* 1 that [SCC P. 84 SCC (CRI) P. 404, para 10] in this connection the general reluctance of an average village to appear as a witness and get himself involved in cases of rival village factions when spirits on both sides are running high has to be borne in mind.

The learned Sessions Judge was, therefore, plainly and indisputably in error in rejecting the evidence on Ram Dayal, Ghanshyam, Ram Das and Khem Raj without even caring to assess it on its own merits. It is indeed difficult to see how the evidence of Ram Dayal could be rejected. He lodged the first information report with the police at 5.30 p.m. on the same day and obviously, since he was not an eyewitness to the incident, he must have got the information from someone who witnessed the incident and there is no reason why he should be disbelieved when he stated that it was Ram Das, Ghanshyam, Ganga Din and Balli who gave the information to him on the basis of which he lodged the first information report. This part of the evidence of Ram Dayal would also show that Ram Das and Ghanshyam were eyewitnesses to the incident. It is quite natural that Ram Das and Ghanshyam were with the deceased Chet Ram as they all belonged to the same faction of Ram Sevak and there is no inherent improbability in their being present when the incident occurred. It is true that it is a little difficult to believe that when the appellants chased the deceased Chet Ram into the courtyard of Laxmi's Ram Das and Ghanshyam followed them and, standing near the entrance, they saw that part of the incident which took place inside the courtyard. It is quite likely, as held by the High Court, that Ram Das and Ghanshyam would not have taken the risk of following the appellants were heavily armed. They must have remained outside and taken cover so as not to be seen by the appellants. But there is no doubt that they must have heard the gunshots fired by appellants Nos. 1 and 2. Equally, they must have seen the appellants dragging the dead body upto the house of Buddhu carpenter, appellant No. 5 giving two blows on the neck of the deceased Chet Ram, and the appellants once again dragging the dead body towards Amgaon. If they had not seen the first part of the incident which took place outside the courtyard of Laxmi, heard the gunshots fired by appellants Nos. 1 and 2, seen the appellants dragging the dead body from the courtyard of Laxmi upto the house of Buddhu carpenter, appellant NO. 5 giving two pharsa blows on the neck of the deceased Chet Ram and the appellants then once again dragging the dead body via Tola towards Amgaon, it is difficult to see how this information could have been received by Ram Dayal so as to enable him to lodge the first information report containing this information. The first information report mentions the names of the appellants and the weapons which each of them carried, narrates the first part of the incident which took place outside the courtyard of Maxmi and sets out the entire sequence of events after the firing of the gunshots inside the courtyard of Laxmi. How could Ram Dayal have obtained all this information unless Ram Das and Ghanshyam were eyewitnesses. Moreover, it may be noted that the first information report was lodged at 5.30 p.m. on March 27, 1967 while the dead body was recovered on the next day and yet the particulars in regard to the firing of gunshots and giving of two pharsa blows by appellants No. 5 on the neck of the deceased Chet Ram completely tally with the medical evidence as to the injuries detected as a result of the post-mortem examination. This circumstances lends the greatest assurance to the prosecution case

that Ram Das and Ghanshyam were eyewitnesses to the incident.

7. The evidence of Chandan, wife of Laxmi was also rejected by the learned Sessions Judge on a flimsy ground. The learned Sessions Judge conceded that Chandan was a natural witness, but he found it difficult to accept her testimony for three reasons. One was that she was not named as a witness in the chargesheet or the calendar, the other was that she gave the names of only three appellants as assailants of the deceased Chet Ram and stated that she did not recognise the other and thirdly, that she ran down after hearing the gunshots and finding the door chained from outside, she ran upstairs again and it was only thereafter that she looked out into the courtyard and saw what was happening and it was, therefore, doubtful whether she saw the remaining part of the incident. None of these three reasons is well founded and the High Court rightly did not accept any one of them as valid. One basic fact which must be remembered while appreciating the evidence of this witness is that her statement was recorded on the same day immediately after the incident when Agnihotri, investigating officer came to the site and started investigation. It is true that she was not named as a witness in the chargesheet nor was she called as a witness in the committing Magistrate's court but that cannot detract from the value of her testimony if otherwise it is found acceptable. It must be remembered that this was a faction ridden village and it is quite probable that this lady was afraid to come and give evidence as she would be incurring the enmity of the faction of Bindaban by doing so. That is perhaps the reason why she was not prepared to come and give evidence in the committing Magistrate's court. Ultimately she did come forward to give evidence at the stage of the trial before the learned Sessions Judge. But by that time her husband's brother was murdered and Bindaban, his son and three others were accused of that offence. She was, therefore, obviously afraid of implicating appellants Nos. 2, 4 and 5 as they were sons or nephews of Bindaban and it was for this reason that she mentioned only the names of appellants Nos. 1, 3 and 6 as the assailants of the deceased Chet Ram stating that she could not recognise the other assailants. Since this statement of hers was contrary to her police statement, she was allowed to be cross-examined by the prosecution and in answer to the prosecution she admitted that due to fear she did not mention the name of all the appellants. This circumstance was completely overlooked by the learned Sessions Judge when she deposed that from the chhajja in front of the atari of her house she saw five or six persons assaulting the deceased Chet Ram and they were armed with guns, spears, pharsa and axe. etc must have taken her hardly a minute or two to rush down and on finding the door chained from outside, to run up again and there is little doubt that she must have seen the rest of the incident after the firing of the gunshots. In fact it was not suggested to her in cross-examination that she could not have seen any part of the incident. The learned Sessions Judge was, therefore, clearly in error in rejecting the testimony of this lady. The High Court rightly accepted her evidence and relied upon it for the purpose of holding the prosecution case established against the appellants.

8. We are, therefore, of the view that the High Court was justified in reversing the acquittal of the appellants and convicting and sentencing each of them for offences under Section 148 and Section 302 read with Section 149. We do not see any reason to interfere with the decision of the High Court. The appeal is accordingly dismissed.

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