The State of Uttar Pradesh

Vs

Het Ram and Others

Criminal Appeal No. 79 of 1975

(P.K. Goswami, P.N. Shinghal JJ)

03.02.1976

JUDGMENT

SHINGHAL, J. -

1. The Sessions Judge of Farukhabad convicted respondents Het Ram, Sobran and Ram Pal of an offence under Section 302/34 I.P.C. for committing the murder of Rati Ram, and sentenced them to rigorous imprisonment for life. He also convicted them of an officer under Section 307/34 I.P.C. for causing grievous injury to Raja Ram (PW 2) with intent to commit his murder, and sentenced them to rigorous imprisonment for ten years. The respondents were given benefit of doubt in regard to the murder of one Nain Sukh, brother-in-law of Rati Ram, and were acquitted. While no appeal was preferred against the acquittal, the accused went up in appeal to the High Court of Judicature at Allahabad, which took the view that the prosecution had failed to establish the guilt beyond reasonable doubt. The High Court allowed the appeal by its judgment dated January 15, 1974, and set aside the conviction and the sentences of the accused. The state of Uttar Pradesh has therefore filed the present appeal by special leave.

2. The controversy in this Court centres round a short point but, in order to appreciate it, it will be necessary to make a brief mention of some of the facts.

3. It was alleged by the prosecution that there was dispute between Rati Ram and respondent Het Ram over a potato field. Rati Ram initiated proceedings under Section 144 Cr. P.C. and secured an order of attachment. A panchayat was held thereafter, and it decided that while potato crop may be given to respondent Het Ram, the field may be given to Rati Ram. It was alleged that the terms of the decision of the panchayat were reduced to writing and that document was handed over to Narain Sukh, brother-in-law of Rati Ram. It was alleged further that on December 24, 1971, Rati Ram and his son Raja Ram (PW 2) left Farukhabad at about 2.45 a.m. in a bullock cart loaded with potatoes for selling them there. Rati Ram's nephew Dwarika (PW 3) accompanied them in another bullock cart loaded with potatoes for the same purpose. At about 3.30 a.m., when they were travelling between Jhaua and Rampura villagers, they were surrounded by respondents Het Ram, Sobran and Ram Lal who were armed with "karolis". It is alleged that Het Ram was also armed with a pistol, and Sobran with a lathi. All the three respondents caused injuries to Rati Ram and Raja Ram, who raised an alarm. Dwarika, who was trailing behind in his cart, also raised an alarm and ran towards Jhaua village, but the respondents ran away towards the west before the villagers could arrive saying they would go and kill Nain Sukh. It is said that Nain Sukh was murdered soon after, while he was sleeping in Rati Ram's "chaupal". A report of the incident was lodged at police station Shamshabad shortly afterwards, at about 9.50 a.m.

4. The injuries of Raja Ram and Rati Ram were examined by the Medical Officer, District Hospital, Fatehgarh, the same day. Raja Ram had 26 incised wounds. The injuries of Rati Ram were also examined the same day. He had 7 incised wounds. His dying declaration was recorded by the Sub-Divisional Magistrate on December 24, 1971, and he succumbed to his injuries on December 30, 1971. Nain Sukh succumbed to his injuries soon after the incident, but we are not concerned with his case as it is not the subject-matter of the appeal before us.

5. The High Court took note of the fact that Raja Ram (PW 2) Dwarika (PW 3) were two eyewitnesses of the prosecution in regard to the incident relating to the injuries inflicted on Rati Ram and Raja Ram. It held that the presence of Raja Ram had been established by the injuries which were received by him, and it also reached the conclusion that Dwarika (PW 3) was also present at the time of the incident. After recording that finding, the judges raised the question whether those witnesses could identify the assailants in the dark night, and answered it in the following manner :

As we were not certain whether person could be identified in a dark night even from a short distance we went to a place where there was no artificial light on 11-1-74, which was the third day of dark fortnight, at about 7.30 p.m. before moonrise along with the learned Government Advocate and Sri Kundan Singh counsel for the appellants. We found that it was extremely difficult to recognise faces even of persons standing within a foot. Although the general outline of the face was visible the features could not be seen clearly. Beyond a distance of two or three feet even the outline of the face was not clear. It is noteworthy that according to the evidence on record the assailants did not speak at all at the time of the occurrence. There was therefore no question of recognition by voice. We are therefore of the opinion that even Raja Ram and Rati Ram who had received injuries in the incident were not in a position to recognise the assailants clearly beyond the possibility of any mistake. According to the evidence on record, Dwarika is alleged to have recognised the assailants from a distance of about five or six paces. From that distance it was not at all possible to do so. The result therefore is that we are not prepared to accept either the dying declaration of Rati Ram or the statements of Raja Ram and Dwarika regarding the complicity of the appellants in the crime. The implication of the appellants on the basis of suspicion cannot be ruled out as admittedly there was a dispute between Rati Ram and Het Ram in respect of a field which, according to the prosecution, constituted the motive for the crime.

6. The legality and the propriety of the visit of the judges "to a place where there was no artificial light", at 7.30 p.m. on January 11, 1974, and the inferences drawn from that visit, is the only point which has been argued for our consideration for, as has been stated in the judgment under appeal, that was the basis of the order of acquittal. While Mr. Rana has challenged that action, Mr. Yogeshwar Prasad has argued that the visit was by way of a local inspection within the meaning of Section 539B of the Code of Criminal Procedure and was quite in order. It is admitted that a memorandum of the facts observed by the judges was not recorded, and Mr. Yogeshwar Prasad has invited out attention to several decisions of High Courts in which it has been held that such a omission was a mere irregularity so long as it could be shown that it had not caused failure of justice or prejudiced the defence.

7. It is not in controversy before us that it is permissible for an appellate Court to make a local inspection of the nature contemplated by Section 539B. Sub-section (1) of that section, which bears on the controversy before us, reads as follows :

539B. (1) Any Judge or Magistrate may at any stage of the inquiry, trial or other proceeding, after

due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

What is therefore permissible is that a judge may inspect any "place in which an offence is alleged to have been committed", or "any other place" which it is his opinion necessary to view for the purpose of "properly appreciating the evidence" given at an inquiry, trial or other proceeding. The judges of the High Court did not, however, inspect any such place in which an offence was alleged to have been committed and, as is obvious, it cannot be said that they inspected any other place which could be said to be necessary to view for the purpose of properly appreciating the evidence in the case. The learned Judges in fact did not go to visit any particular "place" as such, for they went to a place "at a short distance" where there was no artificial light mermly for the purpose of ascertaining whether "persons could be identified in a dark night even from a short distance". Theirs was therefore not a local inspection within the meaning of Section 539B Cr. P.C., for what that section contemplates is the local inspection of the topography of the place in which the offence was alleged to have been committed or its local peculiarities for the purpose of properly appreciating the evidence which was already on the record.

8. It will be recalled that the incident in this case was alleged to have taken place at about 3.30 a.m. on December 24, 1971. The judges however choose to go and visit a place unconnected with the incident on January 11, 1974, at about 7.30 p.m. for the purpose of ascertaining whether persons could be identified at that hour from a short distance. They thus chose the time and the place of their visit according to their whim and fancy, quite unconnected with the time and place of the incident. Mr. Yogeshwar Prasad has not been able to refer us to any provision of law under which such a course could be said to be permissible. It will be recalled that the judges did not record a memorandum of any relevant fact observed by them at the time of their inspection. But even if it is assumed, for the sake of argument, that the omission did not prejudice anyone and was a mere irregularity, the fact remains that, as we shall show presently, they did not correlate the result of their inspection to the evidence on record and there is justification for the argument of Mr. Rana that the local inspection cannot be said to have been undertaken for the purpose of properly appreciating the evidence on record.

9. We have extracted that portion of the impugned judgment of the High Court which bears on the controversy before us. There is nothing in the judgment to show the nature of the place which was selected by the judges for their visit on January 11, 1974 at about 7.30 p.m. It is thus not known whether it was an open place, or it was some such place as the one where the alleged incident took place. The time of the visit had also nothing to do with the alleged incident. It has been stated by the judges that they found that it was "extremely difficult to recognise faces even of persons standing within a foot", but they have not stated whether it was impossible to recognise the faces of even those persons who were relations and were well-known to the witnesses over a long period of time. The statement of Raja Ram (PW 2) in the trial Court was read out to us. He has stated that the accused gave the beating while clinging to the victims at close quarters. There is however nothing in the judgment of the High Court to show whether the darkness found by the judges was so intense that even those clinging to the victims could not be identified by them in the darkness which the judges found at the time of their inspection. The statement that it was extremely difficult to recognise faces of persons standing within a foot, was thus quite immaterial because the evidence in the present case was not that the accused were standing at that distance but that they were clinging to the victims. It has further been stated in the impugned judgment that "although the general outline

of the face was visible the features could not be seen clearly". It has not however been stated whether the features of well familiar faces could also not be recognised. The same criticism applies to the observation that beyond a distance of two or three feet, even the outline of the face was not clear. It would thus appear that it is not possible to contend that the local inspection on which considerable reliance was placed by the learned Judges was undertaken for the purpose of "properly appreciating the evidence" on the record. If we may say so, the inspection was not interlaced for any such purpose. It had the effect of substituting the personal observations of the judges for the evidence on the record. It is a matter of regret that those views should have formed the basis for rejecting the prosecution evidence altogether. It has to be remembered that Raja Ram (PW 2) received as many as 26 incised wounds, some of which were on the front part of his body. He has stated at the trial that the accused were clinging to him so that, according to him, he was facing them at very close quarters. Rati Ram received 7 injuries including those on the chest. He also thus had the opportunity of identifying them at very close quarters. The statements of Raja Ram and the dying declaration of Rati Ram should thereof have been examined by the High Court, as the court of first appeal, on their merits and not on the fanciful ground that the judges who went for local inspection found, on their own examination, that it was extremely difficult to recognise the faces of the assailants.

10. For the reasons mentioned above, we have no doubt that the procedure adopted by the judges in visiting quite a different place, on a date and time unconnected with the time of the alleged incident, for the purpose of deciding whether the witnesses could identify the assailants in the darkness, was quite illegal and it was not permissible for them to dispose of the case on the basis of their own findings without regard to the evidence which was already on the record. We are therefore constrained to set aside the impugned judgment dated January 15, 1974 and to direct that the High Court shall rehear the appeal according to the law and dispose of it within a period of there weeks. The record of the case may be sent to the High Court by a special messenger to avoid any delay in transit.

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