

Muluwa Son of Binda and Others

Vs

The State of Madhya Pradesh

Criminal Appeal No. 123 of 1971

(M.H. Beg, P.N. Bhagwati, R.S. Sarkaria JJ)

20.08.1975

JUDGMENT

SARKARIA, J. -

1. This appeal is directed against a judgment of the High Court of Madhya Pradesh converting, on appeal by the State, the acquittal of the appellants into conviction. It arises out of these circumstances.

2. These were two opposing factions of Ahirs in village Gurha, police station Harpalpur, district Chhatarpur. One faction was led by Gulab deceased and the other by the accused. There was bad blood between the two factions. Their relations were strained. Both the factions were proceeded against under Section 107, Cr. P. C. Even on the day of occurrence, which took place on February 21, 1967, a criminal case under Sections 324, 147, Penal Code was pending against Gulab and his partymen.

3. On February 21, 1967 in the morning, Gulab was grazing his goats at the village tank. At about 10 or 11 a.m., the appellants Muluwa, Nathu alias Siyawaniwala, Munnulal and the acquitted accused, Ramdas, Mohan, Kandu Gangaram and Ramesahai (excepting Bihari and Laxmi Prasad) were seen proceeding to the place where the deceased was. They were proclaiming that they would kill Gulab at all costs and would see to him who dared intervene. Munnulal was armed with a barchhi, and the rest with lathis. Near the tank, these eight accused, including the appellants made a concerted assault on Gulab with their respective weapons. They caused numerous injuries. The victim became unconscious. Taking him to be dead, the assailants left the place. The victim became unconscious. Taking him to be dead, the assailants left the place. The occurrence was witnessed by Mst. Jugatia (PW 1), the daughter of the deceased who implored the assailants to desist from the assault. The appellant Muluwa chased her upto some distance. Shortly after the first assault, all the eight assailants returned to the scene accompanied by Bihari and Laxmi Prasad. Bihari was carrying an axe and Laxmi Prasad a lathi. Finding that the deceased was still alive, Bihari shouted that Gulab should be finished. As a result, all the ten accused again showered blows on Gulab with their respective weapons, and thereafter went away. Bihari carried away the farsa of Gulab which had broken during the assault. After the departure of the assailants, the daughter carried her injured father home. She then proceeded to the police station Harpalpur for report. On the way she was confronted by Muluwa and Nathu appellants who turned her back under threat of death.

4. At about 12 noon, one Ram Charan son of Halku Ahir of village Gurha lodged an information (Ex. P-15) at the police station, purporting to have been derived from one Buckle, to the effect, that there was an apprehension of assault on Gulab deceased at the hands of Muluwa, Ganga and

Siyawaniwala of the village. It was added that Gulab had a quarrel with Bihari. Head Constable Ahmed Beg after entering this report, deputed constables Mohan Singh and Triloki Nath to proceed to the village "for ascertaining the truth". The constables found the injured Gulab at his house. Mst. Jugatia was also there. The injured was laid in a bullock-cart. Mst. Jugatia and Buckle PW 7 also got into the cart. Escorted by the constables they reached the hospital at Harpalpur. The Medical Officer saw Gulab and pronounced him dead. On being informed by the constables, the Station Officer, Parmanand Misra reached the hospital and recorded the statement (Ex. P-1) of Smt. Jugatia at 2 p.m. On the basis of her statement, the murder case was registered against the accused. Parmanand then prepared the inquest report and sent the deadbody for post-mortem examination which was conducted by Dr. B. S. Wankhede (PW 15) on February 22, 1967 at 12.30 p.m. The doctor found eight penetrating wounds, seven bruises, one incised wound and multiple abrasions on the body. The incised wound was located on the occipital bone. Its dimensions were 3" x 2" x 3". There were fractures of left temporal, left parietal and occipital bones. There were fractures of left humerus, right femur, right ulna and dislocation of metacarpo-phalangeal joint of the left middle finger. In the opinion of the doctor, injury No. 1 (the incised wound) individually, and all the injuries, collectively, were sufficient to cause death ordinary course of nature.

5. All the 10 accused were committed by the Magistrate after holding a preliminary enquiry, for trial to the Court, of Sessions in respect of offences under Sections 302 and 148 read with Section 149, Penal Code. Bihari was further charged under Section 329, Penal Code for robbing the deceased of his farsa. Muluwa was charged under Section 506, Penal Code, also, for intimidating Mst. Jugatia with threat of death.

6. The learned Sessions Judge acquitted all the 10 accused. Against that order, the State carried an appeal to the High Court. The appeal was partly accepted and the acquittal of the present appellants was reversed and each of them was convicted under Section 302 read with Section 34, Penal Code and sentenced to imprisonment for life. The acquittal of the remaining accused was maintained. Hence this appeal.

7. Four eyewitnesses namely, Smt. Jugatia (PW 1) Didarbus (PW 2), Kashi (PW 3) and Jagannath (PW 4) were cited by the prosecution. The last three turned hostile and the Public Prosecutor cross-examined them to impeach their credit. The courts below have not placed any reliance on the evidence of these hostile witnesses. The conviction recorded by the High Court rests mainly on the evidence of the sole eyewitness, Smt. Jugatia, the daughter of the deceased.

8. The Sessions Judge gave a number of reasons to show that Jugatia (PW 1) was not a trustworthy witness. The biggest infirmity noticed by him in her evidence was that she maintained complete silence about the assailants and the manner of assault until her statement Ex. P-1 was recorded in the hospital several hours after the occurrence. He noted that although an "outrageous act had occurred" she did not go and tell any of her neighbours including Dhanni, Punne, Chhannu, Deoki, Halke, Kanju and Bitte about the occurrence. She met her cousin who on seeing the injured Gulab asked her as to who had assaulted him. In spite of the query, she did not tell him as to who had assaulted him. She did not disclose anything about the incident even to the constables who escorted her and the injured to the hospital. The trial Judge observed :

This tacit silence on Jugatia's part is enigmatic and quite against normal human behaviour. There is no valid explanation for it and it leads to the inference that she in fact did not know about the assailants of her father.

The other reasons given by the Judge for discarding her evidences were : that she did not name Jagannath, Kashi and Didar in the F.I.R. or even in her police statement during investigation although they were well known to her; that she had contradicted her previous statements - One recorded under Section 164, Cr. P.C. and the other by the committal Court - about the accused Bihari and Laxmi Prasad following the other eight assailants; about her taking shelter behind a house when chased by Muluwa and Siyawaniwala; about her father lodging a report against persons of her husband's party alleging commission of dacoity etc.

9. The learned Judges on the High Court have tried to dispel the reasoning of the trial Judge with a general observation which is as follows :

It is pertinent to note that there have been rival factions and feelings have been running high between them because of prior incidents. At the time of the occurrence, cases were going on. There was a prosecution pending against the deceased, Gulab ... Under these circumstances .... the trial Judge was in error in thinking that people in the vicinity would come out and would try to save the victim when there were two clear cut factions.

Similarly Mst. Jugatia would not be expected to go in the village drumbeating and appraise the members of the opposite faction about the incident.

Similarly the fact she disclosed the names of the assailants in the hospital and not any time before, would also not be fatal to the prosecution case. Mst. Jugatia actually tried to proceed to the police station, to lodge a report. But she was prevented from proceeding further by two members of the opposite faction and she had to return back to the village. Under these circumstances it would be an obviously erroneous approach to expect Mst. Jugatia to move about in the village when she was in danger of being assaulted .... We would not approve of such a dogmatic approach on the part of the trial Judge. It was because of that wrong approach that the trial Judge held Mst. Jugatia's silence to be fatal to the prosecution case .... She may have exaggerated matters to some extent, inasmuch as she described the assault in two separate batches in order to implicate Bihari and Laxmi Prasad, who had not accompanied the assailants on the first occasion, but who were alleged to have accompanied them in their second trip. However, excluding all such exaggerations, we are of the view that conviction of some of the respondents would be sustainable even on the above material on record.

The argument as to why she had not informed the constables about the names of the assailants of her father when she was under their protection, was rejected in these terms :

During that period there would be no question of the witness telling those police constables the entire story, as her anxiety was to get her father removed to the hospital as early as possible, as his condition was bad.

The High Court did not notice the fact of her omission to inform her cousin, Ram Charan as to who were the assailants of her father.

10. With great respect, we are unable to agree with the learned Judges of the High Court that the appraisal of Smt. Jugatia's evidence made by the trial Judge was "dogmatic" or "obviously erroneous". While she was not expected to go about broadcasting in the village to all and sundry, including the neighbours, some of whom might be belonging to the opposite faction, her conduct in not disclosing, even in confidence, as to how the occurrence took place and who were the assailants of her father, to Ram Charan, Buckle, and the two constables, Mohan Singh and Trilokinath, did not

appear to be the natural conduct of a person who had seen the occurrence.

11. As regards Ram Charan, Mr. Panjwani, the learned Deputy Advocate-General for the State points out, that he is a type of cousin who was siding with the accused and was seen by Smt. Jugatia going away with Muluwa appellant. According to the Counsel, she could not be expected to disclose anything to such a callous cousin.

12. The contention cannot be accepted. There is nothing on the record to suggest that Ram Charan was unsympathetic towards Smt. Jugatia, or had any affinity with the accused. On the other hand, he was not only a nephew of the deceased and cousin of Smt. Jugatia, but was also a staunch partisan of the deceased. It is apparent from Ex. P-4, a copy of the roznamcha of the police station, that in proceedings under Section 107, Cr. P. C. Ram Charan, Buckle (PW 7), Gulab deceased and five others were arrayed as one party, while the accused were arraigned as the opposite party. Further, it is noteworthy that it was Ram Charan who had earlier in the day at 12 noon lodged the report (Ex. P-15) in the police station, that there was an apprehension of physical harm to the deceased at the hands of Muluwa, Siyawaniwala appellants and Ganga. Nor was there anything in the conduct of Ram Charan to convey to Smt. Jugatia the impression that he was colluding with the accused party and was callous towards her in that hour of misfortune. Smt. Jugatia's version is that she first saw Ram Charan when he was on her way to the police station. Before she could have any talk with Ram Charan he was taken away by Muluwa appellant, and she was also forced to return away by Muluwa appellant, and she was also forced to return to the village. Thus, Ram Charan's conduct in "going away with Muluwa was involuntary". Her remaining reticent about the occurrence on this "our of joint" occasion was self-explanatory. Indeed, her conduct on this occasion is not in question. What is in point is that which she said and which she did not say, later at the house, in answer to the query made by Ram Charan. Her own version on this point is telling. She states :

After coming to the house Ram Charan saw my father lying down. He questioned me as to by whom he was assaulted. At that time I did not narrate the entire incident to him. I told him that my father was kept in the tank after he was beaten. Therefore I lifted him and brought him to my house. At that time I did not state the names of the assailants to Ram Charan.

13. The underlined sentences (in bold type) in the above extract are crucial. They appear to have been blurted out by the witness unwittingly in her rustic simplicity under the spur of cross-examination. They furnish a clue as to why she did not tell Ram Charan about the names of the assailants and the circumstances of the assault. It can possibly be inferred therefrom, without unreasonable stretching of the words, that she had reached the tank (which was the place of occurrence) only after the incident, and finding her father there in an injured condition, brought him home. In any case, the reply given by her to Ram Charan's query coupled with her failure to apprise him about the assailants, raised a grave doubt about her being an eyewitness on the occurrence.

14. Similarly her conduct in not informing Buckle (PW 7) who was another close partyman of her father and had accompanied the injured along with her, under the escort of the constables, to the hospital, cannot be explained away on the hypothesis that she throughout continued to be under the spell of a freezing fear of the accused and did not shed it until her statement, Ex. P-1 was recorded by the Police Sub-Inspector. It is difficult to believe that even under the protection of the police constables she would not be feeling secure enough to talk about the occurrence. As is evident from the endorsement on the report. Ex. P-15, these two constables were specifically directed by their superior officers to go to the spot "to ascertain the truth". Such being their instructions, it is inconceivable that the constables would not make any enquiry from Smt. Jugatia and others as to the

assault and assailants of the deceased. It is equally improbable that Smt. Jugatia would not inform the constables about these facts if she had really seen the occurrence. True, there would be an anxiety on her part to get her injured father to the hospital as soon as possible, but she would be no less anxious to see the assailants of her father who were at large arrested forthwith by the police.

15. In the above premises the trial Court's conclusion that Smt. Jugatia was not a reliable witness, could not be said to be unreasonable.

16. Even the learned Judges of the High Court found that Smt. Jugatia's evidence was not flawless. In their opinion she had indulged in "exaggerations" and "embellishments". They disbelieved her version that the accused had returned along with Bihari and Laxmi Prasad to assault the deceased a second time. In spite of these infirmities, they held that her statement was "not wholly unreliable", and could be acted upon to the extent it was corroborated by the other material on record. Such corroboration was sought by them from the statements of Putti (PW 5) and Bitta (PW 6). The statements of these witnesses were to the effect, that sometime in the morning they had seen the accused (excluding Bihari and Laxmi) running armed towards the tank : Siyawaniwala appellant was proclaiming that they would kill Gulab. The trial Court found these two witnesses unreliable for two reasons. Firstly, they were partymen of the deceased and were arrayed along with him in proceedings under Section 107, Cr. P. C. Secondly, their evidence suffered from a glaring discrepancy about the time when they saw these eight accused going towards the tank to assault the deceased. Putti gave this time as "about 6 a.m.". Bitta specified this time as "10 or 10.30 a.m.". Smt. Jugatia stated that she had also seen these accused thus going armed to the tank at about 10-11 a.m. Putti admitted in cross-examination that he did not disclose this fact to any person in the village, although he had seen the constables there at about 3 p.m. Similar was the conduct of PW 6. Thus the evidence of PWs 5 and 6 was no better than that of Smt. Jugatia.

17. It is elementary that the evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand; for, evidence is to be weighed not counted. Since the evidence of PWs 5 and 6 suffered from the same infirmities as that of Smt. Jugatia, it cannot be said that the trial Judge had no basis, whatsoever, for stigmatising it as unreliable.

18. All said and done, this is a case where two views on the evidences are reasonably possible, one taken by the trial Court and the other reached by the High Court. It is well-settled that in the absences of any material irregularity, manifest error or illegality, the High Court should not interfere with the order of acquittal, merely because it thinks that it would, sitting as a trial Court, have taken the other view of the evidence.

19. For the foregoing reasons, we allow this appeal, set aside the conviction of the appellants, and restore the order of their acquittal recorded by the trial Court.

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