

Tameshwar Sahi and Others

Vs

State of U. P.

Criminal Appeal No. 125 of 1971

(Sarkaria, JJ)

01.10.1975

JUDGMENT

SARKARIA, J. -

1. Tameshwar Sahi (55), Ram Naresh (60), Harihar alias Harendra Nath Sahi (23), Jagdish Sahi (45), Dudhai alias Budhnath Sahi (70), Garib alias Lal Bahadur Sahi (22), Jagat Sahi (40), Arjun Sahi (25) and Bhandari Ahir (45), Sita Ram Sahi (40), were tried by the Additional Sessions Judge, Gorakhpur for the murders of Chandrabali and Ram Adhar, and for allied offences. All the ten were convicted under Section 302 read with Section 149 Penal Code on two counts, and sentenced to imprisonment for life, each. They were further convicted for the attempted murder of Raj Ballabh (PW 3), Harihar under Section 307 and the rest under Section 307/149 and each sentenced to 5 years' rigorous imprisonment. A sentence of 3 years' rigorous imprisonment was also imposed on each of them under Section 148, Penal Code. The sentences were directed to run concurrently.

2. On appeal, the High Court of Allahabad altered the conviction of Tameshwar Sahi and Ram Naresh to one under Section 302 read with Section 34, Penal Code but maintained their sentences of life imprisonment. The convictions on the other counts were set aside. The convictions of the other eight under Sections 148, 302/149, Penal Code was also set aside. The conviction of Harihar under Section 307, Penal Code was upheld.

3. Tameshwar, Ram Naresh and Harihar have come in appeal to this Court by special leave.

4. The prosecution case as unfolded at the trial by PW 3, Raj Ballabh, is as follows :

4A. One Janki owned a house in village Bairia-Dih. He executed an unregistered sale deed (Kha 10) in the year 1954 in favour of Sita Saran, the acquitted coaccused. After Janki's death his son Kedar (PW 17) sold the same house to Chandrabali deceased by a registered deed (Ka 22) in the year 1964.

5. On October 6, 1964, at about 9.30 a.m., the deceased persons, Chandrabali and his son, Ram Adhar started removing tiles from the roof of the said house. Sita Saran accompanied by the nine coaccused, all armed with spears, came there. Sita Saran asked the deceased to stop the demolition of the house, asserting that he was its owners by virtue of the purchase from Janki. A heated altercation ensued between the deceased and the accused. The deceased came down from the roof. A sharp exchange of abuse between the parties followed. Exhorting his companions to deal with the deceased, Tameshwar hit Chandrabali with the spear, while Ram Naresh struck his spear on Ram Adhar. Ram Naresh dealt a spear blow to Chandrabali also. Raj Ballabh PW interceded and asked

the assailants to desist from the assault. Thereupon, Harihar alias Harendra appellant gave a spear blow to Raj Ballabh, followed by another blow by one of the accused. While the appellants were striking blows on the victim, their companions continued to instigate them saying "Maro, Maro". On receiving these injuries, all the three victims fell to the ground. The assailants then ran away taking their weapons with them.

6. Apart from PW 3, the occurrence was witnessed by Hargovind (CW 1), Chaturgun Sardar Sahi, Sheoshankar, Sheo Mangal Yadav, Uppu and others who had come to the spot on hearing the altercation.

7. Chandrabali and Ram Adhar died at the spot. Raj Ballabh injured was removed to Barhalganj Hospital where he was examined by Dr. Paresh Chandra Chaudhury (PW 5) on the same day at 2.30 p.m. The doctor found one punctured wound on the left side of his chest and another punctured wound on the outer side of his right thigh. The chest wound was grievous while the other was simple.

8. The first information report of this case was laid by Sheo Shankar (PW 12) son of Raj Ballabh (PW 3) at the police station Barhalganj, 7 miles away, at 1.45 p.m., the same day, it was recorded by Head Constable Girish Dutt as the Sub-Inspector was away.

9. At 2.45 p.m. Jagdish, the acquitted coaccused also, lodged a report (Ex. Kha 18) in the police station complaining that Chandrabali and Ram Adhar deceased along with PWs Raj Ballabh, Sheo Shankar, Mangal, Laxmi Shankar, Mahatma Sahi and others were dismantling the tiles of the informant's house which had been purchased by the informant's brother, Sita Saran. The informant and his brother stopped them whereupon the deceased and their associates, all began plying ballams. One of the blows given by Ram Adhar hit the informant on the thigh. The informant and his brother wielded their ballams in self-defence. On account of the hue and cry raised, the villagers collected and intervened.

10. A copy of the F.I.R. made by PW 12 was received by Sub-Inspector Parsu Ram Singh in village Purey at 3 p.m. The Sub-Inspector then proceeded to the place of occurrence and reached there at about 3.45 p.m. He arrested Sit Saran and Dudhai accused, and seized bloodstained shirts from their persons, vide memo, Kha 21. The Investigating Officer recorded the statements of Hargovind, Budhu, Parduman, Smt. Dhanpati Smt. Attariwali and others, at the spot. After inspecting the spot and removing the blood-soaked earth, he recorded the statements of PWs Mangal, Chaturgun, Sheo Shankar and others.

11. On receiving a copy of the report given by Jagdish accused, the Investigating Officer rushed to the police station, and on reaching there at 9 p.m. arrested Jagdish and interrogated him.

12. Tameshwar, Ram Naresh, Harihar, Garib, Arjun, Jagat and Bhandari could not be found despite search. Therefore proceedings under Sections 87 and 88, Cr. P. C. against them were set afoot. These seven accused surrendered in court on November 11, 1964.

13. The inquest reports (Ka 9 and 1p) regarding the deaths of Chandrabali and Ram Adhar were prepared by Head Constable Girish Dutt. The post mortem examination of the dead bodies was conducted by Dr. P. N. Mehrotra (PW 6) on October 27, 1964 at 11.30 onwards.

14. The doctor found three wounds on the body of Ram Adhar which in his opinion, had been caused with a sharpedged pointed weapon like a spear and the death was due to shock and syncope

as a result of the chest injury (No. 1) and haemorrhage.

15. On the body of Chandrabali the doctor found two penetrating wounds on the chest and an abrasion on the left shoulder. The penetrating wounds in the doctor's opinion, had been caused with a sharp edged pointed weapon like a spear and the death was due to shock and syncope as a result of injury to both the lungs and haemorrhage.

16. The plea of the accused was one of denial of the prosecution case. Sita Saran pleaded alibi. Sita Saran however owned the shirt Ex. 7, and alleged that he had been beaten by the Sub-Inspector and the blood, if any, on this shirt, was of the accused. Jagdish disowned the F.I.R. Ex. Ka 18 although he repeated the allegation that he had been assaulted by the deceased and others when he prevented them from dismantling the tiles from the roof of the house.

17. At the trial the prosecution had examined sever eyewitnesses, namely, Chaturgun PW 1, Mahatma PW 2, Raj Ballabh PW 3, Sardar PW 4, Budhu PW 11, Sheo Shankar PW 12 and Laxmi Narain PW 13.

18. The trial Court found that the presence of PWs. 1, 2, 3, 12, and 13 at the time and place of occurrence could not be doubted. It did not rely on the testimony of Budhu who, in its opinion, had colluded with the accused, and had been allowed to be cross-examined by the Public Prosecutor. It further held that Sardar PW 4, was a "got up" witness and no reliance could safely be placed upon his statement. In its opinion, the ocular account of the aforesaid witnesses, corroborated by the medical evidence had fully brought home the charges to the accused. It therefore convicted them as aforesaid.

19. The learned Judges of the High Court, however, in disagreement with the trial Court, found that the evidence of PW 4 also was creditworthy. Although it found that all the 10 accused may have been present at the spot, yet it doubted whether all of them had spears or had intended participating in the occurrence. It held that the fatal assault on the deceased persons was made by Tameshwar and Ramnaresh on the exhortation of Tameshwar, that Harihar had intervened only to attack Raj Ballabh and that in these circumstances, each accused was responsible for his own individual act. On this reasoning all the accused, excepting the appellants, were acquitted.

20. Mr. Frank Anthony, learned Counsel for the appellants, contends that all the eyewitnesses examined by the prosecution were partisans of the deceased, and even according to the High Court it was not safe to act upon their testimony without seeking independent corroboration. Such corroboration, according to Counsel, was sought by the High Court from the testimony of PW 4. The point pressed into service is that evidence of PW 4, as found by the trial Court, was unreliable and it could not impart any assurance to the other evidence, which it itself did not have. It is pointed out that PW 4's statement was recorded by the investigating officer about two months after the occurrence although this witness was available at the time of recording the first information and was also present at the time of the inquest and signed the inquest reports. It is emphasised that his name does not find mention in the F.I.R. Further infirmities in his evidence pointed out by the Counsel are : that he had the audacity to deny that Jagdish accused had received any injury at or about the time of the occurrence; that he had seen the incident from a distance when all the 10 accused persons were allegedly surrounding the deceased and brandishing their weapons. In sum, it is maintained that if the evidence of PW 4 is knocked out there will be no independent evidence to corroborate the partisan witnesses.

21. Doubtless, the evidence of PW 4 suffers from several infirmities, and could not, as rightly held by the trial Court, be safely relied upon. But that does not mean that the prosecution case would collapse on that score. Even if his evidence were to be ruled out, the evidence of PW 3, corroborated by the medical evidence, would, in our opinion, be sufficient to sustain the conviction of the appellants. The testimony of PW 3, who is the chosen Sabhapati of the village panchayat strikes us as true. Although he is a partisan witness and in proceedings under Section 107, Cr. P. C. he was arrayed along with PWs 1, 2, 11, 13 against the party of the accused, yet that is not ground, in the circumstances of the case, to disbelieve him. He gave his evidence with due restraint and responsibility. The very tenor of his testimony bears the impress of truth. He physically interceded to stop the assault of the deceased person and in the process himself received two injuries. He was closest to the deceased and had the best opportunity to see as to who out of the several accused dealt blows to the deceased persons, and to him. He did not as his son PW 12 did (who had probably seen the incident from a distance) irresponsibly and recklessly say that all the ten accused assaulted the deceased persons. He ascribes the injuries of Chandrabali and Ram, Adhar to Tameshwar and Ram Naresh appellants only, although he had the opportunity to ascribe the six injuries found on the deceased person to six different persons out of the ten accused. He himself had received two spear injuries. He could - if he had been actuated by untruthful and vindictive motive - attribute his two injuries to two different persons. But he did nothing of this kind even with regard to his own injuries, he did not give up that restraint. He attributes only one of the injuries to Harinder appellant. In regard to his second injury, all that he said was that one of the accused inflicted that injury. The medical testimony furnished by PWs 5 and 6 confirms that all the injuries for the deceased excepting one of Chandrabali which was an abrasion and both the injuries of Raj Ballabh had been caused with sharp edged pointed weapons like spears. The corroboration furnished by the medical evidence, in the circumstances of the case, was sufficient to make Raj Ballabh's testimony safe for basing a conviction thereon.

22. Nor does the acquittal of the seven accused who according to Raj Ballabh were instigating the appellants necessarily show that he had falsely implicated them. The High Court did not find it so, it acquitted those accused only as a matter of abundant caution. In their case, the medical evidence could not furnish any corroboration as it has done against the appellants.

23. Nor do we find any substance in the contention that the story at the trial was materially changed from that narrated in the F.I.R. lodged by PW 12. In the F.I.R. the parts played by each of the accused were not particularised. It was not stated with specificity as to who belaboured whom. It was stated in a somewhat consolidated manner that all the ten accused surrounded the deceased and were seen plying their spears at them. The informant was the son of Raj Ballabh. Obviously he had seen the occurrence, if at all, from a distance. Had he ventured to go to the rescue of the victims he could not have escaped unscathed. Moreover when a crowd of assailants closes on a victim then the witnesses who see the incident from varying distance are not expected to give more than a general account of the incident. Only Raj Ballabh PW, who had actually interceded to stop the assault on the deceased person, and while so doing himself received injuries, could give such details with specificity, and he has done so in a natural, unexaggerated and forthright manner.

24. There is no hard and fast rule that the evidence of a partisan witness cannot be acted upon, without corroboration. If his presence at the scene of occurrence cannot be doubted and his evidence is consistent with the surrounding circumstances and the probabilities of the case and strikes the court as true, it can be a good foundation for a conviction, more so if some assurance for it is available from the medical evidence.

25. In the light of what has been said above, we have no hesitation in holding the Tameshwar and Ram Naresh were rightly rightly convicted for the murders of Chandrabali and Ram Adhar.

26. As against Harihar, we think the offence made out was one under Section 324, Penal Code and not under Section 307, Penal Code for which he has been convicted. Out of the two injuries found on the person of Raj Ballabh one, that is injury No. 1 only located on the chest, was grievous while the other on the thigh was simple. Raj Ballabh did not specify as to which of these injuries was inflicted by Harihar. Therefore, as a matter of caution, he should have been convicted for causing simple hurt only with a sharp weapon. Accordingly, we alter his conviction from one under Section 307, Penal Code to that under Section 324, Penal Code, and reduce his sentence to 3 years' rigorous imprisonment.

27. Excepting this modification qua Harihar appellant, the appeal is dismissed.

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