

Dharamdeo Singh and Others

Vs

The State of Bihar

Criminal Appeal No. 187 of 1971

(Y. V. Chandrachud, V. R. Krishna Iyer, A. C. Gupta JJ)

18.12.1975

JUDGMENT

GUPTA, J. -

1. The seven appellants before us were among the sixteen accused who were tried in the Court of the Second Additional Sessions Judge at Chapra variously charged under Sections 302/34, 302/149, 147, 148, 324, 326 and 379 of the Indian Penal Code. The Additional Sessions Judge by his order dated November 21, 1966 acquitted all the accused giving them the benefit of doubt on the view that the prosecution had not "come with clean hands" and there were indications of gradual improvement in the prosecution case. On appeal preferred by the State of Bihar, the Patna High Court by its order dated February 2, 1971 affirmed the order of the Additional Sessions Judge as regards nine of the accused but set aside the acquittal in the case of these seven appellants. Each of the seven appellants was convicted under Sections 302/149 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life. All of them were further convicted under Section 148 of the Indian Penal Code but no separate sentence was passed under that section. Appellant Rameshwar Singh was further convicted under Section 326 of the Indian Penal Code and appellants Birjhan Dhanuk, Gobardhan Bind, Saten Keori and Dwarika Singh were also convicted under Section 324 of the Indian Penal code but no separate sentence was passed against them under these sections.

2. There is no dispute that on the morning of November 24, 1965 there was an occurrence in village Bamo in police station Baikunthpur in the district of Saran resulting in the death of two persons named Baldeo Singh and Brahma Singh. It is also admitted that there was ill-feeling between the appellants and the deceased and their people, described in the judgment of the Additional Sessions Judge as the prosecution party - which description we shall adopt for the sake of convenience - over plot No. 283 in the aforesaid village. There had been proceedings under Sections 144 and 145 of the Code of Criminal Procedure over this land as a result of which Baldeo had been declared to be in possession of 11 kathas, 11 dhurs of land on the eastern side of the plot out of 14 kathas, 11 dhurs. The possession of appellant Dharamdeo was declared in respect of 3 kathas forming the western portion of the plot. The feelings between the parties were further embittered when the appellant Dharamdeo who, as a candidate for mukhiaship in the gram panchayat election in 1962 was defeated as a result of the prosecution party helping the rival candidate. The situation became so grave that proceedings under Section 107 of the Code of Criminal Procedure had to be started against both the parties. This was followed by another proceeding under Section 144 of the Code of Criminal Procedure over the possession of plot No. 283 but ultimately the respective possessions of the parties as before was upheld. In this case atmosphere of rivalry, the occurrence out of which the appeal arises took place.

3. The prosecution version of the incidence is like this. On November 24, 1965 in the morning Baldeo Singh along with his son Hirdaya Singh, brother Brahma Singh and Brahma's son Bhagwat Singh went to harvest the paddy standing on plot No. 283. They started the harvesting when all of a sudden the sixteen accused persons variously armed appeared and began assaulting the prosecution party. Baldeo, Brahma, Hirdaya and Bhagwat fled towards the east but were overtaken when they reached the field to one Sheo Lochan Nonia. There appellant Dharamdeo gave a bhala blow in the abdomen of Brahma and appellant Rajinder Singh struck him with a pharsa. Baldeo and Brahma fell down when the other accused persons also assaulted them. Appellant Rameshwar dealt a pharsa blow to Bhagwat. Appellant Dwarika assaulted Hirdaya with a pharsa. One Tapi Singh who sought to intervene was struck by Birihan with a pharsa and appellants Gobardhan and Saten with bhalas. The accused persons before leaving the place removed the harvested paddy lying on the plot No. 283 and also cut away the paddy still standing on the land.

4. At 10. 35 a.m. Muneshwar Pathak the officer-in-charge of Baikunthpur police station (PW 19) had the first report that some incident had taken place when Ram Adhar Singh (PW 1) son of Tapi Singh (PW 18) came to the police station and made a statement. This statement of course contained no particulars. On the statement of Ram Adhar Singh, PW 19 made a station diary and left for the place of occurrence where he found Baldeo and Brahma lying seriously injured. On the spot PW 19 recorded two statements made by Baldeo, the first of which is Exhibit 10 and the other made after some interval of time is Exhibit 10/1. PW 19 then sent Baldeo and Brahma and also their sons Bhagwat and Hirdaya who were also injured to hospital. The formal F.I.R. was drawn up on the basis of Exhibit 10. Both Baldeo and Brahma died in the hospital. PW 17, the Assistant Surgeon at the hospital who performed the post-mortem examination, found 11 marks of external injury on the body of Baldeo of which 3 were incised wounds and the rest caused by some hard and blunt substance like lathi. Brahma Singh had 12 injuries on his body of which 8 were either incised to punctured wounds and the remaining 4 were caused by some hard and blunt substance like lathi.

5. The prosecution examined 19 witnesses to prove its case out of whom 8 were supposed to be eyewitnesses of the occurrence. According to the Additional Sessions Judge the evidence raised doubts about the genesis of the occurrence. He held that Exhibits 10 and 10/1 which he described as the "sheet anchor" of the prosecution case were suspicious and unreliable documents. He gave the following reasons why he declined to rely on Exhibits 10 and 10/1 : (i) in view of the evidence of PW 5, the doctor of the hospital where Baldeo and Brahma were admitted, that they were not in a position to speak when they were brought to the hospital, it was doubtful whether Baldeo was in a fit condition to make the statements alleged to be his; (ii) in spite of Baldeo Singh having on his person 8 injuries caused by lathis, the statement, Exhibit 10 did not mention that any of the accused was armed with a lathi and contained no reference to the lathi blows given either to Baldeo himself or to Brahma; and (iii) Exhibit 10 did not also mention that the prosecution party were chased by the accused and overtaken on the field of Sheo Lochan; the story of the chase, absent in Exhibit 10, was introduced in the other statement, Exhibit 10/1, supposed to have been made by Baldeo a little later. The gradual improvement in the prosecution story as evidenced by Exhibits 10 and 10/1 along with certain other circumstances appearing in evidence made the Additional Sessions Judge doubt the truth of the prosecution case. Some of these other circumstances are as follows : PW 19, the investigating officer, found plot No. 283 harvested without indication that paddy on any part of the plot was cut away in a hurried and haphazard manner. This is not quite consistent with the prosecution story that the accused after the assault came back to plot No. 283 and cut away the paddy still standing on a part of the land. Further, there were no blood or marks of trampling on the plot as one would have expected if the occurrence really started on this land. Another circumstance which heightened the doubt was the presence of blood and marks of trampling on the land

belonging to the accused Dharamdeo Singh which was to the east of plot No. 283. PW 19 also found cut paddy scattered over the land belonging to Dharamdeo. The admitted fact that two of the accused, Dharamdeo Singh and Rajinder Singh, had sustained injuries was another circumstance which weighed with the Additional Sessions Judge. Dharamdeo had a grievous injury on his right hand described by the doctor as an "incised wound on the back of the right wrist joint 4" x 1 1/2" x 2" : the head of the right ulna has been removed". Rajinder Singh had also a "sharp penetrating wound on the upper part of the posterior left axillary 6 1/2" x 1/2" x 4" ". The prosecution version gives to explanation how these injuries could be caused if the occurrence had taken place in the manner suggested by the witnesses for the prosecution. The Additional Sessions Judge also examined the evidence of PW 7 Bhagwat Singh, PW 10 Hirdaya Singh and PW 18 Tapi Singh all of who had received injuries. It appears that PW 7 had named only one of the accused namely Rameshwar Singh to the police though in court he mentioned the names of all the other accused persons. PW 10 in explanation of the absence of any blood on plot No. 283 stated in court that on this plot Dharamdeo had dealt a blow on Baldeo with the lathi portion of his bhala. Apart from the improbability that Dharamdeo in spite of being armed with a bhala which he ultimately used should use it lathi portion only so long as they were on plot No. 283, this is a version which is absent in his statement to the police. PW 18 Tapi Singh, who claimed to be another eyewitness, said that neither Baldeo and Brahma nor Bhagwat and Hirdaya had received any injury on plot No. 283. This is a version which is different from that given by the other eyewitnesses whose story is that injuries were caused to all of them on that plot. In view of the circumstances referred to above and having regard to the fact that the witnesses for the prosecution were inimically disposed towards accused, the Additional Sessions Judge did not find it possible to accept the version of the incident as narrated in court by the witnesses for the prosecution and gave the benefit of doubt to all the 16 accused. The Additional Sessions Judge considered the evidence against each accused separately before coming to the conclusion that the charges against them had not been proved beyond doubt.

6. The High Court on a reappraisal of the evidence held that there was sufficient and cogent material to prove the charges levelled against the 7 appellants before us. It does not appear from the judgment of the High Court that it relied on any piece of evidence which the Additional Sessions Judge had overlooked to take note of or that the High Court thought that the Additional Sessions Judge relied on any circumstance which did not appear in the evidence on record. The only reason that we could see why the High Court reversed the decision of the court of sessions is that the High Court was inclined to take a view on the evidence different from that taken by the Additional Sessions Judge. We do not say that the view which the High Court took was not a possible view on the evidence, but so also was the view that the Additional Sessions Judge had taken. It is well settled that in an appeal against an order of acquittal, [SCC p. 156 : SCC (CRI) p. 780, para 14]

If two conclusions can be based upon the evidence on record, the High Court should not disturb the finding of acquittal recorded by the trial Court. It would follow as a corollary from that if the view taken by the trial Court in acquitting the accused is not unreasonable, the occasion of the reversal of that view would not arise. (See Sethu Madhavan Nair v. State of Kerala ((1975) 3 SCC 150 : 1974 SCC (Cri) 774)).

We have held that the view taken by the trial Court in this case was not an unreasonable one, and no occasion for the reversal of that view had therefore arisen. Accordingly we allow the appeal, set aside the judgment of the High Court and restore the order of acquittal passed by the trial Court. The appellants are directed to be set at liberty forthwith.

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